



# Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984

**No. 79 of 1984**

## TABLE OF PROVISIONS

### PART I—PRELIMINARY

Section	
1.	Short title
2.	Commencement
3.	Interpretation
4.	Purposes of Act
5.	Extension to Territories
6.	Act binds the Crown
7.	Application of other laws
8.	Application of Act

### PART II—PROTECTION OF SIGNIFICANT ABORIGINAL AREAS AND OBJECTS

#### *Division 1—Declarations by Minister*

9.	Emergency declarations in relation to areas
10.	Other declarations in relation to areas
11.	Contents of declarations under section 9 or 10
12.	Declarations in relation to objects
13.	Making of declarations
14.	Publication and commencement of declarations
15.	Declarations reviewable by Parliament
16.	Refusal to make declaration

#### *Division 2—Declarations by Authorized Officers*

17.	Authorized officers
18.	Emergency declarations in relation to areas or objects
19.	Notification of declarations





# Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984

No. 79 of 1984

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**An Act to preserve and protect places, areas and objects of particular significance to Aboriginals, and for related purposes**

[Assented to 25 June 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

## PART I—PRELIMINARY

### Short title

1. This Act may be cited as the *Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984*.

### Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

### Interpretation

3. (1) In this Act, unless the contrary intention appears—  
“Aboriginal” means a member of the Aboriginal race of Australia, and includes a descendant of the indigenous inhabitants of the Torres Strait

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

Islands;

“Aboriginal remains” means the whole or part of the bodily remains of an Aboriginal, but does not include—

- (a) a body or the remains of a body—
  - (i) buried in accordance with the law of a State or Territory; or
  - (ii) buried in land that is, in accordance with Aboriginal tradition, used or recognized as a burial ground;
- (b) an object made from human hair or from any other bodily material that is not readily recognizable as being bodily material; or
- (c) a body or the remains of a body dealt with or to be dealt with in accordance with a law of a State or Territory relating to medical treatment or post-mortem examinations;

“Aboriginal tradition” means the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships;

“area” includes a site;

“Australian waters” means—

- (a) the territorial sea of Australia and any sea on the landward side of that territorial sea;
- (b) the territorial sea of an external Territory and any sea on the landward side of that territorial sea; or
- (c) the sea over the continental shelf of Australia;

“Federal Court” means the Federal Court of Australia;

“significant Aboriginal area” means—

- (a) an area of land in Australia or in or beneath Australian waters;
- (b) an area of water in Australia; or
- (c) an area of Australian waters,

being an area of particular significance to Aboriginals in accordance with Aboriginal tradition;

“significant Aboriginal object” means an object (including Aboriginal remains) of particular significance to Aboriginals in accordance with Aboriginal tradition.

(2) For the purposes of this Act, an area or object shall be taken to be injured or desecrated if—

- (a) in the case of an area—
  - (i) it is used or treated in a manner inconsistent with Aboriginal tradition;

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

- (ii) by reason of anything done in, on or near the area, the use or significance of the area in accordance with Aboriginal tradition is adversely affected; or
  - (iii) passage through or over, or entry upon, the area by any person occurs in a manner inconsistent with Aboriginal tradition; or
- (b) in the case of an object—it is used or treated in a manner inconsistent with Aboriginal tradition,
- and references in this Act to injury or desecration shall be construed accordingly.

(3) For the purposes of this Act, an area or object shall be taken to be under threat of injury or desecration if it is, or is likely to be, injured or desecrated.

**Purposes of Act**

4. The purposes of this Act are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.

**Extension to Territories**

5. This Act extends to every external Territory.

**Act binds the Crown**

6. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

**Application of other laws**

7. (1) This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

(2) A law of a Territory has effect to the extent to which it is not inconsistent with a provision of the regulations, or of a declaration under this Act, having effect in that Territory, but such a law shall not be taken for the purposes of this sub-section to be inconsistent with such a provision to the extent that it is capable of operating concurrently with that provision.

(3) Where—

- (a) a law of a State or Territory deals with a matter dealt with in this Act; and
- (b) an act or omission by a person that constitutes an offence against that law also constitutes an offence against this Act or an offence referred to in paragraph 23 (1) (b),

the person may be prosecuted and convicted under that law or under this Act or the *Crimes Act 1914*, as the case may be, but nothing in this sub-section renders a person liable to be punished more than once in respect of the same act or omission.

