



ANNO DECIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1965

No. 33 of 1965

An Act to provide for the Preservation of Aboriginal and Historic Relics.

[Assented to 9th December, 1965.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Aboriginal and Historic Relics Preservation Act, 1965". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. (1) In this Act, unless the contrary intention appears: Interpretation.

"Aboriginal" means any of the original inhabitants of Australia or their descendants whether of full blood or not.

"board" means the board appointed under section 6 of this Act:

"Crown land" means any land in the State except land which—

- (a) is held for an estate of freehold by a person other than the Crown;
- (b) is subject to a contract, made by or on behalf of the Crown, for the grant of the land for an estate of freehold;
- (c) is subject to an agreement for sale or purchase, or a lease, or a licence to occupy, granted by or on behalf of the Crown;

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(d) is held for an estate of freehold by the Commonwealth or an instrumentality of the Commonwealth ; or

(e) is dedicated for a specific purpose, and includes the bed of the sea extending for three miles from the mean low water mark.

“historic reserve” means land which is an historic reserve pursuant to a proclamation under this Act :

“inspector” means an inspector appointed under this Act :

“private land” means land other than Crown land :

“prohibited area” means land which is a prohibited area pursuant to a proclamation under this Act :

“relic” means—

(a) any trace, remains or handiwork of an Aboriginal but does not include any handiwork made by an Aboriginal for the purpose of sale ;

(b) any trace or remains of the exploration and early settlement considered of sufficient importance by the Minister to warrant protection under this Act :

“sell” means—

(a) sell, barter or exchange ;

(b) agree or offer to sell, barter or exchange ;

(c) receive, expose, store, have in possession, send, consign or deliver for or on sale, barter or exchange :

“sale” means sale, barter, exchange, agreement or offer to sell, barter or exchange, exposing, storing, possessing, sending, consigning or delivering for or on sale :

“Protector” means the Protector of Relics under this Act and includes a person for the time being appointed as an Acting Protector of Relics.

“warden” means honorary Warden appointed under this Act.

(2) This Act shall not be construed so as to take away or restrict the liability of any person under section 53 of the Justices Act, 1921-1960 for aiding, abetting, counselling or procuring the commission of an offence against this Act, or under section 32 of the Acts Interpretation Act, 1915-1957, for attempting to commit an offence against this Act.

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4. (1) Notwithstanding any of the provisions of this Act, Aboriginals shall not be denied free access to and enjoyment of relics of their forebears and they may make such use of any relic of their forebears as is sanctioned by their tribal law.

Aboriginals to have free access to relics.

(2) Nothing in this section shall be construed as permitting Aboriginals to sell any relic for personal gain unless such sale is to the Protector or with his written consent.

Penalty: Fifty pounds.

5. This Act shall be administered by the Minister of Administration and Education.

6. (1) The Minister shall appoint a board whose members shall serve in an honorary capacity to advise the Minister on matters relevant to this Act.

Appointment and constitution of board.

(2) The board shall comprise one representative each to be nominated respectively by the Council of The University of Adelaide, the Museum Department, the Department of Aboriginal Affairs, the Department of Lands (whose representative shall be the member of the Pastoral Board nominated by land holders) and a chairman nominated by the Minister.

7. (1) The Director of the Museum Department shall be the Protector of Relics.

Director of Museum Department to be Protector of Relics.

(2) If for any reason the Director is unable to act in his office, or the office of the Director is vacant, the Governor may appoint an acting Protector of Relics to hold office for a period fixed by the Governor, or until the happening of some event, or during the Governor's pleasure.

8. (1) The Minister and Protector shall each have power to delegate by writing to any person any of their respective 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.

Minister and Protector may delegate powers.

(2) A delegation under this section may be revoked at will by the delegator and shall not prevent the exercise of any power by the delegator.

9. (1) The Governor may appoint such inspectors, wardens and other officers as he considers necessary for the administration of this Act.

Governor may appoint inspectors, wardens, and other officers.

(2) The Protector and every member of the Police Force shall, while holding office as the Protector or as a member of the Police Force as the case may be, be an inspector under this Act.

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(3) The instrument of appointment of an honorary warden may prescribe limitations on his powers, duties or functions by reference to any or all of the following things, namely, the nature of the powers, duties or functions which he may exercise or perform, and the time, place and circumstances in which he may exercise or perform them.

(4) An honorary warden shall hold office until—

- (a) his appointment is terminated by the Governor ; or
- (b) a written resignation signed by him is received by the Minister.

