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### Aboriginal Heritage Act 1975

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# **Aboriginal Heritage Act 1975**

**An Act to make provision for the preservation of aboriginal relics**

**[Royal Assent 19 February 1976]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## PART I - Preliminary

### 1. Short title and commencement

- (1) This Act may be cited as the Aboriginal Heritage Act 1975 .
- (2) This Act shall commence on a date to be fixed by proclamation.

### 2. Interpretation

- (1) In this Act, unless the contrary intention appears –

*authorized officer* means a police officer or warden;

*container* includes any wrapping;

*conveyance* means any vehicle, vessel, or aircraft, or any other contrivance intended for the carriage of persons or goods over land or water or in the air;

*Council* means the Aboriginal Heritage Council established under section 3 ;

*Crown land* means any land vested in the Crown, whether or not it is subject to any private rights, but does not include any such land that is contracted to be granted in fee simple;

*Director* means the Director of National Parks and Wildlife;

*guidelines* means guidelines issued and in force under section 21A ;

*honorary warden* means an honorary warden appointed under section 16 ;

*land* includes land covered by the sea or other waters, and part of the sea or those waters covering that land;

*protected object* has the meaning assigned to that expression by section 7 (4) ;

*protected site* means an area of land declared to be a protected site under section 7 ;

*small business entity* means a body corporate that is within the meaning of *small business entity* in section 328 –110 of the *Income Tax Assessment Act 1997* of the Commonwealth;

*warden* means a warden appointed under section 15 .

- (2) For the purposes of this Act, any person who has wholly or partly descended from the original inhabitants of Australia is a person of Aboriginal descent.
- (3) For the purposes of this Act, but subject to the following provisions of this section, a relic is –
  - (a) any artefact, painting, carving, engraving, arrangement of stones, midden, or other object, made or created by any of the original inhabitants of Australia or the descendants of any such inhabitants, which is of significance to the Aboriginal people of Tasmania; or
  - (b) any object, site, or place that bears signs of the activities of any such original inhabitants or their descendants, which is of significance to the Aboriginal people of Tasmania; or
  - (c) the remains of the body of such an original inhabitant or of a descendant of such an inhabitant that are not interred in–
    - (i) any land that is or has been held, set aside, reserved, or used for the purposes of a burial-ground or cemetery pursuant to any Act, deed, or other instrument; or
    - (ii) a marked grave in any other land.
- (4) Despite subsection (3)(a) or (b) , objects made, or likely to have been made, for the purposes of sale (otherwise than by way of barter or exchange in accordance with Aboriginal tradition) are not relics for the purposes of this Act.

- (5) In any proceedings under this Act in relation to an object alleged to be a relic, the court shall assume the object to be a relic if it is satisfied that there are reasonable grounds for believing that the object is, or may be, a relic.
- (6) References in this Act to the taking or removing of a protected object or relic shall be construed as including references to attempting to take or remove, or assisting in the taking or removing of, that object or relic.
- (7) References in any Act to a public reserve or historic reserve include references to a protected site.
- (8) In this section –

***Aboriginal tradition*** means –

- (a) the body of traditions, knowledge, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people; and
- (b) any such tradition, knowledge, observance, custom or belief relating to particular persons, areas, objects or relationships;

***significance***, of a relic, means significance in accordance with –

- (a) the archaeological or scientific history of Aboriginal people; or
- (b) the anthropological history of Aboriginal people; or
- (c) the contemporary history of Aboriginal people; or
- (d) Aboriginal tradition.

