

Aboriginal Heritage Amendment Bill 2014

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Western Australia

LEGISLATIVE ASSEMBLY

Aboriginal Heritage Amendment Bill 2014

A Bill for

An Act to amend the *Aboriginal Heritage Act 1972*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Aboriginal Heritage Amendment Act 2014*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act — on a day fixed by proclamation,
8 and different days may be fixed for different provisions.

9 **3. Act amended**

10 This Act amends the *Aboriginal Heritage Act 1972*.

11 **4. Section 4 amended**

12 (1) In section 4 delete the definition of *Registrar*.

13 (2) In section 4 insert in alphabetical order:

14

15 *ASO register* means the register of Aboriginal sites and
16 objects kept under section 50A;

17 *CEO* means the chief executive officer of the
18 Department;

19 *declaration* means a declaration issued under
20 section 18C;

21 *DP register* means the register of declarations and
22 permits kept under section 50C;

23 *permit* means a permit given under section 18;

24 *prescribed* means prescribed by the regulations;

25 *register* means —

- 26 (a) the register of Aboriginal sites and objects kept
27 under section 50A; or

1 (b) the register of declarations and permits kept
2 under section 50C;

3 *Registrar* means the Registrar of Aboriginal Sites,
4 designated under section 12(1);
5

6 **5. Section 5 amended**

7 In section 5(c) delete “Committee,” and insert:

8

9 CEO,
10

11 **6. Section 7A inserted**

12 After section 6 insert:
13

14 **7A. Evaluating place or object**

15 (1) A person, court or tribunal evaluating the importance
16 or significance of a place or object to persons of
17 Aboriginal descent or the community for the purposes
18 of this Act must consider these matters —

19 (a) any existing use or significance attributed under
20 relevant Aboriginal custom;

21 (b) any former or reputed use or significance which
22 may be attributed upon the basis of tradition,
23 historical association or Aboriginal sentiment;

24 (c) anthropological, archaeological or
25 ethnographical interest;

26 (d) aesthetic values;

27 (e) any prescribed matter.

28 (2) Associated sacred beliefs, and ritual or ceremonial
29 usage, in so far as those matters can be ascertained,
30 must be regarded as the primary considerations to be

s. 7

1 taken into account in the evaluation of any place or
2 object for the purposes of this Act.
3

4 **7. Sections 11A and 13 replaced**

5 Delete sections 11A and 13 and insert:
6

7 **12A. Functions of CEO**

8 The CEO's functions include the following —

- 9 (a) to evaluate on behalf of the community the
10 importance and significance of places and
11 objects alleged to be associated with Aboriginal
12 persons;
- 13 (b) where appropriate, to record and preserve the
14 traditional Aboriginal lore related to places and
15 objects alleged to be associated with Aboriginal
16 persons;
- 17 (c) to recommend to the Minister places and
18 objects that, in the opinion of the CEO, are, or
19 have been, of special significance to persons of
20 Aboriginal descent and should be preserved,
21 acquired and managed by the Minister;
- 22 (d) to decide, in accordance with section 50B, what
23 information relating to places or objects should
24 be entered into or deleted from the ASO
25 register, and what information in that register
26 should be amended;
- 27 (e) to perform the other functions allocated to the
28 CEO by this Act.

29 **12. Designation and functions of Registrar of**
30 **Aboriginal Sites**

- 31 (1) The CEO must designate an officer of the Department
32 to be the Registrar of Aboriginal Sites.

- 1 (2) The Registrar's functions include administering the
2 day-to-day operations of the Committee.
- 3 (3) The Registrar may delegate to another officer of the
4 Department the performance of any of the Registrar's
5 functions, other than this power of delegation.
- 6 (4) A delegation made under subsection (3) must be in
7 writing and have the prior approval of the CEO.
- 8 (5) All communications required by this Act to be made to
9 or by the Minister, the CEO or the Committee may be
10 made through the Registrar.

11 **13. Powers of delegation**

- 12 (1) The Minister may delegate to an officer of the
13 Department all or any of the functions that the Minister
14 has under this Act, other than this power of delegation.
- 15 (2) The CEO may delegate to an officer of the Department
16 all or any of the functions that the CEO has under this
17 Act, other than this power of delegation.
- 18 (3) A delegation made under subsection (1) or (2) must be
19 in writing.
20

21 **8. Section 15 amended**

22 In section 15 delete "he" and insert:

23
24 the person
25

1 **9. Sections 17 and 18 replaced**

2 Delete sections 17 and 18 and insert:

3

4 **17. Offences relating to Aboriginal sites**

5 (1) A person must not —

6 (a) excavate, destroy, damage, conceal or in any
7 way alter any Aboriginal site; or

8 (b) in any way alter, damage, remove, destroy or
9 conceal any object on or under an Aboriginal
10 site; or

11 (c) deal with in a manner not sanctioned by
12 relevant custom any object on or under an
13 Aboriginal site; or

14 (d) assume the possession, custody or control of
15 any object on or under an Aboriginal site.

16 (2) A person who contravenes subsection (1) commits an
17 offence and is to be sentenced under section 57.

18 (3) It is a defence to a charge of an offence under
19 subsection (2) for the accused person to prove on the
20 balance of probabilities —

21 (a) the accused was acting in accordance with an
22 authorisation given under section 16; or

23 (b) the accused was acting in accordance with a
24 permit; or

25 (c) the place where the alleged offence occurred
26 was the subject of a declaration.