Protector
to keep
register.

10. The Protector of Relics shall—

(1) keep a complete register of all reserves, prohibited areas and unproclaimed known occurrences of relics and regularly inspect and report annually upon their preservation ; and

(2) actively search for, and seek information in relation to any new discovery of relics and arrange for the adequate protection of any such new discovery.

Minister to
issue Identity
Card to
inspectors and
wardens.

11. The Minister shall issue to every person appointed as an inspector or 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.

Powers of
inspector.

12. (1) An inspector may for the purpose of the administration and enforcement of this Act—

(a) request any person whom he finds committing or whom he suspects on reasonable grounds of having committed an offence against this Act to state his full name and usual place of residence ;

(b) arrest any such person who on request refuses or fails to state his full name and usual place of residence, or who states a name or place of residence which the inspector suspects on reasonable grounds to be false and detain that person until his full name and place of residence are ascertained ;

(c) search for, inspect or examine any relic ;

(d) seize any relic and retain it for investigation and legal proceedings ; and

(e) require any person reasonably suspected as likely to damage a relic to leave a historic reserve.

(2) A warden shall have powers similar to those conferred on an inspector by paragraphs (a), (c), (d) and (e) of subsection (1) of this section.

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13. This Act shall not be construed so as to take away or restrict any power which a member of the Police Force has under any other Act or law.

Act not to affect powers of police officers under other Acts.

14. (1) A person shall not hinder or resist an inspector or warden in the execution of any of his duties under this Act.

Hindering and assaulting inspectors and wardens.

Penalty: Fifty pounds, or imprisonment for three months.

(2) A person shall not assault an inspector or warden in the execution of his duties under this Act.

Penalty: One hundred pounds or imprisonment for six months.

15. When an inspector or warden—

Duty to state name and address.

- (a) informs a person that he suspects him of having committed an offence against this Act; and
- (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.

Penalty: Fifty pounds.

16. If the Governor is satisfied with respect to any land that—

Prohibited areas.

- (a) it is expedient to reserve that land for the preservation of relics; and
- (b) for such preservation it is necessary to prevent the entry of persons into that land; and
- (c) satisfactory arrangements have been made or will be made for the management of the land as a prohibited area and for controlling the entry of persons into the land; and
- (d) the consents required by this Act have been obtained,

the Governor may by proclamation declare the land to be a prohibited area.

17. If the Governor is satisfied with respect to any land that—

Historic reserve.

- (a) the land is or may be used for purposes other than the preservation of relics, but that it is desirable to preserve relics thereon as far as is practicable having regard to the other uses of the land; and

(b) the consents required by this Act have been obtained, the Governor may by proclamation declare the land to be a historic reserve.

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Consent to creation of prohibited area and historic reserve.

18. A proclamation of land as a prohibited area, or historic reserve, shall not be made unless—

- (a) where the land or part of it is Crown land—the Minister has recommended the making of the proclamation ; or
- (b) where the land or part of it is private land—the occupier, and if the occupier is not the owner, the owner also has consented to the making of the proclamation.

Incorporation of the Compulsory Acquisition of Land Act.

19. (1) Notwithstanding any of the provisions of this Act the Minister may compulsorily acquire any land when he is informed by the board that there is a unique and irreplaceable relic on, in or under the land which is in danger of loss or damage.

(2) Where land is compulsorily acquired for the purpose mentioned in subsection (1) of this section, the Compulsory Acquisition of Land Act, 1925-1959 (except sections 49, 70, 80, 81 and 82 thereof) or any Act amending the same or in substitution thereof is incorporated with this Act.

(3) The Minister taking land for such purposes as aforesaid shall be regarded as the promoters of an undertaking and this Act shall be regarded as the special Act within the meaning of the said incorporated Act.

Power of Protector to erect notices in or near prohibited area or historic reserve.

20. (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 any prohibited area, or historic reserve, notices indicating that the land is a prohibited area or, an historic reserve as the case may be.

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

(3) A person shall not destroy, damage, move or interfere with a notice erected pursuant to this section.

Penalty : One hundred pounds.

(4) Upon the conviction of a person for an offence against subsection (3) of this section the court may, whether or not it imposes any penalty, order the defendant to pay to the Minister such sum as the court deems just for compensation for the loss caused by the action of the defendant.

Relics in prohibited area or historic reserve to be Crown property.

