Western Australia

Aboriginal Affairs Planning Authority Act 1972

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Defined terms

Western Australia

Aboriginal Affairs Planning Authority Act 1972

An Act to make provision for the establishment of an Aboriginal Affairs Planning Authority and an Aboriginal Affairs Advisory Council for the purpose of providing consultative and other services and for the economic, social and cultural advancement of persons of Aboriginal descent in Western Australia, to repeal the *Native Welfare Act 1963* [1], and for incidental and other purposes.

[Long title amended: No. 28 of 2006 s. 342.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Aboriginal Affairs Planning Authority Act 1972*.

2. Commencement

This Act, or any provision thereof, shall come into operation on such date as is or such dates as are, respectively, fixed by proclamation.

*[**2A.** Deleted: No. 54 of 1984 s. 3.]*

*[**3.** Deleted: No. 54 of 1984 s. 4.]*

4. Terms used

In this Act, unless the context requires otherwise —

Aboriginal means pertaining to the original inhabitants of Australia and to their descendants;

Authority means the Aboriginal Affairs Planning Authority referred to in section 8;

CEO means the chief executive officer of the Department;

Committee means the Aboriginal Affairs Co-ordinating Committee established under section 19;

Council means the Aboriginal Advisory Council constituted in accordance with the provisions of section 18;

Department means the department of the Public Service principally assisting in the administration of this Act;

person of Aboriginal descent means any person living in Western Australia wholly or partly descended from the original inhabitants of Australia who claims to be an Aboriginal and who is accepted as such in the community in which he lives;

repealed Act means the *Native Welfare Act 1963*;

reserved lands means any area of land to which the provisions of Part III apply;

Trust means the Aboriginal Lands Trust referred to in section 20.

[Section 4 amended: No. 113 of 1987 s. 32; No. 28 of 2006 s. 343.]

5. Crown bound

This Act binds the Crown.

*[**6.** Omitted under the Reprints Act 1984 s. 7(4)(f) and (g).]*

Part II — Administrative provisions

7. Administration

(1) The responsibility for the administration of this Act is vested in the Minister who is required to have regard to the recommendations of —

(a) the Authority; and

(b) the Council; and

(c) the Committee; and

(d) the Trust,

but is not bound to give effect to any such recommendation.

(2) The Minister may, after consultation with the body concerned, give to any of the bodies referred to in subsection (1) directions of a general or specific character as to the exercise of its functions, and any such body shall give effect to any directions given to it under this section.

8. Minister to be body corporate

(1) On and from the date of the coming into operation of this Act the body corporate constituted under section 8 of the repealed Act is preserved and continued in existence as a body corporate under and subject to the provisions of, and for the purposes of, this Act under the corporate name of "The Aboriginal Affairs Planning Authority" but so that the corporate identity of the body corporate and its rights, powers, liabilities and duties shall not be affected.

(2) Without limiting the operation of subsection (1), the Minister as so constituted a body corporate under that subsection is capable in the name of the Authority of suing and being sued and of acquiring, holding, exchanging, mortgaging, charging, leasing and disposing of real and personal property, and of doing and suffering all that bodies corporate may do and suffer.

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

9. Powers of delegation

(1) The Authority may —

(a) delegate to any officer of the Department, to a public authority or officer or employee thereof, or to any other person or body specified in the instrument of delegation, all or any of its powers and functions under this Act, and any regulations, rules or by-laws made under this Act, other than this power of delegation; and

(b) vary or revoke a delegation.

(2) A power or function delegated by the Authority may be exercised or performed by the delegate —

(a) in accordance with the instrument of delegation; and

(b) if the exercise of the power or the performance of the function in relation to a matter is dependent upon the opinion, belief, or state of mind of the Authority — upon the opinion, belief, or state of mind of the delegate in relation to that matter.

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

(4) A person who purports to exercise a power or function pursuant to a delegation conferred under the provisions of this section is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary.

[Section 9 amended: No. 113 of 1987 s. 32.]