## PART II - The Aboriginal Heritage Council

### 3. Establishment of Aboriginal Heritage Council

- (1) The Aboriginal Heritage Council is established.
- (2) The Council –
  - (a) shall make recommendations to the Minister on any matter in respect of which this Act provides for its making recommendations to him;
  - (ab) shall advise, and make written recommendations to, the Minister in relation to any object, site or place alleged to be a relic under this Act;
  - (b) shall advise, and make recommendations to, the Minister on such other matters in relation to the administration of this Act as it thinks fit;
  - (c) shall make recommendations to the Director on any matter in respect of which this Act provides for its making recommendations to him; and
  - (d) shall, if requested by the Director, advise, and make recommendations to, him in respect of any other matter relating to the exercise of his functions under this Act.
- (2A) For the purposes of providing advice, and making written recommendations, to the Minister under subsection (2)(ab), the Council is to seek information, or professional or expert advice, from any person or body the Council believes on reasonable grounds to have expertise in relation to the matters concerned.
- (3) Without prejudice to the generality of the provisions of subsection (2), where the Minister refers to the Council any matter related to the administration of this Act or the Director refers to it any matter related to the exercise of his functions under this Act, the Council shall consider that matter as soon as practicable and make a report thereon to the Minister or Director with such recommendations as it may consider appropriate in the circumstances.
- (4) Subject to this Act, the Minister may make arrangements to render available to the Council such accommodation and assistance as it may require.
- (5) The Director shall furnish the Council with such information as it may require and is reasonably available to him in connection with the exercise of his functions under this Act.
- (6) In performing its functions under this Act, the Council, where it is appropriate and practicable to do so, is to consult with the Aboriginal people of Tasmania.

### 4. Membership of Council

- (1) Subject to subsection (2), the Council consists of not more than 10 members appointed –
  - (a) by the Governor on the recommendation of the Minister; and
  - (b) on such terms and conditions as the Minister considers appropriate.
- (2) All members of the Council are to be Aboriginal persons.
- (3) The Minister is to appoint one member of the Council as its Chairperson.

### 5. Powers of Council

- (1) The Council has –
  - (a) power to do anything necessary or convenient to be done to perform its functions; and
  - (b) such other powers as it is given by this or any other Act.
- (2) Except as provided by this Act or the regulations, the Council may regulate its own proceedings.

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## PART III - Declaration and Management, &c., of Protected Sites

### 7. Declaration of protected sites

- (1) Where the Minister is satisfied that there is on or in any land a relic and that steps should be taken to protect or preserve that relic, he may, on the recommendation of the Director, by order declare an area of land within which it is situated to be a protected site.
- (2) The Minister may, on the recommendation of the Director, by order revoke an order made under this section or vary it with respect to the area of land to which it relates.
- (3) An order shall not be made under this section in respect of an area of land (other than an area of Crown land), unless the owner and occupier of the land consent, in writing, to the making of the order.
- (4) An order made under subsection (1) shall specify the relic in respect of which it is made, and a relic so specified, and any part of such a relic and any object forming part of, contained within, or attached to, such a relic or object, is referred to in this Act as *a protected object*.

### 8. Management, &c., of protected sites

- (1) The Director is charged with the management and maintenance of every protected site and the protection and preservation of the protected objects on and in that site.
- (2) Without prejudice to the generality of subsection (1), the Director shall cause to be carried out on a protected site such work as, in his opinion, is necessary or desirable for the purpose of –
  - (a) protecting or preserving a protected object, or any other object, on or in the site and providing and maintaining means of access to any such object or to the site; and
  - (b) restoring or repairing any such object.
- (3) The work referred to in subsection (2) includes –
  - (a) the fencing of a protected site;
  - (b) the erection and maintenance of notices on the site (including notices relating to the site or any object on or in the site or any of the provisions of this Act);
  - (c) the erection and maintenance of cairns or other monuments to mark any object on or in the site; and
  - (d) the provision of such facilities and conveniences for the use or benefit of persons resorting to that site as the Director deems necessary –but nothing in that subsection authorizes the carrying out of work elsewhere than on such a site, except for the purpose of providing, improving, or maintaining means of access to the site.
- (4) The Director may impose a charge for the use of the facilities and conveniences referred to in subsection (3).
- (5) Notwithstanding subsection (4), where a protected site is not an area of Crown land, no charge may be imposed under that subsection on the owner or occupier of the land.
- (6) If the Director is satisfied that any object on or in a protected site is likely to suffer damage or be destroyed or lost unless it is removed to a place of safety, the Director may cause that object to be removed from the site and may, subject to subsection (7), make such arrangements as he considers suitable for its safe custody or for otherwise dealing with it for the purposes of this subsection.
- (7) The arrangements made by the Director with respect to human remains that are removed by him pursuant to subsection (6) shall be made –
  - (a) after he has caused such scientific or other investigations of those remains to be made as, having regard to the recommendations made by the Council with respect to those investigations, he considers necessary or desirable;