27 **18A. Application for permit to do act that might**
28 **contravene s. 17**

29 (1) A person who, on land on which there might be an
30 Aboriginal site or an object to which this Act applies,

-
- 1 proposes to do an act that might contravene section 17
2 may apply for a permit to do the act on the land.
- 3 (2) An application must —
- 4 (a) be in writing in a form approved by the CEO;
5 and
 - 6 (b) describe the land to which it relates; and
 - 7 (c) describe the proposed act that might contravene
8 section 17; and
 - 9 (d) contain any other information the form requires
10 or that is prescribed; and
 - 11 (e) be made to the CEO; and
 - 12 (f) be accompanied by the prescribed fee, if any.
- 13 (3) On an application made in accordance with
14 subsection (2), the CEO must deal with the application
15 in accordance with the regulations and do one of the
16 following —
- 17 (a) if the CEO is of the opinion that there is no
18 Aboriginal site on the land, the CEO may —
 - 19 (i) issue a declaration under section 18C; or
 - 20 (ii) decide not to issue a declaration under
21 section 18C, and in that case the CEO
22 must notify the applicant of that
23 decision;
 - 24 (b) whether the CEO is of the opinion that there is
25 an Aboriginal site on the land or that there is no
26 Aboriginal site on the land, the CEO may give
27 the applicant a permit under section 18 if the
28 CEO is satisfied that —
 - 29 (i) the proposed act would not destroy or
30 significantly damage or alter any
31 Aboriginal site on the land or any object
32 to which this Act applies on or under
33 any Aboriginal site on the land; and

- 1 (ii) there is no significant risk that the
2 proposed act would adversely affect the
3 importance and significance of any
4 Aboriginal site on the land;
- 5 (c) if the CEO is of the opinion that there is an
6 Aboriginal site on the land, the CEO may refer
7 the application to the Committee, and, if he or
8 she does so, the CEO must provide the
9 Committee with —
- 10 (i) a copy of all information that relates to
11 the land and that was made available to
12 the CEO for the purpose of deciding
13 what to do under this subsection; and
- 14 (ii) any other prescribed information;
- 15 (d) refuse the application for a permit.
- 16 (4) The CEO may refer the application to the Committee
17 even though the CEO considers that subsection (3)(b)
18 applies, but only if the CEO is of the opinion that there
19 is an Aboriginal site on the land.
- 20 (5) The CEO may exercise different powers under
21 subsection (3) in respect of different parts of the land.

22 **18B. Committee to consider application and make report**
23 **to Minister**

- 24 (1) If under section 18A(3)(c) an application is referred to
25 the Committee, it must give the Minister a written
26 report that includes its recommendations on the
27 following —
- 28 (a) whether the Minister should give the applicant
29 a permit under section 18 for all or a part of the
30 land;
- 31 (b) if it recommends a permit be given, the terms
32 and any conditions the Minister should include
33 in the permit;

-
- 1 (c) whether the Minister should refuse the
2 application for all or a part of the land.
- 3 (2) If the Committee does not give the Minister a report in
4 accordance with subsection (1), the Minister may direct
5 the Committee —
- 6 (a) to do so within a specified time; or
7 (b) to take any other action the Minister considers
8 necessary in order to expedite the matter.
- 9 (3) The Committee must obey a direction given to it under
10 subsection (2).
- 11 (4) On receiving a report under subsection (1), the
12 Minister, after considering it and the general interest of
13 the community, may do one or more of the
14 following —
- 15 (a) give the applicant a permit under section 18 for
16 all or a part of the land;
17 (b) refuse the application for all or a part of the
18 land;
19 (c) ask the Committee to give him or her a further
20 report on the application or any aspect of it.

21 **18C. Declaration that no Aboriginal site on land**

- 22 (1) The CEO may issue a declaration under this section in
23 respect of any land if the CEO is of the opinion that
24 there is no Aboriginal site on the land.
- 25 (2) The CEO may issue a declaration —
- 26 (a) in the circumstances set out in
27 section 18A(3)(a); or
28 (b) on the CEO's own initiative.
- 29 (3) A declaration must —
- 30 (a) specify the land to which it applies, which in
31 the case of an application made under

- 1 section 18A must be either all of the land
2 described in the application or a part of that
3 land; and
- 4 (b) state there does not appear to be an Aboriginal
5 site on the land specified.
- 6 (4) If the CEO issues a declaration, the CEO must —
- 7 (a) if the declaration resulted from an application
8 made under section 18A, give notice of it to the
9 applicant; and
- 10 (b) publish it in the *Gazette*.
- 11 **18. Permit to do act on land**
- 12 (1) A permit to do an act that might contravene section 17
13 on land on which there might be an Aboriginal site or
14 an object to which this Act applies may be given, on an
15 application made under section 18A —
- 16 (a) by the CEO in accordance with
17 section 18A(3)(b); or
- 18 (b) by the Minister in accordance with
19 section 18B(4)(a).
- 20 (2) A permit given under this section —
- 21 (a) if given by the CEO, may have effect for an
22 indefinite period or for a period specified in the
23 permit;
- 24 (b) if given by the Minister, has effect for an
25 indefinite period.
- 26 (3) A permit given under this section —
- 27 (a) must specify the land to which it applies, being
28 either all of the land described in the
29 application or a part of that land; and

-
- 1 (b) must specify the act or acts it permits on the
2 land specified, being any or a combination of
3 these —
4 (i) the act proposed in the application;
5 (ii) another act (instead of the act proposed)
6 that might contravene section 17;
7 (iii) an act (in addition to the act proposed)
8 that might contravene section 17;
9 and
10 (c) in the case of a permit given by the CEO, must
11 specify either —
12 (i) that the permit is to have effect for an
13 indefinite period; or
14 (ii) the period for which the permit is to
15 have effect;
16 and
17 (d) may include conditions that apply to, and in
18 relation to, doing the act permitted.