*[**10.** Deleted: No. 28 of 2006 s. 344.]*

11. Delegation by CEO

(1) The CEO may, in relation to a matter or class of matters, and in the prescribed manner, delegate all or any of his powers and functions under this Act, with the exception of this power of delegation, so that the powers and functions delegated may be exercised by the delegate in the whole or a part of the State in accordance with the delegation.

(2) In relation to any delegation by the CEO pursuant to this section, the provisions of section 9(2), (3) and (4) apply as if repeated in this section but as if any reference in those subsections to the Authority were a reference to the CEO.

[Section 11 amended: No. 28 of 2006 s. 349.]

12. Duty of Authority

The Authority is charged with the duty of promoting the well-being of persons of Aboriginal descent in Western Australia and shall take into account the views of such persons as expressed by their representatives.

13. Functions of Authority

(1) The functions of the Authority are to —

(a) provide for consultation with persons of Aboriginal descent; and

(b) recognise and support as may be necessary the traditional Aboriginal culture; and

(c) promote opportunity for the involvement of persons of Aboriginal descent in the affairs of the community, and promote the involvement of all sectors of the community in the advancement of Aboriginal affairs; and

(d) foster the involvement of persons of Aboriginal descent in their own enterprises in all aspects of commerce, industry and production, including agriculture; and

(e) provide consultative, planning and advisory services in relation to the economic, social and cultural activities of persons of Aboriginal descent, and advise on the adequacy, implementation and co-ordination of services provided or to be provided from other sources; and

(f) make available such services as may be necessary to promote the effective control and management of land held in trust by or for persons of Aboriginal descent; and

(g) generally to take, instigate or support such action as is necessary to promote the economic, social and cultural advancement of persons of Aboriginal descent in Western Australia, and to that end to apportion, apply or distribute the moneys available to it.

(2) In exercising its functions under this section, the Authority shall at all times take into account the expressed views of the Aboriginal Advisory Council.

14. Powers of Authority

(1) The Authority has all such powers, rights and privileges as may be reasonably necessary to enable it to carry out its duties and functions.

(2) For the purposes of this Act, the Authority may, with the consent of the Minister of the Crown having responsibility for the administration of the Act relating to a department of the government of the State or an instrumentality or agency of the Crown, make use of the services of any officer of that department, instrumentality or agency.

(3) The Authority may, on matters relevant to the purposes of this Act, confer and collaborate with departments of the Commonwealth and the States of the Commonwealth and other bodies, instrumentalities or agencies of the Commonwealth or the States of the Commonwealth having to do with Aboriginal affairs.

(4) Without limiting the generality of the provisions of this section, the Authority may —

(a) establish committees of such persons as the CEO may determine, but so that in every case the chairman of the committee shall be either a Council member or a Co-ordinating Committee member;

(b) empower a committee to investigate and report on any aspect of its functions, to implement any decision, or to carry out any administrative duty;

(c) invite any person, subject to the approval of the Minister and on such terms and conditions as the Minister may determine, to act in an advisory capacity to the Authority in relation to all or any aspects of its functions.

[Section 14 amended: No. 28 of 2006 s. 349.]

15. Staff of Authority

(1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*, such officers as may be necessary to provide administrative, scientific, technical and other services to assist the Authority in the exercise and performance of the powers, functions and duties conferred on the Authority by this Act, and to permit the Authority to undertake investigations, projects, studies and research and to make reports with regard to the carrying out of this Act.

(2) The Minister may engage, under contract for services, such professional and technical or other assistance as may be necessary to enable the Authority to carry out effectively its functions under this Act and may enter into arrangements with —

(a) a Minister of the Crown of any State of the Commonwealth, a Minister of State of the Commonwealth, a department or an instrumentality of the Commonwealth or any State of the Commonwealth; or

(b) a university or other tertiary institution; or

(c) any other body or person,

with respect to the conduct of any investigation, project, study or research that may be necessary or desirable for the purposes of this Act.

[Section 15 amended: No. 113 of 1987 s. 32; No. 32 of 1994 s. 3(2).]

