

# TASMANIA

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## ABORIGINAL RELICS AMENDMENT BILL 2017

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### CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 1 amended (Short title and commencement)
5. Section 2 amended (Interpretation)
6. Part II: Heading amended
7. Section 3 amended (Establishment of Aboriginal Heritage Council)
8. Sections 4, 5 and 6 substituted
  4. Membership of Council
  5. Powers of Council
9. Section 9 amended (Protection of protected sites)
10. Section 10 amended (Duties of persons owning or finding, &c., relics)
11. Section 12 amended (Acquisition of relics by the Crown)
12. Section 14 amended (Protection of relics)
13. Section 15 amended (Wardens)
14. Section 17 amended (Powers of authorized officers and honorary wardens in respect of offences)
15. Section 18 amended (Additional powers of authorized officers)
16. Sections 20 and 21 substituted
  20. Defence of carrying out emergency work

- 21. Defence of compliance with guidelines
- 21A. Guidelines
- 21B. Time for commencing prosecution
- 17. Section 24 substituted
  - 23. Review of Act
  - 24. Act does not affect operation of certain other Acts
- 18. Repeal of Act

# **ABORIGINAL RELICS AMENDMENT BILL 2017**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
6 April 2017

*(Brought in by the Minister for Environment, Parks and  
Heritage, the Honourable Matthew Guy Groom)*

## **A BILL FOR**

### **An Act to amend the *Aboriginal Relics Act 1975***

Be it enacted by Her 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:

#### **1. Short title**

This Act may be cited as the *Aboriginal Relics Amendment Act 2017*.

#### **2. Commencement**

This Act commences on a day to be proclaimed.

#### **3. Principal Act**

In this Act, the *Aboriginal Relics Act 1975*\* is referred to as the Principal Act.

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\*No. 81 of 1975

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 4

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**4. Section 1 amended (Short title and commencement)**

Section 1 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) This Act may be cited as the *Aboriginal Heritage Act 1975*.

**5. Section 2 amended (Interpretation)**

Section 2 of the Principal Act is amended as follows:

- (a) by omitting the definition of *Council* from subsection (1) and substituting the following definition:

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

- (b) by inserting the following definition after the definition of *Director* in subsection (1):

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

- (c) by inserting the following definition after the definition of *protected site* in subsection (1):

*small business entity* means a body  
corporate that is within the  
meaning of *small business entity*  
in section 328 –110 of the *Income*

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 5

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*Tax Assessment Act 1997* of the  
Commonwealth;

- (d) by inserting in subsection (3)(a) “,” after “object”;
- (e) by omitting from subsection (3)(a) “inhabitants;” and substituting “inhabitants, which is of significance to the Aboriginal people of Tasmania; or”;
- (f) by omitting from subsection (3)(b) “descendants; or” and substituting “descendants, which is of significance to the Aboriginal people of Tasmania; or”;
- (g) by omitting from subsection (3)(c) “who died before the year 1876”;
- (h) by omitting subsection (4) and substituting the following subsection:
  - (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.
- (i) by inserting the following subsection after subsection (7):
  - (8) In this section –

*Aboriginal tradition* means –

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 5

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- (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.

**6. Part II: Heading amended**

Part II of the Principal Act is amended by omitting “**RELICS ADVISORY**” from the heading to that Part and substituting “**HERITAGE**”.

**7. Section 3 amended (Establishment of Aboriginal Heritage Council)**

Section 3 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
  - (1) The Aboriginal Heritage Council is established.
- (b) by inserting the following paragraph after paragraph (a) in subsection (2):
  - (ab) shall advise, and make written recommendations to, the Minister in relation to any object, site or

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 8

---

place alleged to be a relic under  
this Act;

(c) by inserting the following subsection  
after subsection (2):

(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.

(d) by inserting the following subsection  
after subsection (5):

(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.

**8. Sections 4, 5 and 6 substituted**

Sections 4, 5 and 6 of the Principal Act are  
repealed and the following sections are  
substituted:



#### **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.

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 9

---

**9. Section 9 amended (Protection of protected sites)**

Section 9 of the Principal Act is amended as follows:

(a) by inserting the following subsections after subsection (2):

(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

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 9

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- (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

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 10

---

- (b) an individual or a small business entity, a fine not exceeding 1 000 penalty units.
- (b) by inserting in subsection (3) “protected” after “seize that”;
- (c) by inserting the following subsection after subsection (3):
  - (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.

**10. Section 10 amended (Duties of persons owning or finding, &c., relics)**

Section 10 of the Principal Act is amended by omitting subsection (7) and substituting the following subsection:

- (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. Section 12 amended (Acquisition of relics by the Crown)**

Section 12 of the Principal Act is amended by omitting subsection (8) and substituting the following subsection:

- (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

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 12

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exceeding 50 penalty  
units.

**12. Section 14 amended (Protection of relics)**

Section 14 of the Principal Act is amended as follows:

(a) by inserting the following subsections after subsection (1):

(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

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 12

---

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

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 13

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exceeding 1 000  
penalty units.

(b) by inserting the following subsection  
after subsection (5):

(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.

**13. Section 15 amended (Wardens)**

Section 15 of the Principal Act is amended as follows:

(a) by omitting subsections (1) and (1A) and substituting the following subsections:

(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.

(b) by omitting from subsection (2) “subsection (1)” and substituting “subsection (1) or (1A)”.

**14. Section 17 amended (Powers of authorized officers and honorary wardens in respect of offences)**

Section 17 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or she” after “he”;
- (b) by inserting in subsection (1) “or her” after “state his”;
- (c) by inserting in subsection (1) “or her” after “of his”;

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 14

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(d) by inserting in subsection (2) “or her” after “him”;

(e) by omitting subsection (3) and substituting the following subsection:

(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

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exceeding 50  
penalty units.

**15. Section 18 amended (Additional powers of authorized officers)**

Section 18 of the Principal Act is amended as follows:

(a) by omitting subsection (2) and substituting the following subsection:

(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.

(b) by omitting subsection (6) and substituting the following subsection:

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 16

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(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.

**16. Sections 20 and 21 substituted**

Sections 20 and 21 of the Principal Act are repealed and the following sections are substituted:

**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

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 16

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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 –

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 16

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- (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

*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 16

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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) –



*Aboriginal Relics Amendment Act 2017*  
*Act No. of*

s. 16

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- (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.

**17. Section 24 substituted**

Section 24 of the Principal Act is repealed and the following sections are substituted:

**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*.

**18. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.