

STATUTORY RULES 1973.

No. 12.

Archaeological and Aboriginal Relics Preservation Act 1972.

ARCHAEOLOGICAL AND ABORIGINAL RELICS PRESERVATION REGULATIONS 1973.

*At the Executive Council Chamber, Melbourne, the
twenty-third day of January, 1973.*

PRESENT:

His Excellency the Governor of Victoria.

Mr. Meagher
Mr. Smith

Mr. Borthwick.

IN pursuance of the powers conferred by the *Archaeological and Aboriginal Relics Preservation Act 1972* and all other powers him thereunto enabling, His Excellency the Governor of the State of Victoria, in the Commonwealth of Australia, by and with the advice of the Executive Council of the said State, doth hereby make the following Regulations (that is to say):—

1. (1) These Regulations may be cited as the *Archaeological and Aboriginal Relics Preservation Regulations 1973*.

(2) In these Regulations—

“Act” means the *Archaeological and Aboriginal Relics Preservation Act 1972*.

“Schedule” means the Schedule to these Regulations.

2. For the purposes of section 11 of the Act—

(a) Form A in the Schedule shall be the prescribed form of identity card of an inspector.

(b) Form B in the Schedule shall be the prescribed form of identity card of a warden.

3. For the purposes of section 22 of the Act—

(a) an application seeking the consent of the Minister to disturb or excavate any land for the purpose of uncovering or discovering a relic shall be in or to the effect of Form C in the Schedule.

(b) a permit authorizing the uncovering or exposing of any relic or the excavation of any relic shall be in or to the effect of Form D in the Schedule.

4. The fee for a permit to uncover, expose or excavate a relic shall be \$5.

10633/72.—PRICE 10 cents

SCHEDULE.

FORM A.
Victoria.

Archaeological and Aboriginal Relics Preservation Act 1972.

ARCHAEOLOGICAL AND ABORIGINAL RELICS PRESERVATION
REGULATIONS 1973.

The bearer, Mr. _____ has been
appointed an inspector pursuant to the provisions of the *Archaeological and
Aboriginal Relics Preservation Act 1972.*

Dated at Melbourne, this _____ day of _____, 19 _____.

Signed _____

Chief Secretary.
Inspector.

FORM B.
Victoria.

Archaeological and Aboriginal Relics Preservation Act 1972.

ARCHAEOLOGICAL AND ABORIGINAL RELICS PRESERVATION
REGULATIONS 1973.

The bearer, Mr. _____ has been
appointed a warden pursuant to the provisions of the *Archaeological and
Aboriginal Relics Preservation Act 1972.*

Dated at Melbourne, this _____ day of _____, 19 _____.

Signed _____

Chief Secretary.
Warden.

FORM C.
Victoria.

Archaeological and Aboriginal Relics Preservation Act 1972.

ARCHAEOLOGICAL AND ABORIGINAL RELICS PRESERVATION
REGULATIONS 1973.

Section 22.

Application for Excavation Permit.

Name of Applicant: _____
Postal Address _____
for Receipt of Permit: _____
Residential Address _____
(If same as postal address, write 'as above'.)
Occupation: _____
Name of Employer: _____

*This Section to be completed only by applicant who has not previously
been granted a permit:*

What are your academic qualifications, if any?

What is your previous excavation experience?

(If space insufficient, attach list.)

Year.	Site Name.	Type of Site.	Director.	Publication.

FORM C.—continued.

Are there any other details of your excavation experience which may be relevant?

Names of Referees.

What is the name of the property, municipality, etc., on which the site is situated?

(Give details of Portion No., Parish, County, Grid Reference.)

What is the nearest postal town to the site?

Please draw a sketch map showing access to the site.

Name and postal address of owner of site.

Name and postal address of occupier of site.

Has the consent of the owner/occupier been obtained? If so, give details.

What is the estimated size of the area to be investigated by means of a field survey which may involve excavation?

What is the estimated size of the area to be excavated?

Of what type is the site to be excavated? (e.g. kitchen midden, burial ground).