(b) after he has considered the recommendations made by the Council with respect to those arrangements; and

(c) subject to the Minister's approval.

(8) The Director may cause examinations to be made of any object in a protected site and may cause explorations to be made of the site, whether by way of the carrying out of excavations or other works or otherwise.

(9) Subject to subsections (7) and (10), the powers of the Director under subsection (6) or subsection (8), so far as they relate to the carrying out of work or the removal of or dealing with objects, shall not be exercised unless the Director has previously informed the Minister.

(10) Where it is impracticable for the Director to inform the Minister before he exercises the powers to which subsection (9) refers, he shall be deemed to comply with that subsection if he notifies the Minister as soon as is reasonably practicable after he exercises those powers.

(11) A person who is authorized, in writing, by the Director may, with such tools and equipment as may be necessary, enter on any land, during the hours of daylight, for the purpose of exercising the powers conferred on the Director by this section.

(12) A person having an estate or interest in any land is entitled to compensation for any loss or injury (whether to the land or any object on the land), or for any decrease in the value of that land, arising from the exercise on that land of any of the powers conferred on the Director by this section, and that compensation shall be of such amount as may be agreed between that person and the Director.

(13) Where there is a dispute between the Director and a person as to the amount of compensation to which that person is entitled under subsection (12), the dispute shall be referred to, and heard and determined by, a magistrate.

(14) Compensation to which a person is entitled under subsection (12) may be recovered as a debt due to him from the Crown.

## 9. Protection of protected sites

(1) Except in accordance with the terms of a permit granted by the Director, no person –

(a) shall destroy, damage, disfigure, conceal, uncover, expose, excavate, or otherwise interfere with a protected object;

(b) shall carry out an act likely to endanger a protected object; or

(c) shall destroy, damage, or deface, or otherwise interfere with any fencing or notice erected, or any other work carried out, in or in respect of a protected site in pursuance of this Act.

(2) Except in accordance with the terms of a permit granted by the Minister on the recommendation of the Director, no person shall remove a protected object from a protected site.

(2A) A person who –

(a) contravenes subsection (1)(a) or (b) in relation to a relic or object, knowing, at the time of the contravention, that it is a protected object; or

(b) contravenes subsection (1)(c) or subsection (2) in relation to a site, knowing, at the time of the contravention, that it is a protected site –

is guilty of an offence.

Penalty: In the case of –

(a) a body corporate, other than a small business entity, a fine not exceeding 10 000 penalty units; or

(b) an individual or a small business entity, a fine not exceeding 5 000 penalty units.

(2B) A person who –

(a) contravenes subsection (1)(a) or (b) in relation to a relic or object and is, at the time of the contravention, reckless or negligent as to whether it is a protected object; or

(b) contravenes subsection (1)(c) or subsection (2) in relation to a site, and is, at the time of the contravention, reckless or negligent as to whether it is a protected site –

is guilty of an offence.

Penalty: In the case of –

(a) a body corporate, other than a small business entity, a fine not exceeding 2 000 penalty units; or

(b) an individual or a small business entity, a fine not exceeding 1 000 penalty units.

(3) Where an authorized officer has reasonable grounds for believing that a protected object has been removed from a protected site contrary to subsection (2) , he may seize that protected object.

(4) If, in any proceedings for an offence against a provision of this section, the court is not satisfied that the defendant is guilty of the offence as charged but is satisfied that the defendant is guilty of an offence under another provision of this section in relation to which a lesser maximum fine is prescribed, the court may find the defendant guilty of the other offence.