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

(4) Nothing in this Act derogates from the rights of any person to any remedy consistent with this Act that he would have apart from this Act.

**Application of Act**

8. (1) Subject to sub-section (2), this Act applies, according to its tenor, to all persons, including foreigners, and to all vessels, including foreign vessels, whether or not they are within Australia or Australian waters.

(2) This Act has effect subject to the obligations of Australia under international law, including obligations under any agreement between Australia and another country or other countries.

**PART II—PROTECTION OF SIGNIFICANT ABORIGINAL AREAS  
AND OBJECTS**

*Division 1—Declarations by Minister*

**Emergency declarations in relation to areas**

9. (1) Where the Minister—

- (a) receives an application made orally or in writing by or on behalf of an Aboriginal or a group of Aborigines seeking the preservation or protection of a specified area from injury or desecration; and
- (b) is satisfied—
  - (i) that the area is a significant Aboriginal area; and
  - (ii) that it is under serious and immediate threat of injury or desecration,

he may make a declaration in relation to the area.

(2) Subject to this Part, a declaration under sub-section (1) has effect for such period, not exceeding 30 days, as is specified in the declaration.

(3) The Minister may, if he is satisfied that it is necessary to do so, declare that a declaration made under sub-section (1) shall remain in effect for such further period as is specified in the declaration made under this sub-section, not being a period extending beyond the expiration of 60 days after the day on which the declaration under sub-section (1) came into effect.

**Other declarations in relation to areas**

10. (1) Where the Minister—

- (a) receives an application made orally or in writing by or on behalf of an Aboriginal or a group of Aborigines seeking the preservation or protection of a specified area from injury or desecration;
- (b) is satisfied—
  - (i) that the area is a significant Aboriginal area; and
  - (ii) that it is under threat of injury or desecration;

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

- (c) has received a report under sub-section (4) in relation to the area from a person nominated by him and has considered the report and any representations attached to the report; and
  - (d) has considered such other matters as he thinks relevant,
- he may make a declaration in relation to the area.

(2) Subject to this Part, a declaration under sub-section (1) has effect for such period as is specified in the declaration.

(3) Before a person submits a report to the Minister for the purposes of paragraph (1) (c), he shall—

- (a) publish, in the *Gazette*, and in a local newspaper, if any, circulating in any region concerned, a notice—
  - (i) stating the purpose of the application made under sub-section (1) and the matters required to be dealt with in the report;
  - (ii) inviting interested persons to furnish representations in connection with the report by a specified date, being not less than 14 days after the date of publication of the notice in the *Gazette*; and
  - (iii) specifying an address to which such representations may be furnished; and
- (b) give due consideration to any representations so furnished and, when submitting the report, attach them to the report.

(4) For the purposes of paragraph (1) (c), a report in relation to an area shall deal with the following matters:

- (a) the particular significance of the area to Aborigines;
- (b) the nature and extent of the threat of injury to, or desecration of, the area;
- (c) the extent of the area that should be protected;
- (d) the prohibitions and restrictions to be made with respect to the area;
- (e) the effects the making of a declaration may have on the proprietary or pecuniary interests of persons other than the Aboriginal or Aborigines referred to in paragraph (1) (a);
- (f) the duration of any declaration;
- (g) the extent to which the area is or may be protected by or under a law of a State or Territory, and the effectiveness of any remedies available under any such law;
- (h) such other matters (if any) as are prescribed.

**Contents of declarations under section 9 or 10**

**11.** A declaration under sub-section 9 (1) or 10 (1) in relation to an area shall—

- (a) describe the area with sufficient particulars to enable the area to be identified; and

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

- (b) contain provisions for and in relation to the protection and preservation of the area from injury or desecration.

**Declarations in relation to objects**

**12. (1) Where the Minister—**

- (a) receives an application made orally or in writing by or on behalf of an Aboriginal or a group of Aborigines seeking the preservation or protection of a specified object or class of objects from injury or desecration;
- (b) is satisfied—
  - (i) that the object is a significant Aboriginal object or the class of objects is a class of significant Aboriginal objects; and
  - (ii) that the object or the whole or part of the class of objects, as the case may be, is under threat of injury or desecration;
- (c) has considered any effects the making of a declaration may have on the proprietary or pecuniary interests of persons other than the Aboriginal or Aborigines referred to in paragraph (1) (a); and
- (d) has considered such other matters as he thinks relevant,

he may make a declaration in relation to the object or the whole or that part of the class of objects, as the case may be.