*[**16.** Deleted: No. 28 of 2006 s. 345.]*

17. Exemption from personal liability

A person who occupies or has occupied the office of Minister, or CEO, or who otherwise exercises or performs or has exercised or performed any power or function conferred or any duty imposed by this Act, is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power or function conferred or purported to be conferred, or the performance of any duty imposed or purported to be imposed, by this Act.

[Section 17 amended: No. 28 of 2006 s. 346.]

18. Aboriginal Advisory Council

(1) There shall be established a council, to be known as the Aboriginal Advisory Council, for the purpose of advising the Authority on matters relating to the interests and well-being of persons of Aboriginal descent.

(2) The Council shall consist of persons of Aboriginal descent chosen by and from persons of Aboriginal descent living in Western Australia in accordance with such methods, and in such number as the Minister may from time to time approve.

(3) The chairman of the Council shall be chosen by and from amongst the members of the Council.

(4) Subject to the approval of the Minister, the convening of meetings of the Council and the procedures to be adopted shall be matters for the Council to determine.

(5) The performance of the functions of the Council is not affected by reason only of there being a vacancy in the office of a member.

(6) The members for the time being of the Council may be paid such remuneration and allowances as the Minister determines.

(7) Where a Council member in the opinion of the chairman of the meeting has a material pecuniary interest in any matter, the chairman may call upon the member to disclose the nature of his interest and in default of any such disclosure, may thereupon determine that such an interest exists.

(8) Every determination that a member is so interested in any matter shall be recorded in the record of the proceedings of the meeting at which it is made.

(9) Where the chairman determines that a member has an undisclosed interest in any matter before the meeting for consideration that member may take part in the consideration or discussion but shall not vote.

(10) In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order, or as to the determination of an interest then, subject to the Minister, the decision of the chairman shall be final and conclusive.

(11) A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as correct by the member presiding at that or the next succeeding meeting.

19. Aboriginal Affairs Co-ordinating Committee

(1) For the purposes of this Act there shall be a body, to be known as the Aboriginal Affairs Co-ordinating Committee, which shall consist of —

(a) the CEO, who shall be the chairman of the Committee; and

(b) the chairman for the time being of the Aboriginal Advisory Council; and

(c) the chief executive officer of each of the following —

(i) the department of the Public Service for which the Under Treasurer is the chief executive officer;

(ii) the Department as defined in section 3 of the *Health Legislation Administration Act 1984*;

(iii) the Department as defined in section 3 of the *Children and Community Services Act 2004*;

(iv) the department referred to in section 228 of the *School Education Act 1999*;

(v) the Housing Authority.

(2) The Committee may invite any person having special knowledge, experience or responsibility, which in the opinion of the Committee will assist the Committee in relation to the planning of Aboriginal affairs or in the performance of the function of the Committee, to take part in the proceedings of the Committee but any such person shall not be entitled to a vote in the Committee.

(3) The function of the Committee is to coordinate effectively the activities of all persons and bodies, corporate or otherwise, providing or proposing to provide service and assistance in relation to persons of Aboriginal descent.

(4) The constitutional provisions contained in the First Schedule shall have effect in relation to the Committee.

[Section 19 amended: No. 100 of 1973 s. 5; No. 121 of 1984 s. 33; No. 34 of 2004 Sch. 2 cl. 1(2); No. 28 of 2006 s. 347.]

20. Aboriginal Lands Trust

(1) For the purposes of this Act there is hereby established a body corporate to be known as the Aboriginal Lands Trust.

(2) The Trust shall have perpetual succession and a common seal.

(3) The Trust in its corporate name —

(a) may sue and be sued;

(b) is capable of acquiring and holding real and personal property;

(c) subject to any general or specific direction given by the Minister under section 7, is capable of granting, selling, alienating, mortgaging, charging or demising personal property and, with the prior approval of the Minister, of dealing in like manner with real property;

(d) is capable of doing and suffering all such acts and things as bodies corporate may lawfully do or suffer.

21. Constitutional provisions of Aboriginal Lands Trust

(1) The membership of the Trust shall be comprised of persons of Aboriginal descent.