19 **19A. Further provisions about permits and declarations**

- 20 (1) A declaration or permit does not confer any right to
21 enter the land to which it relates.
22 (2) A declaration and a permit cannot both relate to the
23 same area of land.
24 (3) A permit cannot be transferred to another person
25 except by the CEO.
26 (4) The CEO, on the application of a person, may transfer
27 a permit from one person to another.

- 1 **19B. Expiry and cancellation of declarations**
- 2 (1) A declaration expires if any or all of the land to which
- 3 it applies is registered in the ASO register as an
- 4 Aboriginal site.
- 5 (2) The Minister or the CEO may, at any time, cancel a
- 6 declaration.
- 7 (3) If a declaration expires under subsection (1) or is
- 8 cancelled under subsection (2), the CEO must —
- 9 (a) if an application under section 18A gave rise to
- 10 the declaration, notify the applicant of the
- 11 expiry or cancellation of the declaration; and
- 12 (b) publish notice of the expiry or cancellation in
- 13 the *Gazette*.
- 14 **19C. Expiry, amendment and cancellation of permits**
- 15 (1) A permit given by the CEO for a period specified in the
- 16 permit expires at the end of that period, unless
- 17 subsection (4) applies.
- 18 (2) Subsection (1) does not prevent a person from making
- 19 an application for a new permit —
- 20 (a) before or after a permit expires; and
- 21 (b) with the same terms as an expiring or expired
- 22 permit or different terms.
- 23 (3) Subsection (4) applies if —
- 24 (a) before a permit expires, the holder of the permit
- 25 (the *expiring permit*) applies for a new permit
- 26 (the *new permit*) with the same terms as the
- 27 expiring permit; and
- 28 (b) the application for the new permit is not
- 29 determined before the expiring permit would
- 30 otherwise expire and is not withdrawn before
- 31 then.

- 1 (4) If this subsection applies, the expiring permit continues
2 to have effect until one of the following occurs —
3 (a) the application for the new permit is
4 withdrawn;
5 (b) the application for the new permit is
6 determined.
- 7 (5) On his or her own initiative, or on the application of a
8 person who holds it —
9 (a) the CEO may amend a permit given by the
10 CEO; and
11 (b) the Minister may amend or cancel a permit
12 given by the Minister or the CEO.

13 **19D. State Administrative Tribunal may review certain**
14 **decisions about declarations and permits**

- 15 (1) A person specified in subsection (2) may apply to the
16 State Administrative Tribunal for a review of any of
17 the following decisions —
18 (a) a decision to cancel a declaration;
19 (b) a decision to refuse an application for a permit;
20 (c) a decision to give a permit subject to
21 conditions;
22 (d) a decision to cancel or amend a permit, other
23 than on an application made by a person who
24 holds it;
25 (e) a decision to refuse an application for the
26 amendment or transfer of a permit.
- 27 (2) These are the persons who may apply under
28 subsection (1) for a review of a decision —
29 (a) in the case of the cancellation of a declaration,
30 the person who made the application under
31 section 18A that gave rise to the declaration;

s. 10

- 1 (b) the person who made the relevant application;
2 (c) the person who holds the permit.
3

4 **10. Section 19 amended**

5 (1) Delete section 19(1) and insert:
6

7 (1) Where the CEO recommends to the Minister that an
8 Aboriginal site is of outstanding importance and that it
9 appears to the CEO that the Aboriginal site should be
10 declared a protected area, the Minister must give notice
11 of the recommendation in accordance with
12 subsection (2A).

13 (2A) The notice must —

- 14 (a) identify the Aboriginal site; and
15 (b) contain a summary of the recommendation; and
16 (c) invite people to make written representations to
17 the Minister about the recommendation; and
18 (d) state by when those representations must be
19 made; and
20 (e) be published in —
21 (i) the *Gazette*; and
22 (ii) a newspaper circulating in the area
23 where the site is situated; and
24 (iii) a newspaper catering mainly or
25 exclusively for the interests of persons
26 of Aboriginal descent;
27 and
28 (f) be given to —
29 (i) each person who, in respect of the land
30 on which the site is situated, holds an
31 interest that is registered under the

1 *Transfer of Land Act 1893* or the
2 *Registration of Deeds Act 1856*; and
3 (ii) each registered native title claimant (as
4 defined in the *Native Title Act 1993*
5 (Commonwealth) section 253) in
6 relation to the land on which the site is
7 situated; and
8 (iii) if under the *Native Title Act 1993*
9 (Commonwealth) native title rights and
10 interests (as defined in section 223 of
11 that Act) exist in relation to the land on
12 which the site is situated, the registered
13 native title body corporate (as defined in
14 section 253 of that Act) in respect of
15 those native title rights and interests;
16 and
17 (iv) any other person whom the Minister
18 considers has an interest in the land on
19 which the site is situated that might be
20 specially affected if the recommended
21 declaration were made.
22