(2) Subject to this Part, a declaration under sub-section (1) has effect for such period as is specified in the declaration.

(3) A declaration under sub-section (1) in relation to an object or objects shall—

- (a) describe the object or objects with sufficient particulars to enable the object or objects to be identified; and
- (b) contain provisions for and in relation to the protection and preservation of the object or objects from injury or desecration.

(4) A declaration under sub-section (1) in relation to Aboriginal remains may include provisions ordering the delivery of the remains to—

- (a) the Minister; or
- (b) an Aboriginal or Aborigines entitled to, and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition.

**Making of declarations**

**13. (1) In this section—**

“declaration” means a declaration under this Division;

“Minister”, in relation to Norfolk Island, means an executive member as defined by the *Norfolk Island Act 1979*.

(2) The Minister shall not make a declaration in relation to an area, object or objects located in a State, the Northern Territory or Norfolk Island unless he



*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

has consulted with the appropriate Minister of that State or Territory as to whether there is, under a law of that State or Territory, effective protection of the area, object or objects from the threat of injury or desecration.

(3) The Minister may, at any time after receiving an application for a declaration, whether or not he has made a declaration pursuant to the application, request such persons as he considers appropriate to consult with him, or with a person nominated by him, with a view to resolving, to the satisfaction of the applicant or applicants and the Minister, any matter to which the application relates.

(4) Any failure to comply with sub-section (2) does not invalidate the making of a declaration.

(5) Where the Minister is satisfied that the law of a State or of any Territory makes effective provision for the protection of an area, object or objects to which a declaration applies, he shall revoke the declaration to the extent that it relates to the area, object or objects.

(6) Nothing in this section limits the power of the Minister to revoke or vary a declaration at any time.

**Publication and commencement of declarations**

**14. (1)** A declaration under this Division—

- (a) shall be published in the *Gazette* and in a local newspaper, if any, circulating in any region concerned; and
- (b) comes into operation on the date of publication in the *Gazette* or such later date as is specified in the declaration.

(2) As soon as practicable after making a declaration under this Division, the Minister shall—

- (a) take reasonable steps to give notice, in writing, of the declaration to persons likely to be substantially affected by the declaration; and
- (b) in the case of a declaration in relation to an area—serve a copy of the declaration on the Australian Institute of Aboriginal Studies and, if the Institute maintains a register of significant Aboriginal areas, it shall enter the area in the register.

(3) Any failure to publish a declaration in a newspaper or failure to comply with sub-section (2) does not affect the validity of a declaration.

**Declarations reviewable by Parliament**

**15.** Sections 48 (other than paragraphs (1) (a) and (b) and sub-section (2)), 49 and 50 of the *Acts Interpretation Act 1901* apply to declarations as if in those sections references to regulations were references to declarations, references to a regulation were references to a provision of a declaration and references to repeal were references to revocation.

**Refusal to make declaration**

16. Where the Minister refuses to make a declaration under this Division in pursuance of an application, he shall take reasonable steps to notify the applicant or applicants of his decision.

***Division 2—Declarations by Authorized Officers***

**Authorized officers**

17. (1) The Minister may, by instrument in writing, designate persons to be authorized officers for the purposes of this Division.

(2) The Minister shall cause to be issued to each authorized officer an identity card in the form prescribed, containing a photograph of the officer.

(3) Where an authorized officer notifies a person of a declaration made under section 18, he shall—

- (a) if it is reasonably practicable to do so—produce his identity card for inspection by that person; or
- (b) in any other case—give that person such particulars of his identity card as are prescribed.

(4) A person who ceases to be an authorized officer shall forthwith return his identity card to the Minister.

**Emergency declarations in relation to areas or objects**

18. (1) Where—

(a) at any time, an authorized officer is satisfied that—

- (i) an area is a significant Aboriginal area, an object is a significant Aboriginal object or a class of objects is a class of significant Aboriginal objects;
- (ii) the area or object is, or objects are, under serious and immediate threat of injury or desecration; and
- (iii) in the case of an area—the circumstances of the case would justify the making of a declaration under section 9, but the injury or desecration is likely to occur before such a declaration can be made; and

(b) no declaration has been made under this section in relation to the area, object or objects within 3 months before that time by reason of a threat that is substantially the same as the threat referred to in sub-paragraph (a) (ii),

the officer may make a declaration for the purposes of this section.