(2) The Trust shall consist of a chairman and 6 other members but the Minister may, on the recommendation of the Trust, from time to time appoint an additional number of members.

(3) The members shall be appointed by the Minister and the Minister shall appoint one of the members to be the chairman.

(4) A member shall hold and vacate office in accordance with the terms of the instrument under which he is appointed, or until his term of tenure is terminated by the Governor.

(5) A member may resign his office by a written notice given under his hand to, and accepted by, the Minister.

(6) The performance of the functions of the Trust is not affected by reason only of there being a vacancy in the office of a member.

(7) The Trust shall hold such meetings as are necessary for the performance of its functions.

(8) The Minister or the chairman may at any time convene a meeting of the Trust.

(9) The chairman shall preside at all meetings at which he is present but in his absence the members present at a meeting shall elect one of their number to preside thereat and while so presiding that member has all the powers and duties of the chairman.

(10) To constitute a meeting there must be not less than one-half of the members present.

(11) Each member, including the member presiding, has a deliberative vote only and, subject to the requirement that a quorum is present, all questions shall be decided by a majority.

(12) A member shall be entitled to such remuneration, leave of absence, travelling and other allowances as the Minister determines.

(13) A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as correct by the member presiding at that or the next succeeding meeting.

(14) Subject to this Act, the Trust may regulate its procedure in such manner as it thinks fit.

21A. Delegation of certain functions by Aboriginal Lands Trust

(1) Subject to this section, when regulations made under this Act —

(a) confer on the Minister power to grant an authority to a person to enter or remain in any reserved lands (in this section called an ***entry authority***); and

(b) require the Minister to consult the Trust before granting an entry authority,

the Trust may by notice published in the *Gazette* and either generally or as otherwise provided by that notice delegate to —

(c) a member of the Trust; or

(d) an officer of the Department,

specified in that notice its functions in respect of the consultation referred to in paragraph (b).

[(2), (3) deleted]

(4) For the purposes of this Act, the performance of the functions referred to in subsection (1) by the person to whom those functions are delegated shall be deemed to be the performance of those functions by the Trust.

(5) A delegation under this section may be —

(a) made subject to such conditions, qualifications and exceptions as are set out in the notice concerned; and

(b) revoked or varied by notice made by the Trust and published in the *Gazette*.

(6) The Trust may perform any function referred to in subsection (1) notwithstanding that it has delegated that function under this section.

(7) To the extent that the performance of any functions which the Trust is empowered by this section to delegate is dependent on the opinion, belief or state of mind of the Trust in relation to a matter, those functions when delegated under this section may be performed by the person to whom they are so delegated on the opinion, belief or state of mind of that person in relation to the matter.

[Section 21A inserted: No. 107 of 1982 s. 3; amended: No. 113 of 1987 s. 32; No. 35 of 2007 s. 88(2); No. 8 of 2010 s. 4.]

22. Seal of Aboriginal Lands Trust

(1) The common seal of the Trust shall be kept in such custody and authenticated in such manner as the Trust directs and shall not be used except upon the resolution of the Trust.

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

23. Functions of Aboriginal Lands Trust

Subject to this Act, the functions of the Aboriginal Lands Trust are —

(a) to carry out such of the functions of the Authority as may be delegated to the Trust under section 24, or as the Minister may direct;

(b) to acquire and hold land, whether in fee simple or otherwise, and to use and manage that land for the benefit of persons of Aboriginal descent;

(c) to ensure that the use and management of the land held by the Trust, or for which the Trust is in any manner responsible, shall accord with the wish of the Aboriginal inhabitants of the area so far as that can be ascertained and is practicable;

(d) to consult, negotiate, enter into financial arrangements, contract, and to undertake or administer projects, either directly or in association with other persons or bodies, as may be necessary or desirable for the development of the land for which the Trust is responsible;

(e) generally, on behalf of and as the corporate entity representing the interests of the Aboriginal inhabitants of the area to which the matter relates, to take, instigate or support any action that may be required to ensure the most beneficial use of the land.