21. (1) All relics within a prohibited area or historic reserve shall be regarded as the property of the Crown and under the Crown's protection.

(2) All relics of European origin appearing to have been made or executed prior to 1865 found in, on or under Crown

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land shall upon discovery be forthwith delivered to the Protector or to the nearest police officer, warden or inspector.

22. (1) A person shall not be within a prohibited area without the permission of an authorized person.

Trespassing prohibited areas.

Penalty: Fifty pounds.

(2) The following persons are authorized to grant permission to be within a prohibited area—

(a) as regards Crown land—the Minister ;

(b) as regards private land—the Minister, the occupier, or a person authorized by the occupier to give such permission.

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

23. A person shall not wilfully or negligently deface, damage, uncover, expose, excavate or otherwise interfere with any relic in an historic reserve or carry out any act likely to endanger the relics thereon except with the written permission of the Minister.

Defacing and damaging, etc. relics in historic reserve.

24. (1) The Minister may direct the excavation or examination of an historic reserve and the removal of relics from it to safe storage.

Minister may direct excavation of historic reserve.

(2) If the owner of any land being whole or part of an historic reserve makes a request in writing to the Minister that the land cease to be an historic reserve or part thereof the Minister may, if advised by the board that no important loss of relics would result thereby, direct the removal of any relics in, on or under such land to safe storage and the Governor shall thereupon make such proclamations as are necessary to provide that the said land shall cease to be such an historic reserve or part thereof.

(3) Subsection (2) of this section shall not restrict the power of the Governor to revoke or vary, at his discretion and without any request, any proclamation declaring land to be a prohibited area or historic reserve.

25. (1) The owner of any land shall receive compensation from the Minister for all damage or disability which may arise from any action taken under the provisions of this Act.

Land owner to be compensated for damage.

(2) When the landowner is willing to forego his right to compensation under this section, the Minister must obtain a written record of such waiver.

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Power of Minister and Protector with regard to preservation of a relic.

26. The Minister or Protector may for the purpose of preserving a relic—

- (a) purchase or otherwise acquire it on behalf of the Crown ;
- (b) purchase land upon which immovable relics such as cave paintings or rock engravings or stone structures or arranged stones or carved trees or buildings 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.

No offence to collect portable relics.

27. (1) It shall not be an offence under this Act to pick up or collect any portable relic exposed in or upon the surface of any land.

(2) A person collecting a portable relic under subsection (1) of this section shall safeguard it from loss or damage and no such portable relic may be bought or sold without the consent of the Protector.

Destroying or defacing rock carvings, drawings or tree carvings of Aboriginal origin.

28. (1) A person shall not knowingly conceal, destroy, deface or damage a relic of the nature of cave paintings or rock engravings or stone structures or arranged stones or carved trees of Aboriginal origin.

(2) A person finding or having knowledge of any relic shall report the fact to the Protector or the nearest police officer or warden within reasonable time.

Offences and proof of certain matters.

29. (1) A person who contravenes or fails to comply with any provision of this Act or the regulations shall be guilty of an offence punishable upon conviction by a fine not exceeding one hundred pounds or by imprisonment for a period not exceeding three months.

(2) An allegation in a complaint :—

- (a) that an object is a relic and that such relic is of European origin and appears to have been made or executed prior to 1865 ;
- (b) that any land is Crown land ; or
- (c) that any person is a protector, warden or inspector duly appointed under this Act,

shall be *prima facie* evidence of the fact so alleged.

Power of court to order forfeiture of any relic.

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

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31. (1) Where an inspector or warden has reasonable grounds for believing that an offence against this Act or the regulations has been or is about to be committed in relation to a relic, the inspector or warden, as the case may be, may, subject to subsection (2), seize and detain that relic.

Inspector may seize and detain relic if offence about to be committed, etc., in respect thereof.

(2) Subsection (1) shall not authorize the detention of a relic for a period exceeding four months after the date on which it was seized unless, within that period, an order for the forfeiture of the relic is made under section 30 of this Act.

32. All proceedings for offences against this Act shall be disposed of summarily.

Summary disposal.

33. The moneys required for any purpose of this Act shall be paid out of moneys to be provided by Parliament for the purposes of this Act.

Parliament to supply moneys.

34. The Governor may make any regulations necessary or convenient for carrying this Act into effect and may by any regulation impose penalties recoverable summarily and not exceeding fifty pounds for breach of any regulation under this Act.

Governor may make regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

EDRIC BASTYAN, Governor.