(2) A declaration under sub-section (1)—

- (a) shall be in writing;
- (b) shall specify the period, not exceeding 48 hours, for which it is to remain in effect;

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

- (c) shall—
  - (i) where the declaration relates to an area—describe the area with sufficient particulars to enable the area to be identified; or
  - (ii) where the declaration relates to an object or a class of objects—describe the object or objects with sufficient particulars to enable the object or objects to be identified; and
- (d) shall contain provisions for and in relation to the protection and preservation of the area, object or objects from injury or desecration, including, in the case of Aboriginal remains, provisions for their custody.

(3) A declaration under sub-section (1) may be revoked or varied at any time, by instrument in writing, by the Minister or any authorized officer.

**Notification of declarations**

19. (1) An authorized officer shall, as soon as practicable after making a declaration under section 18—

- (a) in such manner as he thinks appropriate in the circumstances, notify the Minister of the making of the declaration, the terms of the declaration and the reasons for which it was made; and
- (b) take reasonable steps to give notice of the declaration to persons likely to be substantially affected by the declaration.

(2) Any failure to comply with sub-section (1) does not invalidate a declaration.

***Division 3—Discovery and Disposal of Aboriginal Remains***

**Discovery of Aboriginal remains**

20. (1) A person who discovers anything that he has reasonable grounds to suspect to be Aboriginal remains shall report his discovery to the Minister, giving particulars of the remains and of their location.

(2) Where the Minister receives a report made under sub-section (1) and he is satisfied that the report relates to Aboriginal remains, he shall take reasonable steps to consult with any Aboriginals that he considers may have an interest in the remains, with a view to determining the proper action to be taken in relation to the remains.

**Disposal of Aboriginal remains**

21. (1) Where Aboriginal remains are delivered to the Minister, whether in pursuance of a declaration made under section 12 or otherwise, he shall—

- (a) return the remains to an Aboriginal or Aboriginals entitled to, and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition;

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

- (b) otherwise deal with the remains in accordance with any reasonable directions of an Aboriginal or Aborigines referred to in paragraph (a); or
- (c) if there is or are no such Aboriginal or Aborigines—transfer the remains to a prescribed authority for safekeeping.

(2) Nothing in this section shall be taken to derogate from the right of any Aboriginal or Aborigines accepting possession, custody or control of any Aboriginal remains pursuant to this section to deal with the remains in accordance with Aboriginal tradition.

### **PART III—OFFENCES, PENALTIES AND LEGAL PROCEEDINGS**

#### **Offences and penalties**

**22. (1)** A person who contravenes a provision of a declaration made under Part II in relation to a significant Aboriginal area is guilty of an offence punishable, on conviction—

- (a) if the person is a natural person—by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) if the person is a body corporate—by a fine not exceeding \$50,000.

(2) A person who contravenes a provision of a declaration made under Part II in relation to a significant Aboriginal object or significant Aboriginal objects is guilty of an offence punishable, on conviction—

- (a) if the person is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the person is a body corporate—by a fine not exceeding \$25,000.

(3) A person who contravenes sub-section 20 (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.

(4) A person who contravenes sub-section 17 (4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

#### **Indictable offences**

**23. (1)** Subject to sub-section (2), the following offences are indictable offences:

- (a) an offence referred to in sub-section 22 (1) or (2);
- (b) an offence against—
  - (i) section 6, 7 or 7A of the *Crimes Act 1914*; or

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

(ii) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,

in relation to an offence referred to in paragraph (a) of this sub-section.

(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in sub-section (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence referred to in that sub-section, the penalty that the court may impose is—

- (a) if the person is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
- (b) if the person is a body corporate—a fine not exceeding \$10,000.

**Evidence**

24. (1) In any proceedings for an offence referred to in sub-section 23 (1), the proof of a declaration made under Part II in relation to an area, object or objects is *prima facie* evidence that the area is a significant Aboriginal area, the object is a significant Aboriginal object or the objects are significant Aboriginal objects, as the case may be.

(2) For the purposes of sub-section (1), a declaration made by the Minister under Part II may be proved by the production of the *Gazette* purporting to contain it.

(3) In proceedings for an offence referred to in sub-section 23 (1), where there is evidence that, at the relevant time, the defendant neither knew, nor had reasonable grounds for knowing, of the existence of the declaration alleged to have been contravened, the defendant shall not be committed for trial or convicted unless the prosecution proves that, at that time, the defendant knew, or ought reasonably to have known, of the existence of the declaration.