24. Transfers from Authority to Trust

(1) The Governor, on the request of the Authority, may by proclamation, and subject to such conditions as may be expressed therein, place any land to which Part III applies under the control and management of the Aboriginal Lands Trust.

(2) A proclamation made under subsection (1) may provide that any power conferred upon the Authority by this Act may be exercised by the Trust, but a delegation of power under this section may be revoked wholly or partly by the Authority at any time and no delegation shall prevent the Authority from exercising the power.

(3) Where a proclamation purports to delegate any power to the Trust, the Trust is presumed to exercise that power in accordance with the terms of the delegation in the absence of proof to the contrary.

25. New lands may be reserved

(1) The Governor may, by proclamation —

(a) declare any Crown lands to be reserved for persons of Aboriginal descent;

(b) alter the boundaries of any reserved lands;

(c) declare that any land shall cease to be reserved for persons of Aboriginal descent.

(2)(a) The power conferred by subsection (1) shall not be exercised except as recommended by the Minister and the Minister before presenting a recommendation to the Governor on the exercise of the power shall refer the question to the Authority and shall cause the report of the Authority together with his proposed recommendation to the Governor to be laid before each House of Parliament.

(b) Either House of Parliament may pass a resolution rejecting the proposed recommendation, of which resolution notice has been given within 14 sitting days of such House after the proposed

recommendation has been laid before it, whether or not the 14 days or some of them occur in the same session of Parliament or during the same Parliament as that in which the proposed recommendation is laid before the House.

(c) The Minister shall not present to the Governor a recommendation which —

(i) is required to be laid before each House of Parliament and has not been so laid; or

(ii) is before either House of Parliament and is subject to rejection; or

(iii) has been rejected.

Part III — Reserved lands

26. Application of Part and establishment of reserved lands

This Part applies to —

(a) any land vested in the Crown which, immediately prior to the date of the coming into operation of this Act, was reserved for the use and benefit of the Aboriginal inhabitants under the provisions of section 29 of the *Land Act 1933* [2], and was the subject of a proclamation made under section 18(1)(a) of the repealed Act; and

(b) any land vested in the Crown which is reserved for the use and benefit of the Aboriginal inhabitants under the provisions of Part 4 of the *Land Administration Act 1997*, and is the subject of a proclamation made under section 25(1)(a) of this Act.

[Section 26 amended: No. 107 of 1982 s. 4; No. 31 of 1997 s. 4.]

27. Vesting and effect of reserves

Any land to which this Part applies is by force of this section vested in the Authority.

28. Revenue

In relation to any land to which this Part applies —

(a) the Authority, for the benefit of persons of Aboriginal descent, either generally or in specific classes of case, may receive subject to the approval of the Treasurer any rental, royalty, share of profit or other revenue that may be negotiated or prescribed in relation to the use of the land or the natural resources;

(b) subject to the provision of section 31, the Authority may authorise any person or body to enter any reserved lands and to remain thereon for any purpose, which, in the opinion of the Minister, will or may be of benefit to the Aboriginal inhabitants.

29. Proclamations

(1) A proclamation made in relation to any land to which this Part applies may be cancelled or from time to time varied, or an error in any such proclamation may be rectified, by a subsequent proclamation.

(2) A proclamation such as is referred to in subsection (1) may make different provision for different cases or classes of cases determined according to place, customary use, persons, purpose, or other circumstance.

30. Right of control in reserved lands

(1) No application for the grant of any interest, licence, right, title or estate under any Act which would operate in relation to any land to which this Part applies —

(a) shall be refused without the prior consent of the Authority;

(b) shall be processed except in consultation with the Authority;

(c) shall be taken to be approved unless the approval of the Authority, and any terms and conditions to which it may be subject, is referred to in the document evidencing the grant.

(2) Nothing in this section shall affect or be construed to derogate from the operation of the *Mining Act 1978* or the *Petroleum, Geothermal Energy and Greenhouse Gas Storage Act 1967* or any other Act relating to minerals or petroleum.