What is the nature of the aboriginal relics sought?

What type and method of excavation is proposed? (Give details).

What percentage of occupation deposit will be excavated or disturbed?

What is the estimated size of the team?

Has the site been previously disturbed? If so, give details.

Give the name of any organization from which a grant has been obtained for expenses to be incurred in this excavation.

What obligations have been contracted as the result of such a grant?

What is the estimated time required to complete the excavation? (Give details).

Is it anticipated that a renewal of permit will be needed for this site?

DECLARATION.

I, _____, declare that the particulars shown herein are true and correct, and I accept full responsibility for the manner in which the excavation is conducted.

Date: _____

Applicant's Signature.

This declaration and all attached sheets must be signed by the applicant personally.

FORM D.

Victoria.

Archaeological and Aboriginal Relics Preservation Act 1972.

ARCHAEOLOGICAL AND ABORIGINAL RELICS PRESERVATION REGULATIONS 1973.

EXCAVATION PERMIT.

(Name in full.) _____ of _____

(Postal address.) _____ is hereby

authorized to disturb or excavate the land described hereunder for the purpose of uncovering or exposing any relic or excavating for any relic.

Description of Land.

situated within the Parish of _____

County of _____ and as shown

cross hatched on attached sketch.

FORM D.—continued.

This permit is valid from / / 19 to / / 19 and is issued subject to the attached terms, conditions and limitations.

Dated at this day of 19 . Chief Secretary.

And the Honorable Edward Raymond Meagher, Her Majesty's Chief Secretary for the State of Victoria, shall give the necessary directions herein accordingly.

T. J. FORRISTAL, Clerk of the Executive Council.

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1972

VICTORIA.



ANNO VICESIMO PRIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 8273.

An Act to make Provision for the Preservation of
Archaeological and Aboriginal Relics.

[13th May, 1972.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. (1) This Act may be cited as the *Archaeological and Aboriginal Relics Preservation Act 1972*. Short title.

(2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement.

2. In this Act unless inconsistent with the context or subject-matter— Interpretations.

“Aborigine” means inhabitant of Australia in pre-historic ages or a descendant from any such person. “Aborigine.”

“Advisory Committee” means the Archaeological Relics Advisory Committee constituted under this Act. “Advisory Committee.”

“Archaeological area” means an area proclaimed under this Act as an archaeological area ; “Archaeological area.”

“Archaeological relic” or “relic” includes a relic pertaining to the past occupation of the Aboriginal people of that part of Australia which is now the State of Victoria, “Archaeological relic.”

4366/72.—PRICE 20 cents

whether

whether or not the relic existed prior to the occupation of that part of Australia by people of European descent, and, without affecting the generality of the foregoing, includes any Aboriginal deposit, carving, drawing, skeletal remains and anything belonging to the total body of material relating to that past Aboriginal occupation, but does not include a body or the remains of a body interred in a cemetery burial ground or place of burial after the year 1834, or a handiwork made for the purpose of sale.

"Crown land."	"Crown land" means land belonging for the time being to the Crown.
"Inspector."	"Inspector" means inspector under this Act.
"Portable relic."	"Portable relic" means a relic which because of its weight and size is capable of being lifted and removed by hand.
"Prescribed."	"Prescribed" means prescribed by this Act or the regulations.
"Private land."	"Private land" means— (a) land alienated from the Crown in fee simple or vested in an authority (other than a statutory corporation) for the purposes of an Act ; or (b) land leased or granted under a licence under an Act relating to Crown lands with a right of acquiring the fee simple in that land or held under perpetual lease under the <i>Land Act</i> 1958.
"Regulations."	"Regulations" means regulations under this Act.
"Sale."	"Sale" includes barter, exchange, agreement for sale barter or exchange, offer for sale barter or exchange and the receipt possession signing consignment or delivery for or on sale barter or exchange and the verb "to sell" (however conjugated) has a corresponding meaning.
"The Protector."	"The Protector" means the Protector of Relics under this Act and includes any person for the time being acting in his stead.
"This Act."	"This Act" includes the regulations.
"Warden."	"Warden" means warden under this Act.
Protector of Relics.	3. (1) The Director from time to time of the National Museum of Victoria shall be the Protector of Relics.