23 (2) In section 19(2):

- 24 (a) after “he” (each occurrence) insert:
25 or she
26 or she
27 or she
28 (b) after “his” insert:
29 or her
30 or her
31

s. 11

1 (c) delete “Committee to consider the representations and
2 report to him on them.” and insert:
3
4 CEO to consider the representations and report to him or
5 her on them.
6

7 (3) In section 19(3):

8 (a) delete “Committee,” and insert:

9
10 CEO,
11

12 (b) delete “Committee” and insert:

13
14 CEO
15

16 **11. Section 20 amended**

17 (1) In section 20(1) delete “Committee” and insert:

18
19 Minister, after receiving advice from the CEO,
20

21 (2) In section 20(3) delete “Committee” and insert:

22
23 Minister (after the Minister has received advice from the CEO)
24

25 **12. Section 21 amended**

26 In section 21:

27 (a) after “he” (each occurrence) insert:

28
29 or she
30

- 1 (b) after “his” insert:
2
3 or her
4
5 (c) delete “Committee” (each occurrence) and insert:
6
7 CEO
8
9 (d) after “him” insert:
10
11 or her
12
13 (e) delete “Committee,” and insert:
14
15 CEO,
16

17 **13. Section 23 amended**

18 At the end of section 23(2) insert:
19
20 Penalty: a fine of \$4 000.
21

22 **14. Section 24 amended**

- 23 (1) In section 24(a) after “he” insert:
24
25 or she
26
27 (2) At the end of section 24 insert:
28
29 Penalty: a fine of \$3 000.
30

s. 15

1 **15. Section 25 amended**

2 Delete section 25(1) and insert:

3

4 (1) An Order in Council declaring an area to be a protected
5 area may subsequently be varied or revoked if the
6 Governor, on the recommendation of the Minister
7 under section 21 or otherwise (in every case after the
8 Minister has received advice from the CEO), is
9 satisfied that it is in the general interest of the
10 community to do so, but not otherwise.

11

12 **16. Section 26 amended**

13 (1) In section 26(1) delete “may in his opinion be” and insert:

14

15 are

16

17 (2) Delete section 26(2) and insert:

18

19 (2) Regulations made under subsection (1) may create
20 offences with a maximum penalty not exceeding —

21 (a) for an individual, a fine of \$7 000;

22 (b) for a body corporate, a fine of \$35 000.

23

24 **17. Section 27 amended**

25 (1) In section 27(1) delete “his interest enables him” and insert:

26

27 that interest enables him or her

28

- 1 (2) In section 27(5):
2 (a) delete “himself, his” and insert:
3
4 the covenantor, the covenantor’s
5
6 (b) delete “him” and insert:
7
8 the covenantor
9

10 **18. Section 28 amended**

- 11 (1) In section 28(2)(a) after “he” insert:
12
13 or she
14
15 (2) Delete section 28(3).
16 (3) In section 28(4) delete “Subject to subsection (3), the” and
17 insert:
18
19 The
20

21 **19. Section 29 amended**

- 22 Delete section 29(c) and insert:
23
24 (c) a person who is a public service officer of the
25 agency principally assisting the Minister
26 administering the *Land Administration*
27 *Act 1997* in that Act’s administration and who
28 is for the time being nominated for the purposes
29 of this section by that Minister,
30

1 **20. Section 30 amended**

2 (1) Delete section 30(1) and (2) and insert:

3

4 (1) Despite anything in the instrument under which he or
5 she is appointed, an appointed member of the
6 Committee may resign his or her office by a written
7 notice signed by him or her and given to, and accepted
8 by, the Minister.

9 (2A) A member of the Committee who ceases to hold office,
10 unless otherwise disqualified, is eligible for
11 reappointment.

12 (2) The office of an appointed member of the Committee
13 becomes vacant, and the person is not eligible for
14 reappointment, if the person —

15 (a) absents himself or herself from 3 consecutive
16 ordinary meetings of the Committee without
17 having obtained leave of absence from the
18 Minister; or

19 (b) has his or her appointment terminated by the
20 Minister on the grounds of inability,
21 inefficiency or misbehaviour; or

22 (c) is a person in respect of whom an
23 administration order is in force under the
24 *Guardianship and Administration Act 1990*
25 Part 6.

26

27 (2) After section 30(3) insert:

28

29 (4) Subsection (5) applies if —

30 (a) the Committee is required to consider any
31 matter that will or may affect native title rights

- 1 and interests (as defined in the *Native Title*
2 *Act 1993* (Commonwealth) section 223); and
3 (b) a registered native title body corporate (as
4 defined in section 253 of that Act) is the native
5 title holder (as defined in section 224 of that
6 Act) in respect of those native title rights and
7 interests.
- 8 (5) If this subsection applies, the Committee may seek the
9 advice of the registered native title body corporate
10 under subsection (3) without getting the approval of the
11 Minister.
12

13 **21. Section 31 amended**

14 In section 31(1) delete “his” and insert:

15

16 the member’s
17

18 **22. Section 32 amended**

19 In section 32(2) delete “him” and insert:

20

21 the Chairman
22

23 **23. Section 33 amended**

24 In section 33(1) delete “firstmentioned meeting,” and insert:

25

26 meeting to which the minutes relate,
27

s. 24

1 **24. Section 35 amended**

2 In section 35 delete “him” (each occurrence) and insert:

3

4 that member

5

6 **25. Sections 37 to 39 replaced**

7 Delete sections 37 to 39 and insert:

8

9 **39. Functions of the Committee**

10 The functions of the Committee are —

11 (a) to advise the Minister on any question referred
12 to the Committee, and generally on any matter
13 related to the objects and purposes of this Act;
14 and

15 (b) to perform the functions allocated to the
16 Committee by this Act.