## PART IV - General Provisions Relating to Relics, Including Their Vesting in the Crown

### 10. Duties of persons owning or finding, &c., relics

(1) Subject to subsection (2) , a person who, at the commencement of this Act –

(a) owns a relic or has a relic in his custody or under his control; or

(b) has knowledge of a relic –

shall, within 6 months after that commencement, inform the Director or an authorized officer of the fact.

(2) Without prejudice to the generality of section 25 , the regulations may exempt, or may authorize the Director to exempt –

(a) any person or class of persons from complying with subsection (1) ; and

(b) any relic or any class or kind of relics from that subsection –

either unconditionally or subject to such conditions as may be prescribed or as the Director may impose.

(3) A person shall, as soon as practicable after finding a relic, inform the Director or an authorized officer of the find.

(4) It is a defence in any proceedings for an offence under subsection (1) or subsection (3) for the defendant to show that he had reasonable grounds for believing that the Director was aware of the existence of the relic.

(5) A person who has knowledge of the place where a relic is situated shall, when so requested by an authorized officer, inform that officer of the location of that place.

(6) The Director may, by agreement with a person who owns a relic or has a relic in his custody or under his control, take such action as he considers necessary for the preservation, exhibition, study, or scientific or other investigation of the relic.

(7) A person who contravenes, or fails to comply with, any of the provisions of this section is guilty of an offence.

Penalty: In the case of –

(a) a body corporate, other than a small business entity, a fine not exceeding 100 penalty units; or

(b) an individual or a small business entity, a fine not exceeding 50 penalty units.

### 11. Vesting of certain newly-discovered relics in the Crown

(1) A relic that, on or after the commencement of this Act –

(a) is found by any person; or

(b) is abandoned by any person –

on any Crown land is the property of the Crown.

(2) In subsection (1) ,

*relic* means a relic that is not attached to, or otherwise part of, Crown land.

### 12. Acquisition of relics by the Crown

(1) Subject to this section, on the recommendation of the Director, the Minister may acquire or accept a relic on behalf of the Crown and a relic so acquired or accepted becomes vested in the Crown.

(2) Without prejudice to the acquisition of a relic under this section by any other means, the Minister may serve notice on the owner of the relic informing him that the relic is required by the Crown and requiring him to deliver the relic to the place specified in the notice, and on the relic being so delivered it vests in and becomes the property of the Crown.

(3) Where a notice has been served on the owner of a relic (in this section referred to as "the previous owner") under subsection (2) , and he satisfies the Minister that it is not practicable for him to deliver the relic to the place specified in the notice given to him under that subsection, he shall give possession of the relic to a person authorized in writing by the Minister to take the relic.

(4) Where a relic becomes vested in the Crown by virtue of subsection (2) , the Minister shall pay to the previous owner its value and the reasonable expenses (if any) incurred by the previous owner in delivering the relic as mentioned in that subsection.

(5) Where there is a dispute between the Minister and the previous owner of a relic as to the value of the relic, or the amount of any such expenses as are referred to in subsection (4) , the dispute shall be referred to, and heard and determined by, a magistrate.

(6) A notice required to be served on any person under this section may be so served by delivering it to him personally or sending it by certified mail addressed to him at his usual or last known place of abode or business.

(7) Where a notice has been served on the owner of a relic, he may apply to a magistrate within one month from the date of the service of the notice for the notice to be quashed on the grounds that –

(a) he is of Aboriginal descent; and

(b) he or his ancestors have had the possession of the relic for a period exceeding 50 years –

and if upon hearing the application the magistrate is satisfied that the grounds have been made out he may quash the notice and thereupon the notice shall cease to be of further effect.

(8) Any person who damages, destroys or disposes of a relic in respect of which a notice has been served under subsection (2) is guilty of an offence.

Penalty: In the case of –

(a) a body corporate, other than a small business entity, a fine not exceeding 100 penalty units; or

(b) an individual or a small business entity, a fine not exceeding 50 penalty units.