(2) Subject

(2) Subject to this Act the Governor in Council may appoint a person as Acting Protector of Relics to act in lieu of the Protector during any illness or absence of the Protector.

Acting
Protector.

4. (1) The Minister may by writing under his hand delegate to any person any of his powers under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters specified in the instrument of delegation.

Delegation of
powers.

(2) The Protector may by writing under his hand delegate to any person any of his powers under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters specified in the instrument of delegation.

(3) A delegation under this section may be revoked at will by the Minister or the Protector (as the case may be) and shall not prevent the exercise by the Minister or the Protector of any power so delegated.

Revocation.

5. (1) There shall be constituted an Archaeological Relics Advisory Committee consisting of ten honorary members, of whom—

Archaeological
Relics Advisory
Committee.

(a) one shall be the Protector of Relics, who shall be the chairman ; and

(b) nine shall be persons appointed by the Governor in Council—

- (i) one being an archaeologist or anthropologist on the staff of the National Museum of Victoria ;
- (ii) one being a member of the National Trust of Australia (Victoria) ;
- (iii) one being a member of the Anthropological Society of Victoria ;
- (iv) one being the Secretary for Lands or his nominee ;
- (v) one being the Director of Aboriginal Affairs or his nominee ;
- (vi) one being the Director of National Parks or his nominee ;
- (vii) one being the Chairman of the Forests Commission or his nominee ;
- (viii) one being a member of the Institute of Aboriginal Studies ; and
- (ix) one being an Aborigine nominated by the Minister for Aboriginal Affairs.

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Period of appointment

(2) Each of the appointed members of the Advisory Committee shall hold office for the period not exceeding three years which is specified in his instrument of appointment, but shall be eligible for re-appointment.

Deputy chairman.

(3) The members of the Advisory Committee shall elect one of the appointed members as deputy chairman for a period not exceeding twelve months, but a person so elected shall be eligible for re-election.

Meetings.

6. (1) The chairman shall preside at all meetings at which he is present.

(2) In the absence of the chairman at any meeting the deputy chairman shall preside.

(3) In the absence of both the chairman and the deputy chairman at any meeting the members present shall elect one of their number to act as chairman of the meeting.

Quorum.

(4) At a meeting the quorum shall be six members.

(5) The decision of the Advisory Committee on any matter shall be the decision of the majority of the members present, and in the event of an equality of votes the chairman of the meeting shall have a second or casting vote.

(6) Subject to this Act the Advisory Committee may regulate its own proceedings.

Functions of Advisory Committee.

7. The functions of the Advisory Committee shall be to consider and advise the Minister on all matters it thinks necessary in relation to archaeological relics and the preservation of those relics.

Secretary &c.

8. (1) Subject to the *Public Service Act* 1958 there shall be appointed a secretary to the Advisory Committee and such other officers and employes as are required for the purposes of this Act.

(2) The secretary shall keep minutes of all meetings of the Advisory Committee and carry out other secretarial duties required by that Committee or the Protector.

Appointment of honorary inspectors wardens &c.

9. (1) The Governor in Council may appoint in an honorary capacity such inspectors and wardens as are necessary for the purposes of this Act.

(2) Every member of the Advisory Committee shall be an inspector for the purposes of this Act.

Powers of a warden may be limited.

(3) The instrument of appointment of a warden may set out limitations on his powers, duties or functions with respect to the nature of those powers duties and functions and the time place and circumstances in which he may exercise or perform them.

(4) A warden

(4) A warden shall hold office until his appointment is revoked by the Governor in Council or his written resignation is received by the Minister.

(5) The Governor in Council may revoke the appointment of any person appointed under this section.

10. The Protector—

Duties of the Protector.