17

18 **26. Section 39B amended**

19 In section 39B after “his” insert:

20

21 or her

22

23 **27. Section 39D deleted**

24 Delete section 39D.

1 **28. Section 40 amended**

2 In section 40 delete “Committee” and insert:

3

4 Minister (after receiving advice from the CEO)

5

6 **29. Section 41 amended**

7 (1) In section 41(1):

8 (a) after “his” (each occurrence) insert:

9

10 or her

11

12 (b) after “he” insert:

13

14 or she

15

16 (2) In section 41(1) delete the Penalty and insert:

17

18 Penalty: a fine of \$5 000.

19

20 (3) In section 41(2) after “his” (each occurrence) insert:

21

22 or her

23

24 (4) At the end of section 41(2) insert:

25

26 Penalty: a fine of \$5 000.

27

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1 **30. Section 42 amended**

2 In section 42(1)(b):

3 (a) delete “Committee” and insert:

4

5 CEO,

6

7 (b) delete “it” and insert:

8

9 the CEO

10

11 **31. Section 43 amended**

12 (1) In section 43(1):

13 (a) in paragraph (d) after “he” insert:

14

15 or she

16

17 (b) delete paragraph (e) and insert:

18

19 (e) he or she has first, in writing, offered that
20 object for sale to the Minister, and has been
21 advised, in writing, by the Minister that the
22 Minister does not wish to purchase it; or

23

24 (c) in paragraph (f) delete “he” and insert:

25

26 the Minister

27

28 (d) in paragraph (g) after “he” insert:

29

30 or she

31

1 (2) After section 43(1) insert:
2

3 (2A) A person who contravenes subsection (1) commits an
4 offence and is to be sentenced under section 57.
5

6 (3) In section 43(2):

7 (a) delete “he shall” and insert:
8

9 the Minister must
10

11 (b) delete “he” (2nd occurrence) and insert:
12

13 the Minister
14

15 (4) In section 43(3) delete “him” and insert:
16

17 the Minister
18

19 (5) In section 43(5) delete “he” and insert:
20

21 the person
22

23 (6) Delete section 43(7).

24 **32. Section 45 amended**

25 In section 45(1) delete “he” and insert:
26

27 the Minister
28

s. 33

1 **33. Section 46 amended**

2 (1) In section 46(5) delete “the terms of” and insert:

3

4 subsection (2) having received

5

6 (2) At the end of section 46(5) insert:

7

8 Penalty: a fine of \$5 000.

9

10 (3) In section 46(7):

11 (a) in paragraph (a) after “he” insert:

12

13 or she

14

15 (b) in paragraph (a) after “his” insert:

16

17 or her

18

19 (c) in paragraph (b) delete “him.” and insert:

20

21 him or her.

22

23 **34. Section 47 amended**

24 In section 47(1) delete “his” and insert:

25

26 the Minister’s

27

1 **35. Section 49 amended**

2 At the end of section 49(2) insert:

3

4 Penalty: a fine of \$5 000.

5

6 **36. Part VIIA inserted**

7 After section 49 insert:

8

9 **Part VIIA — Registers**

10 **Division 1 — Register of Aboriginal sites and objects**

11 **50A. Register of Aboriginal sites and objects**

12 (1) The Registrar must, so far as practicable, keep a
13 register of the following —

- 14 (a) all protected areas;
- 15 (b) all other Aboriginal sites;
- 16 (c) all Aboriginal cultural material;
- 17 (d) all objects to which this Act applies.

18 (2) The register kept under this section is called the
19 register of Aboriginal sites and objects (the *ASO*
20 *register*).

21 (3) The register kept under this section is a continuation of
22 the register provided for by section 38 before it was
23 deleted by the *Aboriginal Heritage Amendment*
24 *Act 2014* section 25.

- 1 **50B. CEO decides what goes on or is removed from ASO**
2 **register**
- 3 (1) The CEO decides whether or not —
- 4 (a) information relating to a place or object (other
5 than a protected area or Aboriginal cultural
6 material) should be entered in or deleted from
7 the ASO register; and
- 8 (b) information in the ASO register relating to a
9 place or object (other than a protected area or
10 Aboriginal cultural material) should be
11 amended.
- 12 (2) For the purpose of making those decisions, the CEO
13 determines all matters relating to or connected with the
14 following —
- 15 (a) whether or not a place is an Aboriginal site;
16 (b) whether or not an object is an object to which
17 this Act applies.
- 18 (3) In order to make those decisions, the CEO may make
19 any inquiries, obtain whatever information and consult
20 whoever the CEO considers necessary.
- 21 (4) The CEO is not prevented from deciding that
22 information should be entered in or deleted from the
23 ASO register, or that information in the ASO register
24 should be amended, just because that information was
25 or was not recorded in the ASO register on the basis of
26 any previous advice given by any person or body
27 (including the Committee).

