Aboriginal and Torres Strait Islander Heritage Protection Amendment Bill 1987

Date Introduced: 25 March 1987
House: House of Representatives
Presented by: Hon. Clyde Holding, M.P., Minister for Aboriginal Affairs

Digest of Bill

Purpose

To provide a scheme for the protection of Aboriginal cultural heritage in Victoria.

Background

Refer to the Digest for the Aboriginal Land (Lake Condah and Framlingham Forest) Bill 1987.

Main Provisions

The preamble to the Bill contains a number of acknowledgements by the Victorian Government including the importance to Aboriginal people of their culture and heritage, that the Aboriginal people are the owners of their heritage and should be responsible for its control and management and the need to give appropriate status to Aboriginal elders and communities in the protection of Aboriginal culture and heritage. The preamble also states that the Victorian Government has requested this Bill and, while the Commonwealth does not acknowledge the matters acknowledged by Victoria, it has agreed to this Bill.

Section 7 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (the Principal Act) will be amended to exclude the operation of other laws, except registrations or declarations made under the Archeological and Aboriginal Relics Preservation Act 1972 of Victoria prior to the commencement of this Bill or other Victorian laws that are capable of operating concurrently with this Bill, from the areas covered by proposed Part IIA (clause 3).

Applications in relation to areas or objects in Victoria are to be made under proposed Part IIA unless the Minister or authorised person is satisfied that the application under those provisions could not be made or would be inappropriate (clause 4 which will insert a new section 8A into the Principal Act).
A new Part IIA, titled Victorian Aboriginal Cultural Heritage will be inserted into the Principal Act by clause 7.

The Minister will be able to delegate all powers under the proposed Part to a Victorian Minister or an officer of the Department (proposed section 21B).

Proposed section 21C deals with emergency declarations of preservation. An emergency declaration may be made by an inspector or the Minister on application or of their own motion or by a Magistrate on application if the person is satisfied that the threat to the object or area is such that it cannot otherwise be protected. The emergency declaration will last from 30 to 44 days.

Temporary declarations are dealt with in proposed section 21D. If an Aboriginal community decides that an Aboriginal place or object in the community's area is under threat the community may advise the Minister that a temporary declaration be made. If as a result of such an application or of the Ministers own motion the Minister considers it reasonable and appropriate that a declaration be made, the declaration is to be made and contain the manner of preservation. Such declarations are to last between 60 and 120 days. Notice and an opportunity to be heard are to be given to people likely to be affected by a declaration before the declaration is made. An affected party, including the local Aboriginal community, may apply for arbitration to review the Ministerial decision.

Provisions similar to those applying to temporary declarations, including those relating to notice and arbitration, will apply to 'permanent' declarations. Such declarations may be varied or revoked by the Minister and such a decision will also be capable of review by arbitration (proposed section 21E).

It will be an offence to breach a declaration. A contravention in relation to a place by a natural person will have a maximum penalty of a $10 000 fine or 5 years imprisonment or both. The penalty for a corporation will be a maximum fine of $50,000. A contravention in relation to an object will carry a maximum penalty of a $5 000 fine and/or 2 years imprisonment for natural persons and a $25 000 fine for corporations (proposed section 21H).

Aboriginal communities will be able to enter into Aboriginal Cultural Heritage Agreements with people for the preservation, maintenance, exhibition sale or use of cultural property (proposed section 21K).

Property of irreplaceable religious, cultural or historical significance may be compulsorily acquired where no other arrangements have been made for it's preservation and maintenance (proposed section 21L) and reasonable compensation will be payable (proposed section 21M). In addition, compensation may be payable to persons affected by a 'permanent' declaration (proposed section 21N).

Proposed Division 3 deals with Aboriginal remains. Persons who discover something that they have reasonable grounds to believe are Aboriginal remains are to
notify the Minister. A penalty of $500 will apply for a breach of this provision. The Minister is to consult with any local Aboriginal community with an interest as to what to do with the remains (proposed section 21P). Such remains are, generally, to be returned to the community entitled or disposed of in accordance with their directions (proposed section 21Q).

Division 4 deals with miscellaneous matters including the appointment of inspectors (proposed section 21R); powers of search and entry (proposed section 21S) and defacing property (proposed section 21U).

Proposed Part IIA will not apply to the Alcoa smelter site at Portland (proposed section 21ZA).

For further information, if required, contact the Law and Government Group.

6 April 1987

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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