- (a) shall keep a register of all archaeological areas, of all unproclaimed known occurrences of relics, and of all persons known to be holding private collections of artifacts or unique specimens that include relics ;
- (b) shall seek information in relation to the situation of relics and to any new discovery of relics, and arrange for the adequate protection of relics ;
- (c) shall make necessary investigations and researches in the State of Victoria, with respect to archaeological relics ;
- (d) may, in respect of an archaeological area, enter into an arrangement with the Minister and the person whose consent was required for the land to be proclaimed as an archaeological area, relating to the control of the area, granting of leases or permits for the use of land in the area, the erection of buildings or making of roads or trails insofar as he considers necessary or desirable to accommodate the public or to facilitate administration ; and
- (e) shall develop an educational programme and service for the purpose of making available to the public facts and information pertaining to relics and archaeological areas.

11. The Minister shall issue to each inspector and warden a card (in this Act called an "identity card") stating the name of that person and the fact that he is an inspector or warden, as the case may be.

Identity cards.

12. An inspector or a warden may for the purpose of the administration and enforcement of this Act—

Powers of inspectors and wardens.

- (a) request any person whom he finds committing or whom he suspects on reasonable grounds of having committed or being about to commit an offence against this Act to state his full name and usual place of residence;
- (b) seek information in relation to the situation of, inspect or examine any relic ;
- (c) impound any relic and retain it pending investigation and legal proceedings ; and

(d) require

- (d) require any person in an archaeological area damaging or reasonably suspected of damaging or being likely to damage a relic to leave the area.

Penalties.

13. (1) A person who hinders or resists an inspector or a warden in the execution of any of his duties as such, shall be guilty of an offence against this Act.

(2) A person who assaults an inspector or a warden in the execution of his duties as such, shall be guilty of an offence against this Act.

Inspector or warden may demand name and address of suspect.

14. When an inspector or a warden—

- (a) informs a person that he suspects him of having committed an offence against this Act ;
(b) shows his identity card to that person ; and
(c) requests that person to state his full name and usual place of residence—

that person shall forthwith inform that inspector or warden of his full name and his usual place of residence.

Archaeological areas.

15. (1) Where the Governor in Council is satisfied with respect to any land—

- (a) that it is necessary to reserve the land for the preservation of relics therein ;
(b) that for the preservation of relics therein it is necessary to control the entry of persons upon that land ;
(c) that satisfactory arrangements have been made or will be made for the management of the land as an archaeological area and for controlling the entry of persons upon the land ; and
(d) all consents required by this Act have been obtained—

the Governor in Council may by proclamation published in the *Government Gazette* declare the land to be an archaeological area.

Consents.

(2) A proclamation of land as an archaeological area shall not be made unless the consent in writing for the making of the proclamation has first been received from—

- (a) where the land or a part thereof is Crown land—the Minister for Lands ;
(b) where the land or a part thereof is vested in a statutory corporation for the purposes of any Act—the Minister administering that Act ;
(c) where the land or a part thereof is under the control of a Minister under an Act—that Minister ; or
(d) where the land or a part thereof is private land—the owner and, if the owner is not the occupier, the occupier.

16. (1) If

16. (1) If the Governor in Council is satisfied that it is expedient to reserve a particular area of land for the preservation or protection of a relic and that it is necessary in the meantime to prevent or control the entry of persons into that area, he may by Order in Council published in the *Government Gazette* declare such area as a temporary archaeological area.

Temporary archaeological areas.

(2) A temporary archaeological area shall cease to be such upon the expiration of six months after its declaration as such unless in the meantime it has been declared or has otherwise become an archaeological area.

17. (1) A person shall not be within an archaeological area without the permission of an authorized person.

Persons not to be within an archaeological area without permission. Authorized persons.

(2) The Minister and the following persons are authorized to grant permission to be within an archaeological area :—

- (a) in the case of Crown land—the Minister of Lands ;
- (b) in the case of land vested in a statutory corporation for the purposes of any Act—the Minister administering that Act ;
- (c) in the case of land under the control of a Minister under an Act—that Minister ; and
- (d) in the case of private land—the owner and when the owner is not the occupier, the occupier, or a person authorized by the occupier to give such permission.