1 **Division 2 — Register of declarations and permits**

2 **50C. Register of declarations and permits**

- 3 (1) The Registrar must, so far as practicable, keep a
4 register of the following —
- 5 (a) all current declarations;
 - 6 (b) the expiry of a declaration under
7 section 19B(1);
 - 8 (c) the cancellation of a declaration under
9 section 19B(2);
 - 10 (d) all current permits, including the term of a
11 permit and any conditions to which a permit is
12 subject;
 - 13 (e) all decisions to refuse an application for a
14 permit;
 - 15 (f) all decisions to amend a permit;
 - 16 (g) all decisions to cancel a permit;
 - 17 (h) all decisions to transfer a permit;
 - 18 (i) all current consents given under the old
19 section 18 (as defined in section 72(1)),
20 including any conditions attached to the
21 consent.
- 22 (2) The register kept under this section is called the
23 register of declarations and permits (the ***DP register***).
- 24 (3) If a decision that is required to be recorded in the DP
25 register is the subject of an application to the State
26 Administrative Tribunal under section 19D, the register
27 must record both the original decision and the outcome
28 of the application.

1 **Division 3 — General provisions relating to registers**

2 **50D. Publication of information on registers**

- 3 (1) The Registrar must make the information in the
4 registers publicly available free of charge.
- 5 (2) The Registrar may comply with subsection (1) in any
6 way the Registrar considers appropriate.
- 7 (3) Subsection (1) is subject to any regulations authorised
8 by section 50F.

9 **50E. Further provisions relating to registers**

- 10 (1) The registers must be in the form and include whatever
11 information is prescribed.
- 12 (2) The CEO may direct the Registrar to enter or amend
13 information in, or delete information from, a register,
14 and the Registrar must comply with the direction as
15 soon as practicable.
- 16 (3) Entering and amending information in, and deleting
17 information from, a register must be done in
18 accordance with prescribed procedures (if any).
- 19 (4) The Registrar must keep information that has been
20 deleted from a register so there is an historical record
21 of the information that was on the register.

22 **50F. Protecting information in register from disclosure**

23 The regulations may prohibit or restrict disclosure of
24 some or all information in a register.
25

1 **37. Section 50 amended**

2 (1) In section 50(2):

3 (a) after “his” (each occurrence) insert:

4

5 or her

6

7 (b) after “he” insert:

8

9 or she

10

11 (2) In section 50(3) after “his” insert:

12

13 or her

14

15 **38. Section 51 amended**

16 (1) In section 51(1):

17 (a) delete “Department, or any honorary warden,” and
18 insert:

19

20 Department

21

22 (b) after “he” (each occurrence) insert:

23

24 or she

25

26 (c) delete “him,” and insert:

27

28 him or her,

29

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- 1 (2) In section 51(2):
2 (a) after “his” insert:
3
4 or her
5
6 (b) delete “Department, or an honorary warden, shall” and
7 insert:
8
9 Department must
10
11 (3) Delete section 51(3).

12 **39. Section 52 amended**

- 13 In section 52:
14 (a) delete “custodian, an honorary warden,” and insert:
15
16 custodian
17
18 (b) after “he” insert:
19
20 or she
21

22 **40. Section 54 amended**

- 23 (1) Delete section 54(1) and insert:
24
25 (1) A person who wilfully obstructs any person acting in
26 the execution of this Act commits an offence.
27 Penalty:
28 (a) for an individual, a fine of \$10 000;
29 (b) for a body corporate, a fine of \$50 000.
30

1 (2) In section 54(2) after “him” insert:

2

3 or her

4

5 **41. Section 55 amended**

6 (1) In section 55:

7 (a) after “having” insert:

8

9 a permit,

10

11 (b) after “giving of the” insert:

12

13 permit,

14

15 (2) At the end of section 55 insert:

16

17 Penalty:

18 (a) for an individual, a fine of \$50 000;

19 (b) for a body corporate, a fine of \$250 000.

20

21 **42. Section 56 amended**

22 (1) In section 56 delete “him” (each occurrence) and insert:

23

24 the person

25

26 (2) In section 56 delete the Penalty and insert:

27

28 Penalty: a fine of \$3 000.

29

1 **43. Section 57A inserted**

2 After section 56 insert:

3

4 **57A. Commencing prosecutions**

5 (1) The Minister or the CEO may commence a prosecution
6 of a person for an offence under this Act.

7 (2) Subject to the *Director of Public Prosecutions*
8 *Act 1991*, a person other than the Minister, a delegate
9 of the Minister, the CEO or a delegate of the CEO
10 cannot commence a prosecution of a person for an
11 offence under this Act.

12 (3) A prosecution of a person for an offence under this Act
13 cannot be commenced after 5 years after the day on
14 which it was allegedly committed.

15

16 **44. Section 57 amended**

17 (1) Delete section 57(1) and insert:

18

19 (1) A person who commits an offence under section 17
20 or 43 is liable —

21 (a) in the case of an individual —

22 (i) for a first offence, to a fine of \$100 000
23 or imprisonment for 12 months;

24 (ii) for a second or subsequent offence, to a
25 fine of \$200 000 or imprisonment for
26 2 years;

27 (b) in the case of a body corporate —

28 (i) for a first offence, to a fine of \$500 000;

29 (ii) for a second or subsequent offence, to a
30 fine of \$1 000 000.