(9) In this section, *owner*, in relation to a relic, includes the person in possession of the relic.

(10) This section does not authorize the acquisition or acceptance of any land or require the severance of any relic from land.

### 13. Dealing with relics vested in the Crown

(1) Where a relic becomes the property of the Crown under this Act, the Director may cause to be made such scientific or other investigations of the relic as, having regard to the recommendations made by the Council with respect to those investigations, he considers necessary or desirable.

(2) Subject to subsection (4) , the Director may –

(a) after deciding not to cause investigations to be made of a relic pursuant to subsection (1) ; or

(b) after those investigations have been made of a relic –

deal with or dispose of the relic in such manner as the Minister approves.

(3) The Minister shall not exercise the power of approval conferred on him by subsection (2) until he has considered the recommendations made by the Council with respect to the exercise of that power.

(4) Where, after investigations have been made pursuant to subsection (1) of a relic that is the property of the Crown by virtue of an acquisition or acceptance, the Crown does not wish to retain the ownership of the relic, the Director shall cause the relic to be delivered to the person from whom it was acquired or accepted or to his personal representative if he has since died, and on the relic being so delivered it vests in and becomes the property of that person or his estate.

### 14. Protection of relics

(1) Except as otherwise provided in this Act, no person shall, otherwise than in accordance with the terms of a permit granted by the Minister on the recommendation of the Director –

- (a) destroy, damage, deface, conceal, or otherwise interfere with a relic;
- (b) make a copy or replica of a carving or engraving that is a relic by rubbing, tracing, casting, or other means that involve direct contact with the carving or engraving;
- (c) remove a relic from the place where it is found or abandoned;
- (d) sell or offer or expose for sale, exchange, or otherwise dispose of a relic or any other object that so nearly resembles a relic as to be likely to deceive or be capable of being mistaken for a relic;
- (e) take a relic, or cause or permit a relic to be taken, out of this State; or
- (f) cause an excavation to be made or any other work to be carried out on Crown land for the purpose of searching for a relic.

(1A) A person who contravenes subsection (1)(a), (b), (c), (d) or (e) in relation to a relic knowing, at the time of the contravention, that it is a relic, is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, other than a small business entity, a fine not exceeding 10 000 penalty units; or
- (b) an individual or a small business entity, a fine not exceeding 5 000 penalty units.

(1B) A person who contravenes subsection (1)(a), (b), (c), (d) or (e) in relation to a relic and who is, at the time of the contravention, reckless or negligent as to whether it is a relic, is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, other than a small business entity, a fine not exceeding 2 000 penalty units; or
- (b) an individual or a small business entity, a fine not exceeding 1 000 penalty units.

(1C) A person who contravenes subsection (1)(f) is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, other than a small business entity, a fine not exceeding 2 000 penalty units; or
- (b) an individual or a small business entity, a fine not exceeding 1 000 penalty units.

(2) A permit under subsection (1) is of no effect if, to the knowledge of the holder thereof, the relic to which it relates has been acquired or dealt with in contravention of this Act.

(3) This section does not apply to any dealing in land.

(4) Where an authorized officer has reasonable grounds for believing that an offence under –

- (a) this section has been, or is about to be, committed in relation to a relic; or
- (b) subsection (1) (d), has been, or is about to be, committed in relation to an object other than a relic referred to therein –

he may seize the relic or other object.

(5) Where a person is convicted of an offence under this section in relation to a relic owned by him, the court by which he is convicted may, in addition to or in lieu of imposing any penalty on that conviction, order the relic to be forfeited to the Crown and, on the making of such an order, the relic vests in and becomes the property of the Crown.

(6) If, in any proceedings for an offence against a provision of this section, the court is not satisfied that the defendant is guilty of the offence as charged but is satisfied that the defendant is guilty of an offence under another provision of this section in relation to which a lesser maximum fine is prescribed, the court may find the defendant guilty of the other offence.