(3) Permission to be within an archaeological area may be limited as to time or place and shall have no effect after the specified time, or outside the specified area.

18. (1) Notwithstanding anything to the contrary in this Act the Minister may compulsorily acquire any land other than land established as an aboriginal reserve and on which aborigines are living when he is informed by the Advisory Committee that there is a unique and irreplaceable relic on, in or under the land which is in danger of loss or damage, has notified the owner of the land in writing that he has been so informed, and has allowed time for an appeal to be lodged with the Appeals Committee as hereafter in this section provided or, if an appeal has been lodged, has considered the report of the Appeals Committee on the appeal.

Compulsory acquisition.

(2) The owner of any land who receives notice from the Minister under sub-section (1) may within fourteen days after receiving the notice appeal in writing to the Appeals Committee appointed for the purposes of this section on one or both of the following grounds :—

(a) that the relic is not so unique and irreplaceable that it is necessary compulsorily to acquire the land ;

(b) that

(b) that having regard to the nature of the land or any purpose for which it is used the land should not compulsorily be acquired.

(3) The Appeals Committee shall consist of—

(a) a stipendiary magistrate nominated by the Minister who shall be Chairman ;

(b) the Protector ; and

(c) a person experienced in land conservation nominated by the Minister.

(4) Any appeal under this section shall be sent to or lodged with the secretary to the Advisory Committee who shall act as secretary to the Appeals Committee.

(5) The Appeals Committee—

(a) may regulate its own proceedings in the hearing of an appeal ; and

(b) shall report its findings to the Minister.

(6) The *Lands Compensation Act* 1958 is hereby incorporated and shall be read and construed as one with this Act and in the construction of the *Lands Compensation Act* 1958 for the purposes of this Act unless inconsistent with the context or subject-matter—

“ Minister of Public Works ” or “ Minister ” means the Minister for the time being administering this Act ;

“ Special Act ” means this Act.

(7) A person shall not be entitled to compensation under the *Lands Compensation Act* 1958 or this Act for the value of an archaeological relic on or under the surface of land acquired under this section.

Erection of notices.

19. (1) The Protector or any person authorized by him may cause to be erected at suitable places within or on the boundaries of or near an archaeological area notices indicating that the land is an archaeological area.

(2) The fact that a notice is not erected at any place pursuant to the provisions of this section shall not affect the liability of any person for a contravention of any provision of this Act.

Destruction of notices an offence.

(3) Any person who destroys damages removes or interferes with a notice erected pursuant to this section shall be guilty of an offence against this Act.

Relics deemed property of Crown.

20. All relics within an archaeological area shall be the property of the Crown and be under the protection of the Crown.

21. A person

21. A person who wilfully or negligently defaces or damages or otherwise interferes with a relic or carries out an act likely to endanger a relic shall be guilty of an offence against this Act.

Defacing relics &c.

22. (1) A person shall not disturb or excavate any land for the purpose of uncovering or discovering a relic without first receiving the consent of the Minister.

Land not to be excavated without permit.

(2) The Minister may, upon payment by the applicant of the prescribed fee and subject to such terms conditions and limitations as he sees fit, grant a permit to any person authorizing him to uncover or expose any relic or to excavate for any relic.

Granting of permit.

(3) The Minister may direct the excavation or examination of an archaeological area and the removal of relics from it to a place of safe storage.

Removal of relics from safe storage.

(4) A person who wilfully uncovers or exposes a relic or excavates for a relic otherwise than in accordance with a permit issued under this Act shall be guilty of an offence against this Act.

Penalty.

23. (1) A person who discovers a relic shall forthwith report the discovery to the Protector or to an inspector or warden unless he has reasonable cause to believe that the relic is recorded in the register kept by the Protector.

Discovery of relics to be reported.

(2) When any relic is discovered in the course of any construction or excavation on any land it shall be the duty of the person in charge of such construction or excavation to forthwith report the discovery to the Protector, who, if he considers the relic to be worthy of preservation, shall take whatever action is necessary to do so.