**Body corporate responsible for acts, &c., of servants and agents**

25. (1) Where, at a particular time, a member of the governing body, director, servant or agent of a body corporate—

- (a) intends to do, or not to do, a particular act; or
- (b) knows, or ought reasonably to know, of the existence of a declaration made under Part II,

paragraph (a) or (b), as the case may be, shall be deemed to apply to the body corporate at that time.

(2) Any conduct engaged in on behalf of a body corporate by a member of the governing body, director, servant or agent of the body corporate, or by any other person at the direction or with the consent or agreement (whether express or implied) of one of the first-mentioned persons, shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

(3) In sub-section (2), a reference to engaging in conduct is a reference to doing, or failing or refusing to do, any act or thing.

(4) In relation to a body corporate that does not have a governing body, a reference in this section to a member of the governing body is a reference to a member of the body corporate.

### **Injunctions**

**26. (1)** Where, on the application of the Minister, the Federal Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of a provision of a declaration made under Part II;
- (b) attempting to contravene such a provision;
- (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
- (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) conspiring with others to contravene such a provision,

the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under sub-section (1).

(3) The Court may rescind or vary an injunction granted under sub-section (1) or (2).

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is a serious and immediate threat of injury to, or desecration of, the relevant significant Aboriginal area, significant Aboriginal object or significant Aboriginal objects, as the case may be, if the person engages in conduct of that kind.

(5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- (b) whether or not the person has previously refused or failed to do that act or thing; and

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

- (c) whether or not there is a serious and immediate threat of injury to, or desecration of, the relevant significant Aboriginal area, significant Aboriginal object or significant Aboriginal objects, as the case may be, if the person refuses or fails to do that act or thing.

**Proceedings *in camera***

27. In any proceedings in a court arising under this Act, the court, on application, may, if it is satisfied that it is desirable to do so, having regard to—

- (a) the interests of justice; and  
(b) the interests of Aboriginal tradition,

order the exclusion of the public, or of persons specified in the order, from a sitting of the court and make such orders as it thinks fit for the purpose of preventing or limiting the disclosure of information with respect to the proceedings.

**Compensation for acquisition of property**

28. (1) Where, but for this section, the operation of a provision of this Act or of a declaration made under Part II would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Commonwealth such reasonable amount of compensation as is agreed upon between the person and the Commonwealth or, failing agreement, as is determined by the Federal Court.

(2) In sub-section (1), “acquisition of property” and “just terms” have the same respective meanings as in paragraph 51 (xxxi) of the Constitution.

**Powers of courts not limited**

29. Nothing in this Act shall be taken to limit or restrict any powers conferred on a court by any other law.

**Legal assistance**

30. (1) A person—

- (a) who wishes to apply for a declaration under section 9, 10 or 12;  
(b) who considers that his proprietary or pecuniary interests—  
    (i) are likely to be adversely affected by a declaration proposed to be made under section 9, 10, 12 or 18; or  
    (ii) are adversely affected by a declaration so made; or  
(c) against whom proceedings have been instituted—  
    (i) for an offence referred to in sub-section 23 (1); or  
    (ii) under section 26,

may apply to the Attorney-General for a grant of assistance under sub-section (2).

(2) Where an application is made by a person under sub-section (1), the Attorney-General, or an officer of the Australian Public Service authorized in writing by the Attorney-General, may, if he is satisfied that it would involve

*Aboriginal and Torres Strait Islander Heritage  
(Interim Protection) No. 79, 1984*

hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize the grant by the Commonwealth to the person, either unconditionally or subject to such conditions as the Attorney-General or officer determines, of such legal or financial assistance as the Attorney-General or officer determines.

**PART IV—MISCELLANEOUS**

**Delegation**

**31. (1)** The Minister may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers and functions under this Act (other than sections 9, 10 and 12, sub-section 13 (2) and section 26), the regulations, or a declaration, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, the regulations or the declaration, as the case may be, be deemed to have been exercised or performed by the Minister.

(3) A delegation under this section does not prevent the exercise of a power or performance of a function by the Minister.

(4) In this section, “declaration” means a declaration made under Part II.

**Regulations**

**32.** The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Cessation of operation of Act**

**33.** At the expiration of 2 years after the commencement of this Act, this Act, unless sooner repealed, ceases to be in force and, for the purposes of section 8 of the *Acts Interpretation Act 1901*, shall be deemed to have been repealed by an Act other than this Act.