## PART V - Provisions Relating to Administration and Enforcement

### 15. Wardens

(1) The Secretary of the Department may appoint to be a warden for the purposes of this Act a State Service officer, or State Service employee, who is employed in the Department, and the State Service officer or State Service employee may hold that office in conjunction with State Service employment.

(1A) The Secretary of the Department, with the consent of the Head of another State Service Agency, may appoint to be a warden for the purposes of this Act a State Service officer, or State Service employee, who is employed in that Agency, and the State Service officer or State Service employee may hold that office in conjunction with State Service employment.

(2) A person appointed as a warden under subsection (1) or (1A) may be so appointed in respect of a specified protected site.

(3) A warden appointed under this section in respect of a particular protected site shall not exercise the powers of a warden conferred on him under this Act otherwise than in respect of that site.

### 16. Honorary wardens

(1) The Secretary of the Department may, subject to such conditions as he thinks fit, appoint persons as honorary wardens to assist authorized officers in the execution of this Act.

(2) A person appointed as an honorary warden under subsection (1) may, subject to subsection (3), be so appointed in respect of a specified protected site.

(3) No person shall be appointed as an honorary warden under subsection (1) in respect of a specified protected site not on Crown land unless the owner and occupier of the site consent, in writing, to the appointment.

(4) An honorary warden appointed under this section in respect of a particular protected site shall not exercise the powers conferred on him under this Act otherwise than in respect of that site.

### 17. Powers of authorized officers and honorary wardens in respect of offences

(1) Where an authorized officer or honorary warden has reasonable grounds for believing that a person has committed, or is committing, an offence against this Act on or in relation to any protected site, or in relation to any protected object, relic, or other thing, he or she may require that person to state his or her name and the address of his or her place of abode.

(2) Where a person who is within any protected site is found offending against a provision of this Act, an authorized officer or honorary warden may require him or her to leave the site.

(3) A person who, when required under this section –

(a) to state his or her name and the address of his or her place of abode, fails or refuses to give his or her full name and that address or gives a name or address that is false; or

(b) to leave any protected site, refuses to do so, or does not do so within a reasonable time –

is guilty of an offence.

Penalty: In the case of –

(a) a body corporate, other than a small business entity, a fine not exceeding 100 penalty units; or

(b) an individual or a small business entity, a fine not exceeding 50 penalty units.

### 18. Additional powers of authorized officers

(1) Without prejudice to the powers of seizure contained elsewhere in this Act, where an authorized officer has reasonable grounds for believing that an object is in possession of any person contrary to the provisions of this Act, he may seize that object.

(2) A person who, when required to do so by an authorized officer, refuses to deliver to that officer any object that the officer is entitled to seize under this Act is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, other than a small business entity, a fine not exceeding 100 penalty units; or
- (b) an individual or a small business entity, a fine not exceeding 50 penalty units.

(3) A justice may, on the complaint of an authorized officer that the officer has reasonable grounds for believing that there is in or on any premises, conveyance, container, or animal an object that the officer is entitled to seize under this Act, issue a warrant to an authorized officer named in the warrant authorizing him –

- (a) to enter and search those premises or that conveyance;
- (b) to search that container and, if necessary for the purposes of searching it, to open that container; or
- (c) to search any container or other thing carried by that animal and, if necessary for the purposes of searching it, to open that thing.

(4) For the purposes of conducting a search in a conveyance or in respect of an animal pursuant to a warrant under subsection (3), an authorized officer may require that conveyance or animal to be stopped and, if it is on a protected site or on or in any water, he may bring it, or cause or require it to be brought, to some convenient place for the search to be carried out.

(5) For the purpose of facilitating the exercise of his powers pursuant to a warrant under subsection (3) in respect of any premises, conveyance, container, or animal, an authorized officer may require the person apparently in charge of those premises, or that conveyance, container, or animal, or any of his servants or agents, to afford him such assistance as he may require.

(6) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement made of the person by an authorized officer under this section is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, other than a small business entity, a fine not exceeding 100 penalty units; or
- (b) an individual or a small business entity, a fine not exceeding 50 penalty units.

