

Part III—Offences, penalties and legal proceedings

22 Offences and penalties

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes a provision of a declaration made under Part II in relation to a significant Aboriginal area.

Penalty:

- (a) if the person is a natural person—\$10,000 or imprisonment for 5 years, or both; or
 - (b) if the person is a body corporate—\$50,000.
- (2) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes the terms of a declaration under this Part relating to a significant Aboriginal object or significant Aboriginal objects.

Penalty:

- (a) if the person is a natural person—\$5,000 or imprisonment for 2 years, or both; or
 - (b) if the person is a body corporate—\$25,000.
- (3) A person who contravenes subsection 20(1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.
- (4) A person who contravenes subsection 17(4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

- (5) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

23 Indictable offences

- (1) Subject to subsection (2), the following offences are indictable offences:
 - (a) an offence referred to in subsection 22(1) or (2);
 - (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
in relation to an offence referred to in paragraph (a) of this subsection.
- (2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in that subsection, the penalty that the court may impose is:
 - (a) if the person is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
 - (b) if the person is a body corporate—a fine not exceeding \$10,000.

24 Evidence

- (1) In any proceedings for an offence referred to in subsection 23(1), the proof of a declaration made under Part II in relation to an area, object or objects is *prima facie* evidence that the area is a significant Aboriginal area, the object is a significant Aboriginal object or the objects are significant Aboriginal objects, as the case may be.
- (2) For the purposes of subsection (1), a declaration made by the Minister under Part II may be proved by the production of the *Gazette* purporting to contain it.
- (3) In proceedings for an offence referred to in subsection 23(1), where there is evidence that, at the relevant time, the defendant neither knew, nor had reasonable grounds for knowing, of the

Section 25

existence of the declaration alleged to have been contravened, the defendant shall not be committed for trial or convicted unless the prosecution proves that, at that time, the defendant knew, or ought reasonably to have known, of the existence of the declaration.

25 Body corporate responsible for acts of servants and agents

- (1) Where, at a particular time, a member of the governing body, director, servant or agent of a body corporate:
 - (a) intends to do, or not to do, a particular act; or
 - (b) knows, or ought reasonably to know, of the existence of a declaration made under Part II or IIA;paragraph (a) or (b), as the case may be, shall be deemed to apply to the body corporate at that time.
- (2) Any conduct engaged in on behalf of a body corporate by a member of the governing body, director, servant or agent of the body corporate, or by any other person at the direction or with the consent or agreement (whether express or implied) of one of the first-mentioned persons, shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.
- (3) In subsection (2), a reference to engaging in conduct is a reference to doing, or failing or refusing to do, any act or thing.
- (4) In relation to a body corporate that does not have a governing body, a reference in this section to a member of the governing body is a reference to a member of the body corporate.

26 Injunctions

- (1) Where, on the application of the Minister, the Federal Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
 - (a) a contravention of a provision of a declaration made under Part II or IIA;
 - (b) attempting to contravene such a provision;
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision;

- (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) conspiring with others to contravene such a provision;
- the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
 - (3) The Court may rescind or vary an injunction granted under subsection (1) or (2).
 - (4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is a serious and immediate threat of injury to, or desecration of, the relevant area, place, object or objects, as the case may be, if the person engages in conduct of that kind.
 - (5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is a serious and immediate threat of injury to, or desecration of, the relevant area, place, object or objects, as the case may be, if the person refuses or fails to do that act or thing.

Section 27

27 Proceedings *in camera*

In any proceedings in a court arising under this Act, except Part IIA, the court, on application, may, if it is satisfied that it is desirable to do so, having regard to:

- (a) the interests of justice; and
- (b) the interests of Aboriginal tradition;

order the exclusion of the public, or of persons specified in the order, from a sitting of the court and make such orders as it thinks fit for the purpose of preventing or limiting the disclosure of information with respect to the proceedings.

28 Compensation for acquisition of property

- (1) Where, but for this section, the operation of a provision of this Act (except a provision of Part IIA) or of a declaration made under Part II would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Commonwealth such reasonable amount of compensation as is agreed upon between the person and the Commonwealth or, failing agreement, as is determined by the Federal Court.
- (2) In subsection (1), *acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

29 Powers of courts not limited

Nothing in this Act shall be taken to limit or restrict any powers conferred on a court by any other law.

30 Legal assistance

- (1) A person:
 - (a) who wishes to apply for a declaration under section 9, 10 or 12;
 - (b) who considers that his or her proprietary or pecuniary interests:
 - (i) are likely to be adversely affected by a declaration proposed to be made under section 9, 10, 12 or 18; or

- (ii) are adversely affected by a declaration so made; or
 - (c) against whom proceedings have been instituted:
 - (i) for an offence referred to in subsection 23(1); or
 - (ii) under section 26 (not being proceedings in relation to a declaration under Part IIA);
- may apply to the Attorney-General for a grant of assistance under subsection (2).
- (2) Where an application is made by a person under subsection (1), the Attorney-General, or a person appointed or engaged under the *Public Service Act 1999* (the *public servant*) authorized in writing by the Attorney-General, may, if he or she is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize the grant by the Commonwealth to the person, either unconditionally or subject to such conditions as the Attorney-General or public servant determines, of such legal or financial assistance as the Attorney-General or public servant determines.

