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ABORIGINAL SACRED SITES ORDINANCE 1978

589

No. 115 of 1978

An Ordinance to provide for the protection of
Aboriginal Sacred Sites

[Assented to 9 November 1978]

BE it ordained by the Legislative Assembly for the Northern Territory of Australia as follows:

PART I—PRELIMINARY

1. This Ordinance may be cited as the *Aboriginal Sacred Sites Ordinance 1978*. Short title
2. This Ordinance shall come into operation on the date on which the *Aboriginal Land Ordinance 1978* comes into operation.* Commencement
3. In this Ordinance, unless the contrary intention appears— Definitions
 - “Aboriginal” means a person who is a member of the Aboriginal race of Australia;
 - “Aboriginal land” has the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976*;
 - “Aboriginal Land Commissioner” means the Aboriginal Land Commissioner established by the *Aboriginal Land Rights (Northern Territory) Act 1976*;
 - “custodian” means the traditional Aboriginal owner or other Aboriginal to whom the protection of a sacred site is entrusted by and in accordance with Aboriginal tradition;
 - “Land Council” means an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*;
 - “sacred site” means a site that is sacred to Aboriginals or is otherwise of significance according to Aboriginal tradition, and includes any land that, under this Ordinance, is declared to be sacred to Aboriginals or of significance according to Aboriginal tradition;
 - “the Authority” means the Aboriginal Sacred Sites Protection Authority.

*Not commenced as at 1 January 1979.

**PART II—THE ABORIGINAL SACRED SITES PROTECTION
AUTHORITY**

Division 1—Establishment and Constitution of the Authority

The Aboriginal
Sacred
Sites
Protection
Authority

4.(1) There shall be an Authority known as the Aboriginal Sacred Sites Protection Authority, which, subject to this Ordinance, shall have and may exercise the rights, powers, authorities and functions conferred on it by this Ordinance and shall be charged with and perform the duties and obligations imposed upon it by this Ordinance.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and may acquire, hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed.

(4) The exercise of the rights, powers, authorities or functions or the performance of duties or obligations of the Authority shall not be affected by reason only of there being a vacancy in the office of a member.

Constitution
of the
Authority

5.(1) The authority shall consist of a Chairman and 11 other members, all of whom except the Director shall be appointed by the Administrator.

(2) The composition of the Authority shall be such that—

(a) not less than 7 positions shall be for Aboriginals chosen by the Administrator from nominations received from the Land Councils; and

(b) the other positions shall be for the Director of the Authority and persons who are experienced in anthropology, land use and survey, Aboriginal studies, site conservation or such other fields as the Administrator thinks fit.

(3) All members of the Authority other than the Director shall be appointed for periods not exceeding 3 years and are eligible for re-appointment.

(4) A member of the Authority other than the Director shall be paid from the moneys of the Authority fees, allowances and expenses at rates determined by the Administrator.

(5) The Chairman shall be, for the purposes of this Ordinance, a member of the Authority.

Termination
of membership
of the
Authority

6.(1) A member may resign his office by writing under his hand addressed to the Minister.

(2) A resignation by a member submitted in accordance with subsection (1) does not have effect until it is accepted by the Minister.

(3) The Minister may remove a member from office for incompetence or misbehaviour.

(4) The Minister shall remove a member from office if—

- (a) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) he absents himself without leave granted by the Authority in any 12 months from 3 meetings of the Authority of which reasonable notice and a requirement to attend have been given to him personally or in the ordinary course of post;
- (c) he becomes of unsound mind; or
- (d) he becomes permanently incapable of performing his duties.

(5) Where the person who ceases to be a member was a member by virtue of his nomination by a Land Council, the Minister shall notify the Land Councils of the cessation of membership of the Authority and call for nominations for a member to fill the vacant position caused by the resignation.

(6) Where a person is a member of the Authority by virtue of his being the Director of the Authority and he ceases to hold the position of Director, he shall thereupon cease to be a member of the Authority.

7. The Authority may grant leave of absence to a member.

Leave of absence

8.(1) Where—

- (a) the Chairman is absent from duty; or
- (b) the position of Chairman is vacant,

Acting appointments

the Minister may appoint a member to act in the place of the Chairman during the period of absence or vacancy.

(2) Where a member is absent from duty with leave, the Minister may, if the Authority requests, appoint a person to act in the place of that member during the period of absence.

(3) Where there is no Chairman at a meeting of the Authority, the meeting may elect a Chairman for the conduct of that meeting.

9.(1) Subject to this section, the Chairman shall determine the times and places of the meetings of the Authority.