(7) Subject to subsection (8) an authorized officer may arrest without warrant any person found offending against a provision of this Act who –

- (a) fails or refuses, on demand, to give his full name and the address of his place of abode;
- (b) gives any name or address that the officer has reasonable grounds for believing is false; or
- (ba) refuses to comply with a requirement to leave any protected site or does not do so within a reasonable time; or
- (c) does not deliver up to that officer, on demand, any object in his possession or under his control that the officer is entitled to seize under this Act.

(8) An authorized officer may exercise the power of arrest conferred on him by subsection (7) only if he has reasonable grounds for believing that the purpose of this Act will not be adequately served by proceeding against the offender by summons.

## 19. Procedure on seizure of objects

(1) Where any object has been seized under this Act, it may be retained until the determination of any proceedings that may be instituted in respect of an offence against this Act alleged to have been committed in relation to the object.

(2) Where an object may be retained under subsection (1), it shall be retained in such manner and in such custody as the Director may approve.

(3) Where any object has been seized from any person under this Act and, within 3 months of its seizure, no proceedings have been instituted for such an offence as is referred to in subsection (1), a court of petty sessions,

on the application of that person, may direct it to be returned to him and, on the making of that direction, the authority under that subsection to retain the object ceases.

(4) Where an object is seized under section 9 (3) , nothing in this section shall be construed as prejudicing or affecting the rights of the owner of the object or any other person having property therein.

## 20. Defence of carrying out emergency work

It is a defence to a prosecution for an offence under this Act if, in relation to the section of the Act the defendant is alleged to have contravened, it is proved that the act or omission constituting the alleged offence was due to the act of carrying out –

- (a) emergency work in accordance with section 55 of the Electricity Supply Industry Act 1995 ; or
- (b) any other work that is a necessary and proportionate response to an actual or impending emergency that threatens human life or property or threatens to injure any person.

## 21. Defence of compliance with guidelines

(1) It is a defence to a prosecution for an offence under section 9 or 14 if, in relation to the section of the Act which the defendant is alleged to have contravened, it is proved –

- (a) that, in so far as is practicable –
  - (i) the defendant complied with the guidelines; or
  - (ii) it was reasonable in the circumstances for the defendant to rely on another person's compliance with the guidelines; or
- (b) that the act or omission constituting the alleged offence was due to an act or default of another person; or
- (c) that, in so far as it was reasonable to do so in the circumstances, the defendant relied on information supplied by another person.

(2) In this section –

***another person*** does not include a person who was –

- (a) an employee or agent of the defendant; or
- (b) in the case of a defendant that is a body corporate – a director, employee or agent of the defendant.

## 21A. Guidelines

(1) The Minister must issue guidelines specifying the actions to be undertaken by a person for the purpose of establishing a defence in accordance with section 21 .

(2) The Minister may –

- (a) amend the guidelines; or
- (b) revoke the guidelines and substitute new guidelines.

(3) The guidelines –

- (a) may be made so as to apply differently according to such factors as are specified in the guidelines; and
- (b) may adopt, either wholly or in part and with or without modification, either specifically or by reference, any standards, rules, codes, guidelines or other documents (whether published or issued before or after the commencement of this section); and
- (c) are not statutory rules for the purposes of the Rules Publication Act 1953 ; and
- (d) are not subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