24. (1) If the owner of any land which is or is part of an archaeological area makes a request in writing to the Minister that the land should cease to be an archaeological area or part thereof the Minister may, if it appears to him that no important loss of relics would result thereby, direct the removal of any relics in on or under the land to safe storage, and the Governor in Council shall thereupon make such proclamations as are necessary to provide that the said land shall cease to be an archaeological area or part thereof.

Relics may be removed before Governor in Council proclaims that land ceases to be archaeological area.

(2) Sub-section (1) shall not restrict the power of the Governor in Council to revoke or vary, at his discretion and without any request, any proclamation declaring land to be an archaeological area.

25. (1) The Minister shall for the purpose of preservation of any relic take such action as is reasonable for that purpose.

Powers of Minister in preserving relic.

(2) The

Compensation.

(2) The owner of any land shall receive compensation from the Crown for all damage or disability which may arise from any action taken under the provisions of this section in respect of that land.

(3) When the landowner is willing to waive his right to compensation under this section, he shall give to the Minister a written record of the waiver.

Minister may purchase relics &c.

26. (1) The Minister may for the purpose of preserving relics—

- (a) purchase or otherwise acquire a relic on behalf of the Crown ;
- (b) purchase land upon which immovable relics may be present ;
- (c) erect screens, shelters or other structures where necessary to preserve a relic or take such other action as is reasonably necessary for the purpose.

(2) Subject to this Act a person who without the consent of the Protector knowingly buys or sells, or at any time has in his possession or under his control a relic other than a portable relic, shall be guilty of an offence against this Act.

(3) It shall not be an offence against this Act for a person to possess a relic that he had legally in his possession before the commencement of this Act, but no such relic shall be bought or sold without the consent of the Protector.

Portable relics.

27. (1) A person shall not be guilty of an offence against this Act in picking up or collecting a portable relic exposed in or upon the surface of land.

(2) A person who knowingly picks up or collects a portable relic shall—

- (a) safeguard it from loss or damage ;
- (b) ensure that it can be identified ; and
- (c) forthwith give notice in writing to the Protector, describing the relic and stating the place where it was found.

(3) No such portable relic shall be bought or sold without the consent in writing of the Protector.

General penalty.

28. (1) A person who contravenes or fails to comply with any of the provisions of this Act or the regulations shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable to a penalty not exceeding \$200 or to imprisonment for not more than three months or to both.

29. In

29. In any proceedings for an offence against this Act— Evidentiary.

- (a) a certificate signed by the Minister to the effect that a person named in the certificate is the Protector or is an inspector or warden shall be *prima facie* evidence of that fact ;
- (b) a certificate signed by the Minister of Lands to the effect that any land is Crown land shall be *prima facie* evidence of that fact.

30. Where a person is convicted of an offence against this Act in relation to a relic owned by him the court by which the person is convicted may order that the relic be forfeited to the Crown in addition to imposing any penalty under this Act in respect of the offence. Forfeiture of relic owned by offender.

31. (1) Where an inspector or a warden has reasonable grounds for believing that an offence has been or is being or is about to be committed against this Act with respect to a relic the inspector or warden may impound and detain that relic. Seizure of relic.

(2) Sub-section (1) shall not authorize the detention of a relic for more than four months.

32. The Governor in Council may make regulations for the control and preservation of relics and of archaeological areas and generally for carrying this Act into effect and, in particular, without in any way limiting the generality of the foregoing, for or with respect to— Regulations.

- (a) prescribing the forms to be used under this Act ;
- (b) the keeping of records necessary or desirable for the purposes of this Act ;
- (c) the making of returns ;
- (d) any fees to be charged under this Act ;
- (e) charging fees for admission to archaeological areas ;
- (f) the conduct of the proceedings of the Advisory Committee ;
- (g) the manner of making applications for permits for the excavation of relics, the gathering of objects forming part thereof and the conditions subject to which such permits will be granted ; and
- (h) generally, any matter or thing authorized or required by this Act to be prescribed or necessary to be prescribed for carrying this Act into effect.

MELBOURNE :

By Authority : C. H. RIXON, Government Printer.