Meetings of the Authority

(2) The Authority shall meet as often as is necessary to carry out the functions of the Authority and, in any event, at least once every 3 months.

(3) The Minister may convene a meeting of the Authority.

(4) At a meeting of the Authority 7 members, not less than 4 of whom are appointed on the nomination of the Land Councils, constitute a quorum.

(5) Any question arising at a meeting of the Authority shall be determined by a majority of the votes of the members present.

(6) The Chairman presiding at any meeting of the Authority shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(7) The Authority shall cause minutes to be kept of its meetings.

Protection of
members of
the Authority

10. No action or proceeding, civil or criminal, shall lie against the Chairman or a member for or in respect of an act or thing done or omitted to be done in good faith by a member in his capacity as the Chairman or a member.

Chairman's
Annual
Report

11.(1) The Chairman shall, by 31 July in each year, submit to the Minister a report on the administration and operation of the Authority during the previous 12 months up to and including 30 June in that year.

(2) The Minister shall lay the report referred to in sub-section (1) before the Legislative Assembly within 3 days from the date of receipt if the Legislative Assembly is sitting, and if it is not, then within 3 days of the commencement of the next sittings.

Delegation

12.(1) The Authority may, by instrument in writing under its common seal, delegate to the Chairman, a member or an employee engaged in the work of the Authority, either generally or otherwise as provided by the instrument of delegation, all or any of the powers of the Authority under this Ordinance except this power of delegation.

(2) A power delegated in accordance with sub-section (1) may be exercised by the delegate in accordance with the instrument of delegation and, when so exercised, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Authority.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Authority.

Division 2—Functions and Powers of the Authority

Functions of
the Authority

13. The functions of the Authority are—

- (a) to establish and maintain a register of sacred sites;
- (b) to examine and evaluate all claims for sacred sites made to it by Aboriginals;
- (c) to record sacred sites, with full details of the significance to the traditional Aboriginals, including any story, of each sacred site and any relevant factors including custodianship of the sacred site;
- (d) to recommend to the Administrator that particular sacred sites be declared protected sites under this Ordinance;
- (e) to enforce the provisions of this Ordinance; and
- (f) to carry out such other functions relating to the protection of sacred sites as the Administrator may, by notice in the *Gazette*, authorize the Authority to carry out.

14. The Authority has power to do all things necessary or convenient to be done in connexion with or as incidental to the performance of its functions and all things related to the performance of its functions.

Powers of the Authority

15.(1) Subject to this section, the Authority may employ such persons as it thinks necessary to assist the Authority in exercising its powers and performing its functions and duties under this Ordinance.

Employment of persons

(2) The terms and conditions of employment of persons employed under this section shall be such as are determined by the Administrator with the advice of the Public Service Commissioner for the Northern Territory.

16.(1) The Authority shall employ a person who shall be known as the Director of the Aboriginal Sacred Sites Protection Authority and who shall be charged with the carrying out of the decisions of the Authority.

The Director

(2) The Director shall be employed upon such terms and conditions as are determined by the Administrator with the advice of the Public Service Commissioner for the Northern territory.

Division 3—Finances of the Authority

17. The moneys of the Authority consist of all moneys received by the Authority and include such moneys as are appropriated by the Parliament for the purposes of the Authority, such moneys as are allocated by the Legislative Assembly for the purposes of the Authority and any other moneys collected by the Authority in the course of its operation under this Ordinance.

Moneys of the Authority

18.(1) The Authority shall open and maintain an account with an approved bank and shall maintain at all times at least one such account.

Bank accounts

(2) The Authority shall pay all moneys of the Authority into an account referred to in this section.

(3) In this section, "approved bank" means the Reserve Bank of Australia or another bank approved by the Minister.

19.(1) The moneys of the Authority may be applied—

Application of moneys

(a) in payment of fees, expenses and allowances payable to members of the Authority; and

(b) in payment or discharge of the expenses, obligations and liabilities of the Authority arising under this Ordinance,

but not otherwise.

(2) Moneys of the Authority shall be expended in accordance with the estimates approved by the Minister for Aboriginal Affairs under section 21.

Investment,
&c., of moneys
of the Authority

20. Moneys of the Authority not immediately required for the purposes referred to in section 19 may be—

- (a) invested in securities of or guaranteed by the Commonwealth;
- (b) lodged—
 - (i) in an account at call; or
 - (ii) on fixed deposit,
 with an approved bank for the purpose of section 18; or
- (c) deposited with a company prescribed for the purpose of section 38(7)(b) of the *Companies Ordinance*.