- (4) A reference in subsection (3)(b) to standards, rules, codes, guidelines or other documents includes a reference to an amendment of those standards, rules, codes, guidelines or other documents, whether the amendment is published or issued before or after the commencement of this section.
- (5) In issuing guidelines, amending guidelines or revoking and substituting guidelines, the Minister may consult with any person he or she considers appropriate.
- (6) The guidelines take effect on a day specified in the guidelines as the day on which the guidelines are to take effect.
- (7) An amendment of guidelines, or a revocation and substitution of guidelines, takes effect on a day specified in the guidelines as the day on which the amendment, or the revocation and substitution, is to take effect.
- (8) The Minister must cause guidelines, an amendment of guidelines or substituted guidelines to be laid before each House of Parliament within the first 5 sitting-days of that House after the day on which the guidelines, the amendment of guidelines or the substituted guidelines take effect.
- (9) Either House of Parliament may pass a resolution disallowing guidelines, an amendment of guidelines or substituted guidelines within 5 sitting-days after the guidelines, the amendment of guidelines or the substituted guidelines have been laid before it.
- (10) If a House of Parliament passes a motion to disallow guidelines, an amendment of guidelines or substituted guidelines under subsection (9) –
- (a) the guidelines, amendment of guidelines or substituted guidelines are void on and from the date of the passing of the motion of disallowance; but
  - (b) the passing of the motion of disallowance does not affect the validity of anything done under the guidelines, the amendment of guidelines or the substituted guidelines before the date of the passing of that motion.
- (11) If at the expiration of 5 sitting-days after the guidelines, an amendment of guidelines or the substituted guidelines are laid before either House of Parliament, no notice has been given of a motion to disallow the guidelines, the amendment of guidelines or the substituted guidelines, or, if such notice has been given, the notice has been withdrawn or the motion has been negatived, the guidelines, the amendment of guidelines or the substituted guidelines are taken to have been confirmed by that House.
- (12) The Minister is to ensure that the guidelines, as in force, are published on the website of the Department and made available to the public in any other manner the Minister considers appropriate.

## **21B. Time for commencing prosecution**

- (1) A prosecution under this Act must be commenced –
- (a) not later than 2 years after the date on which the offence is alleged to have been committed; or
  - (b) not later than 2 years after the date on which evidence of any act or omission constituting the offence first came to the attention of any authorized officer.
- (2) Subsection (1) has effect despite section 26 of the Justices Act 1959 or any other law.

## PART VI - Miscellaneous

### 22. Expenses of Act

- (1) All moneys received by the Director under this Act shall be paid into the Public Account.
- (2) The expenses incurred in the administration of this Act shall be defrayed out of moneys provided by Parliament for the purpose.

### 23. Review of Act

- (1) The Minister is to review this Act within 3 years after the day on which this section commences.
- (2) The Minister is to cause a report on the outcome of the review to be tabled in each House of Parliament within 6 months after the third anniversary of the day on which this section commences.

### 24. Act does not affect operation of certain other Acts

Nothing in this Act affects the operation of section 139 of the Criminal Code Act 1924 or the Coroners Act 1995

### 25. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may make provision with respect to the care, control, and management of protected sites.
- (3) Without prejudice to the generality of subsection (2), regulations under that subsection may make provision with respect to –
  - (a) the protection or preservation of protected objects or the property or other things on protected sites;
  - (b) the prevention of damage or injury to those sites or any protected objects, property, or other things thereon;
  - (c) the protection or preservation of the fauna or flora contained in those sites;
  - (d) the prohibition or control of the removal of any property or other things (not being protected objects) from protected sites;
  - (e) the prohibition or control of the bringing into, or over, or the use or possession in or over, protected sites of conveyances or any other things (including living things);
  - (f) the conduct of persons in protected sites;
  - (g) the exclusion or ejection of persons from protected sites or any part thereof; and
  - (h) the making and collection of charges for admission to protected sites or any part thereof.
- (4) Regulations made for the purposes of this section –
  - (a) may confer powers and discretions on the Director and on authorized officers, honorary wardens, and other prescribed persons in relation to any matters referred to in those regulations; and
  - (b) may impose fines, not exceeding 10 penalty units, in respect of contraventions of the regulations.
- (5) The powers referred to in subsection (4) include power, in such cases or circumstances as may be prescribed, to seize creatures found in a protected site.
- (6) Any regulations made under this section may apply to protected sites generally or to any specified protected site.
- (7) Regulations made under this section do not prohibit the doing of anything in a protected site that is not Crown land by the owner or occupier thereof, or of any person acting on his authority, that he would have been entitled to do if those regulations had not been made.