31

- 1 (2) In section 57(2) after “he” insert:
2
- 3 or she
4
- 5 (3) After section 57(4) insert:
6
- 7 (5) A court that convicts a person of an offence under this
8 Act that involves destroying, damaging or altering an
9 Aboriginal site or an object to which this Act applies
10 may order the person —
- 11 (a) to take remedial action to restore the place or
12 object to the same state as it was in before the
13 offence or to a state specified in the order; or
- 14 (b) to pay another person to take remedial action to
15 restore the place or object to the same state as it
16 was in before the offence or to a state specified
17 in the order.
- 18 (6) An order made under subsection (5) —
- 19 (a) must specify —
- 20 (i) the remedial action to be taken; and
21 (ii) the time for complying with the order;
22 and
- 23 (b) if it is made under subsection (5)(b), must also
24 specify —
- 25 (i) the person who is to be paid; and
26 (ii) the amount to be paid;
27 and
- 28 (c) may include conditions subject to which the
29 remedial action must be taken.

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- 1 (7) If a person does not obey an order made under
2 subsection (5)(a), the CEO —
3 (a) may take the remedial action specified in the
4 order; and
5 (b) may recover the costs of doing so from the
6 person as a debt due to the State in a court of
7 competent jurisdiction.
8

9 **45. Section 59A inserted**

10 Before section 59 insert:
11

12 **59A. Application of *Sentencing Act 1995***

- 13 (1) The *Sentencing Act 1995* Part 16 Division 1 applies to
14 an order referred to in section 57(5) as if it were a
15 reparation order as defined in that Part.
16 (2) The *Sentencing Act 1995* section 122 applies to a
17 person who does not obey an order made under
18 section 57(5)(a) as if the order were a restitution order
19 made under Part 16 of that Act.
20 (3) The *Sentencing Act 1995* sections 119 and 119A apply
21 as if an order made under section 57(5)(b) were a
22 compensation order made under Part 16 of that Act.
23

24 **46. Section 59 amended**

25 In section 59 delete “Minister, in consultation with the
26 Committee,” and insert:
27

28 Minister
29

1 **47. Section 60 amended**

2 (1) In section 60(1) after “he” (each occurrence) insert:

3

4 or she

5

6 (2) Delete section 60(2) and insert:

7

8 (2A) Subsection (2) applies in any proceedings under this
9 Act that relate to —

10 (a) a place registered in the ASO register as an
11 Aboriginal site; or

12 (b) an object registered in the ASO register as
13 Aboriginal cultural material or as an object to
14 which this Act applies.

15 (2) In any proceedings to which this subsection applies, a
16 person seeking to prove the place or object is not one to
17 which this Act applies has the onus of proving the
18 matter.

19

20 (3) Delete section 60(3) and insert:

21

22 (3) If a charge of an offence under this Act alleges an act
23 occurred within a place registered in the ASO register
24 as an Aboriginal site, then, if the act is proved, it is to
25 be presumed, in the absence of evidence to the
26 contrary, that it occurred within the place.

27

28 (4) Delete section 60(4) and insert:

29

30 (4) In any proceedings under this Act, a document
31 purporting to be a declaration issued, or consent or

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- 1 permit given, under this Act signed by the CEO or, as
2 the case requires, the Minister is evidence of its
3 contents without —
- 4 (a) proof of the signature of the person purporting
5 to have signed the document; or
- 6 (b) proof that the purported signatory was the CEO
7 or the Minister, as the case may be.
8

9 **48. Section 61 amended**

10 Delete section 61(c) and insert:

- 11
- 12 (c) no authorisation, consent or permit had been
13 given or issued by the Minister;
- 14 (d) no declaration or permit had been issued or
15 given by the CEO,
16

17 **49. Section 62 amended**

18 In section 62 after “he” insert:

19

20 or she
21

22 **50. Section 63 inserted**

23 At the beginning of Part VIII insert:
24

25 **63. Review of Act**

- 26 (1) The Minister must carry out a review of the operation
27 of this Act as soon as practicable after every
28 5th anniversary of the day on which the *Aboriginal*
29 *Heritage Amendment Act 2014* section 4 comes into
30 operation.

- 1 (2) The Minister must —
2 (a) prepare a report based on the review; and
3 (b) as soon as practicable after the report is
4 prepared and in any event not more than
5 18 months after the relevant anniversary, cause
6 it to be laid before each House of Parliament.
7

8 **51. Section 66 amended**

- 9 (1) Delete section 66(1) and insert:
10

- 11 (1) The functions under section 24 of the owner of Crown
12 land, or of the owner of freehold land held in the name
13 of the State, may be performed by —
14 (a) the Minister as defined in the *Land*
15 *Administration Act 1997* section 3(1) (the
16 ***Minister for Lands***); or
17 (b) a person authorised in writing by the Minister
18 for Lands to do so.
19

- 20 (2) Delete section 66(3).