The Authority
to prepare
estimates

21.(1) The Authority shall, not later than 31 March in each year, submit to the Minister for Aboriginal Affairs particulars, prepared in such form as the Minister for Aboriginal Affairs directs, of its expected receipts and proposed expenditure for the financial year commencing on the following 1 July.

(2) The Minister for Aboriginal Affairs may approve estimates submitted to him under sub-section (1).

Proper
accounts to
be kept

22. The Authority shall cause proper accounts and financial records of the transactions and affairs of the Authority to be kept in accordance with accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are properly authorized and correctly made and that adequate control is maintained over the assets of, or in the custody of, the Authority and over the incurring of liabilities by the Authority.

Audit

23.(1) The Minister for Aboriginal Affairs shall appoint a person to be the auditor to inspect and audit the accounts and records of financial transactions of the Authority, and inspect other records relating to the assets of the Authority.

(2) The auditor shall inspect and audit the accounts and records of financial transactions of the Authority and shall, forthwith, draw the attention of the Minister for Aboriginal Affairs to any irregularity revealed by the inspection and audit that is, in the opinion of the auditor, of sufficient importance to justify his so doing.

(3) The auditor shall, at least once in each year report to the Minister for Aboriginal Affairs the results of the inspection and audit carried out by him in accordance with sub-section (2).

(4) The auditor or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Authority relating directly or indirectly to the receipt or payment of moneys by the Authority or to the acquisition, receipt, custody or disposal of assets of the Authority.

(5) The auditor or a person authorized by him may make copies of or take extracts from any such accounts, records, documents or papers.

(6) The auditor or a person authorized by him may require a person being a member of the Authority or an officer or employee of the Authority to furnish him with such information in the possession of that person or to which that person has access as the auditor or authorized person considers necessary for the purposes of an inspection or audit under this Ordinance.

(7) A person shall comply with and shall not contravene a requirement made under sub-section (6).

Penalty: 500 dollars.

PART III—REGISTER OF SACRED SITES

24.(1) The Authority shall set up a register known as the Register of Aboriginal Sacred Sites in which it shall record all sites which the Authority accepts as sacred sites. Creation and maintenance of a register

(2) The record of the sacred site made under sub-section (1) shall, in so far as it is possible, state—

- (a) the boundaries of the sacred site area;
- (b) the name or names of the custodian or custodians and his or their addresses;
- (c) the story of the site according to Aboriginal tradition; and
- (d) any other matters concerning the site as the Authority thinks relevant.

(3) The Authority shall enter in the register set up under sub-section (1), from time to time, details of any changes in custodianship of a site and details of changes to any other matters recorded in the register.

(4) Access to the register shall be at the discretion of the Authority.

25.(1) The Authority shall examine and evaluate a site referred to it by an Aboriginal as a sacred site. Sites to be evaluated, &c.

(2) If the Authority is satisfied that the site is a sacred site, the Authority shall record the site and all its particulars in the Register of Aboriginal Sacred Sites.

26.(1) The custodian or custodians of a sacred site may request the Authority to take steps to have the sacred site declared a sacred site for the purposes of this Ordinance. Investigation before declaration of site

(2) The Authority may, if it thinks fit, apply to the Administrator to have a sacred site declared a sacred site for the purposes of this Ordinance.

(3) Where a request is received under sub-section (2), the Administrator shall cause an investigation to be carried out to ascertain—

- (a) the importance of that site to Aboriginal tradition;
- (b) whether the owners, if any, of the land containing the site object to the taking of steps to protect the site;
- (c) whether any other person would be disadvantaged if steps were taken to protect the site;
- (d) whether there is any other person interested in the site, and whether that person has any objections to the taking of steps to protect the site; and
- (e) the most appropriate steps that should be taken, having regard to all the circumstances of the case, to protect the site.

(4) The Administrator shall refer a request made under subsection (2) to the Aboriginal Land Commissioner and, from time to time, may cause consultation with the Aboriginal Land Commissioner with respect to the request.

(5) The Aboriginal Land Commissioner may use any request forwarded by the Administrator or any information gained as a result of consultation with the Administrator in the carrying out of his statutory functions under any law in force in the Northern Territory.

Administrator
may declare a
sacred site

27.(1) Upon consideration of a request made under section 26(2), the Administrator may—

- (a) reject the request; or
- (b) by notice in the *Gazette*—
 - (i) declare the area to be a sacred site; and
 - (ii) give notice of any proposed steps to protect the sacred site.