Part IV—Miscellaneous

31 Delegation

- (1) The Minister may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him or her, delegate to a person all or any of his or her powers and functions under this Act (other than sections 9, 10 and 12, subsection 13(2) Part IIA and section 26), the regulations, or a declaration, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, the regulations or the declaration, as the case may be, be deemed to have been exercised or performed by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power or performance of a function by the Minister.
- (4) In this section, *declaration* means a declaration made under Part II.

32 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule—Local Aboriginal communities

Section 21A

Ballarat and District Aboriginal Co-operative Ltd.
Bendigo Dja Dja Wrung Aboriginal Association Incorporated
Brambuk Incorporated
Camp Jungai Co-operative Ltd.
Central Gippsland Aboriginal Health and Housing Co-operative
Ltd.
Dandenong and District Aborigines Co-operative Ltd.
Echuca Aboriginal Co-operative Ltd.
Far East Gippsland Aboriginal Corporation
Framlingham Aboriginal Trust
Gippsland and East Gippsland Aboriginal Co-operative Ltd.
Goolum-goolum Aboriginal Co-operative Ltd.
Gunditjmara Aboriginal Co-operative Ltd.
Healesville and District Aboriginal Co-operative Ltd.
Kerrup-Jmara Elders Aboriginal Corporation
Lake Condah Aboriginal Co-operative Ltd.
Lake Tyers Aboriginal Trust
Lakes Entrance Aboriginal Corporation
Moogji Aboriginal Council East Gippsland Incorporated
Murray Valley Aboriginal Co-operative Ltd.
Rumbalara Aboriginal Co-operative Ltd.
Shepparton Aboriginal Arts Council Co-operative Ltd.
Sunraysia and District Aboriginal Corporation
Swan Hill and District Aboriginal Co-operative Ltd.
Wamba-Wamba Local Aboriginal Land Council
Wathaurong Aboriginal Co-operative Ltd.
West Gippsland Aboriginal Co-operative Ltd.
Wurundjeri Tribe Land Compensation and Cultural Heritage
Council Incorporated

Yorta-yorta Cultural Heritage Council Incorporated
Yorta Yorta Murray Goulburn Rivers Clans Incorporated

Table of Acts**Notes to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*****Note 1**

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* as shown in this compilation comprises Act No. 79, 1984 amended as indicated in the Tables below.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended by the *Aboriginal and Torres Strait Islander Heritage Protection Regulations (Amendment)*. The amendments are incorporated in this compilation.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984</i>	79, 1984	25 June 1984	25 June 1984	
<i>Aboriginal and Torres Strait Islander Heritage (Interim Protection) Amendment Act 1986</i>	83, 1986	24 June 1986	24 June 1986	—
<i>Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987</i>	39, 1987	5 June 1987	10 July 1987 (see <i>Gazette</i> 1987, No. S171)	—
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	150, 1989	27 Nov 1989	5 Mar 1990 (see <i>Gazette</i> 1990, No. S48)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 5 (items 1-3): Royal Assent (a)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 20, 21): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (b)	—
<i>Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001</i>	15, 2001	22 Mar 2001	Schedule 1 (items 1-11): 24 May 2001 (c)	S. 4

Act Notes

- (a) The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended by Schedule 5 (items 1-3) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (b) The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended by Schedule 1 (items 20 and 21) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (c) The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended by Schedule 1 (items 1-11) only of the *Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(c) of which provides as follows:
- (1) Subject to this section, this Act commences on the latest of the following days:
 - (c) the day on which item 15 of Schedule 1 to the Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 commences.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title.....	am. No. 83, 1986
S. 1.....	am. No. 83, 1986
S. 6A.....	ad. No. 15, 2001
S. 7.....	am. No. 39, 1987; No. 43, 1996; No. 15, 2001
S. 8A.....	ad. No. 39, 1987
Ss. 9, 10.....	am. No. 43, 1996
Ss. 12, 13.....	am. No. 43, 1996
S. 15.....	am. No. 99, 1988
Ss. 16, 17.....	am. No. 43, 1996
S. 19.....	am. No. 43, 1996
Ss. 20, 21.....	am. No. 39, 1987; No. 43, 1996
Part IIA (ss. 21A-21Z, 21ZA)	ad. No. 39, 1987
S. 21A.....	ad. No. 39, 1987
S. 21B.....	ad. No. 39, 1987 am. No. 150, 1989
Ss. 21C-21F.....	ad. No. 39, 1987
S. 21G.....	ad. No. 39, 1987 am. No. 15, 2001
S. 21H.....	ad. No. 39, 1987 rs. No. 15, 2001
Ss. 21J-21T.....	ad. No. 39, 1987
S. 21U.....	ad. No. 39, 1987 am. No. 15, 2001
Ss. 21V-21X.....	ad. No. 39, 1987
S. 21Y.....	ad. No. 39, 1987 am. No. 15, 2001
S. 21Z.....	ad. No. 39, 1987
S. 21ZA.....	ad. No. 39, 1987
S. 22.....	am. No. 15, 2001
S. 23.....	am. No. 15, 2001
Ss. 25-28.....	am. No. 39, 1987
S. 30.....	am. No. 39, 1987; No. 43, 1996; 146, 1999
S. 31.....	am. No. 39, 1987; No. 43, 1996
S. 33.....	rep. No. 83, 1986
Schedule.....	ad. No. 39, 1987 am. Statutory Rules 1987 No. 153; 1989 No. 420; 1992 No. 121; 1994 No. 28

Table A

Table A

Application, saving or transitional provisions

Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001 (No. 15, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.