21 **52. Section 67 amended**

22 In section 67(1)(a) and (b) after “the Committee,” insert:
23

24 the CEO,
25

26 **53. Section 68 amended**

- 27 (1) In section 68 delete “The Governor” and insert:
28

- 29 (1) The Governor
30

- 1 (2) At the end of section 68 insert:
2
- 3 (2) Without limiting subsection (1), regulations may do
4 any or all of the following —
- 5 (a) prescribe forms to be used for the purposes of
6 this Act;
- 7 (b) prescribe the practice and procedure for —
- 8 (i) dealing with applications made under
9 section 18A, 19A(4) or 19C(5);
- 10 (ii) making decisions under section 18A,
11 18B, 18C, 18, 19A(4), 19B(2) or
12 19C(5);
- 13 (c) prescribe the powers that may be exercised by
14 honorary wardens, including (without
15 limitation) —
- 16 (i) the power to require a person to provide
17 their personal details (for example, full
18 name and residential address) in the
19 circumstances set out in the regulations;
- 20 (ii) the power to remove people, vehicles,
21 animals and other things from protected
22 areas, other Aboriginal sites and land
23 held subject to a covenant in favour of
24 the Minister under section 27, in the
25 circumstances set out in the regulations;
- 26 (iii) the power to give directions to people in
27 the circumstances set out in the
28 regulations;
- 29 (iv) any other power that is reasonably
30 necessary to enforce the provisions of
31 this Act or the regulations;
- 32 (d) prescribe the fees and charges to be paid for
33 services provided under this Act by the
34 Department;

- 1 (e) create offences with, unless section 26(2)
2 applies, a maximum penalty not exceeding —
3 (i) for an individual, a fine of \$5 000;
4 (ii) for a body corporate, a fine of \$25 000.
- 5 (3) Despite the *Interpretation Act 1984* sections 3(3) and
6 45(3), section 45(1) and (2) of that Act apply in respect
7 of fees and charges prescribed under this section.
8

9 **54. Part IX inserted**

10 After section 68 insert:
11

12 **Part IX — Transitional and validation**
13 **provisions**

14 **69. Provisions for *Aboriginal Heritage Amendment***
15 ***Act 2014***

16 This Part contains transitional and validation
17 provisions for the *Aboriginal Heritage Amendment*
18 *Act 2014*.

19 **70. Term used: amending Act**

20 In this Part —
21 ***amending Act*** means the *Aboriginal Heritage*
22 *Amendment Act 2014*.

23 **71. Transitional provision for Registrar**

24 On the commencement of the amending Act section 25,
25 the person who, immediately before that
26 commencement, was appointed as the Registrar is to be
27 taken to have been designated as the Registrar under
28 section 12.

- 1 **72. Transitional provision for section 18**
- 2 (1) In this section —
- 3 *old section 18* means section 18 as in force
- 4 immediately before the amending Act section 9 comes
- 5 into operation.
- 6 (2) If immediately before the amending Act section 9
- 7 comes into operation the Minister has not made a
- 8 decision about a notice given under the old section 18,
- 9 the old section 18 continues in force in relation to the
- 10 notice.
- 11 (3) A consent given under the old section 18 has effect as
- 12 if —
- 13 (a) the consent were a permit —
- 14 (i) given by the Minister under section 18
- 15 (as inserted by the amending Act
- 16 section 9); and
- 17 (ii) that is subject to any conditions to
- 18 which the consent was subject;
- 19 and
- 20 (b) the use specified in the consent were an act
- 21 specified in a permit.
- 22 **73. Transitional provision for section 19**
- 23 If immediately before the amending Act section 10
- 24 comes into operation the Committee has made a
- 25 recommendation to the Minister under section 19, that
- 26 section continues to apply to and in relation to that
- 27 recommendation as if the references in subsections (2)
- 28 and (3) of that section to the CEO were references to
- 29 the Committee.

- 1 **74. Transitional provision for section 20**
- 2 If immediately before the amending Act section 11
- 3 comes into operation the Committee has made a
- 4 recommendation to the Governor under section 20(1)
- 5 or (3), that recommendation is to be taken to be a
- 6 recommendation made by the Minister on the advice of
- 7 the CEO.
- 8 **75. Transitional provision for section 21**
- 9 If immediately before the amending Act section 12
- 10 comes into operation the Minister has received
- 11 representations under section 21 and has directed the
- 12 Committee to make a report under that section, that
- 13 section continues to apply to and in relation to the
- 14 consideration of those representations as if the
- 15 references in that section to the CEO were references to
- 16 the Committee.
- 17 **76. Transitional provision for section 25**
- 18 If immediately before the amending Act section 15
- 19 comes into operation the Governor has under
- 20 section 25 consulted with the Committee in relation to
- 21 the variation or revocation of an Order in Council, that
- 22 section continues to apply to and in relation to the
- 23 variation or revocation of that Order in Council on the
- 24 basis of that consultation as if that section had not been
- 25 amended by the amending Act.
- 26 **77. Validation (section 28(3))**
- 27 (1) In this section, a reference to the doing of anything
- 28 includes a reference to an omission to do anything.
- 29 (2) Nothing done by the Committee before, on or after the
- 30 amending Act section 18(2) comes into operation, and
- 31 nothing done before, on or after the amending Act
- 32 section 18(2) comes into operation in reliance on or as

1 a result of anything done by the Committee, is invalid
2 or ineffective, or was ever invalid or ineffective, just
3 because the membership of the Committee did not at
4 any material time include a person appointed by the
5 Minister in accordance with section 28(3) (as deleted
6 by the amending Act section 18(2)).

7 **78. Transitional provision for section 40**

8 If immediately before the amending Act section 28
9 comes into operation the Committee has made a
10 recommendation to the Governor under section 40, that
11 recommendation is to be taken to be a recommendation
12 made by the Minister on the advice of the CEO.

13 **79. Transitional provision for section 42**

14 If immediately before the amending Act section 30
15 comes into operation the Committee has provided its
16 opinion to the Minister for the purposes of
17 section 42(1)(b), that opinion is to be taken to be the
18 opinion of the CEO.
19

20