(2) A notice given in pursuance of sub-section (1)(b) shall—

- (a) include a map indicating an area that contains the sacred site, or indicate where such a map may be inspected; and
- (b) indicate the nature of the steps (if any) to be taken.

Powers to pro-
tect sacred
sites

28.(1) Without limiting the power of the Administrator to take steps to protect a sacred site, the Administrator may take, or promote, or cause to be taken, steps, under such laws in force in the Northern Territory as the Administrator considers appropriate—

- (a) for the acquisition of an area of land;
- (b) for the reservation of an area of Crown land;
- (c) for the vesting of title to an area of Crown land in the Authority;
- (d) where the land is vested in, or is under the care, control or management of, a statutory corporation, recommending the taking of special measures, including the making of by-laws, for the protection of the site; and

(e) where a person has an estate or interest in the land, recommending, and assisting with the funding of, special measures for the protection of the site.

(2) The Administrator may authorize the Authority to erect signs on an area to indicate that the area contains a sacred site.

(3) Regulations made under this Ordinance may include regulations providing for or in relation to the protection of a sacred site.

29.(1) Where the custodian of a sacred site (if any) and the Authority are satisfied that it is proper to allow a person (other than an Aboriginal who is entitled by Aboriginal tradition to enter) to enter a sacred site, the Authority may issue a permit to that person to enter the sacred site subject to such conditions as the permit may contain.

Custodian and Authority may authorize entry

(2) The Authority may attach any conditions it thinks fit to a permit issued under sub-section (1).

30.(1) The Administrator, with the advice of the Authority, may, by notice in the *Gazette*, appoint honorary wardens to assist in the protection of sacred sites declared under section 27.

Honorary wardens

(2) The notice appointing an honorary warden shall specify the sacred site declared under section 27 for which the honorary warden is appointed.

(3) The Minister may issue an honorary warden appointed under sub-section (1) with an identification card in the form approved by the Minister.

PART IV—OFFENCES, PENALTIES AND PROCEDURES

31.(1) Except in the performance of a function under this Ordinance or otherwise in accordance with this Ordinance or the *Aboriginal Land Rights (Northern Territory) Act 1976*, a person shall not enter or remain on a sacred site.

Offences

Penalty: 1,000 dollars.

(2) Sub-section (1) does not prevent an Aboriginal from entering or remaining on a sacred site in accordance with Aboriginal tradition.

(3) A person shall not knowingly desecrate a sacred site.

Penalty: 2,000 dollars or imprisonment for 12 months or both.

(4) A person shall not carry out works on a sacred site unless he has written permission from the Authority.

Penalty: 2,000 dollars or imprisonment for 12 months or both.

(5) A person shall obey the reasonable directions relating to the protection of a sacred site given by an honorary warden appointed under section 30(1) in relation to a sacred site for which that honorary warden is appointed.

Penalty: 1,000 dollars.

(6) Subject to sub-section (7), in proceedings for an offence against sub-section (1) or (4), it is a defence if the person charged proves that he had no reasonable grounds for suspecting that the land concerned was a sacred site.

(7) Where the charge relates to a sacred site on Aboriginal land, the defence provided by sub-section (6) shall not be taken to have been established by a person unless he proves that—

- (a) his presence on the land would not have been unlawful if the land had not been a sacred site; and
- (b) he had taken all reasonable steps to ascertain the location and extent of the sacred sites on any part of that Aboriginal land likely to be visited by him.

Prosecutions
may be on com-
plaint of Au-
thority, &c.

32. A prosecution for an offence against this Ordinance or the Regulations may be made upon the complaint of the Aboriginal Sacred Sites Protection Authority or a person authorized by the Authority to do so.

Summary
jurisdiction

33. Proceedings for an offence against this Ordinance may be instituted and heard in a court of summary jurisdiction.

PART V—MISCELLANEOUS

Certificate of
Authority or
Director proof
of certain
things

34. A certificate issued under the common seal of the Aboriginal Sacred Sites Protection Authority or the hand of the Director of the Aboriginal Sacred Sites Protection Authority certifying that an area of land is recorded in the Register of Aboriginal Sacred Sites as a sacred site shall be accepted as proof that it is recorded as a sacred site by the Authority, by all courts, judges and persons acting judicially without further proof being required.

Regulations

35.(1) The Administrator may make regulations, not inconsistent with this Ordinance prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the carrying out or giving effect to this Ordinance.

(2) Regulations made under this Ordinance may provide for penalties for breaches of the Regulations not exceeding 500 dollars.