[Section 30 amended: No. 35 of 2007 s. 88(3); No. 8 of 2010 s. 5; No. 19 of 2010 s. 51; No. 17 of 2024 s. 433.]

31. Trespass on reserved land

(1) A person who enters or remains on any land to which this Part applies, or is shown to have been within the boundaries of that

land, shall be guilty of an offence, unless he establishes to the satisfaction of the court that he is —

(a) a person of Aboriginal descent; or

(b) a member of either House of the Parliament of the State or of the Commonwealth; or

(c) a person lawfully exercising a function under this Act or otherwise acting in pursuance of a duty imposed by law; or

(d) a person authorised in that behalf under the regulations.

(2) A prosecution for an offence under subsection (1) must not be commenced without the authority of the CEO.

[Section 31 amended: No. 84 of 2004 s. 80; No. 28 of 2006 s. 349.]

32. Customary tenure

(1) The Governor, by proclamation, may declare that the right to the exclusive use and benefit of any area to which this Part applies specified in that proclamation shall be reserved for the Aboriginal inhabitants of that area, being persons who are or have been normally resident within the area, and their descendants.

(2) Regulations made in relation to an area to which subsection (1) applies may provide for the compilation, maintenance, and use of documentary evidence as to the entitlement of persons to any interest in the use of, or benefit to be derived from, specific areas of land or in the enjoyment of natural resources related to customary land use.

33A. Power to grant leases over Part III land

(1) To avoid doubt, it is declared that the Authority has, and has always had, power to grant a lease over land whenever vested in the Authority under section 27.

(2) To avoid doubt, it is declared that the powers delegated to the Trust by a proclamation whenever made under section 24 in

respect of land to which this Part applies include, and have always included, power to grant a lease over that land unless the proclamation expressly excludes that power.

[Section 33A inserted: No. 6 of 2010 s. 11.]

[Part IV: s. 33-37 deleted: No. 38 of 2012 s. 4;
s. 38 deleted: No. 98 of 1985 s. 3.]

Part V — Financial provisions

39. Establishment of Aboriginal Trading Account

(1) An agency special purpose account called the Aboriginal Trading Account is established under section 16 of the *Financial Management Act 2006*.

(2) The Aboriginal Trading Account consists of —

(a) the proceeds of the disposal of or dealing with artifacts or other property acquired by the CEO from persons of Aboriginal descent; and

(b) moneys from time to time appropriated by Parliament for the purpose, or advanced by the Treasurer in any case where the moneys otherwise standing to the credit of the Account would be insufficient for the purposes of this Act; and

(c) such moneys as are at the date of the commencement of this Act, or may thereafter be, under the control of the CEO and are credited to the Account.

(3) The amount of any advance made to the Account by the Treasurer, to the extent to which such advance is for the time being not repaid, is a charge on the Account.

(4) The Account shall be controlled by the CEO and, subject to the approval of the Minister, may be administered and dealt with in such manner as the Treasurer may authorise.

[Section 39 amended: No. 98 of 1985 s. 3; No. 49 of 1996 s. 64; No. 28 of 2006 s. 349; No. 77 of 2006 Sch. 1 cl. 1(2) and (3).]

40. Use of Aboriginal Trading Account

Subject to this Act, the moneys standing to the credit of the Aboriginal Trading Account shall be used —

(a) in the purchase from persons of Aboriginal descent of artifacts and other articles for re-sale by the CEO;

(b) in the supply of materials to such persons to enable them to make or procure artifacts or other articles;

(c) in the purchase, lease, or hire, of vehicles, plant, machinery, tools, or other things to enable persons of Aboriginal descent to undertake, engage in or carry out contract work or other employment or business, whether as individuals, in groups, or by community effort,

and when not immediately required for the purposes of this Act may be invested in any investment authorised by law as in force immediately before the coming into operation of the *Trustees Amendment Act 1997* for the purpose of the investment of trust funds.

[Section 40 amended: No. 1 of 1997 s. 18; No. 28 of 2006 s. 349; No. 77 of 2006 Sch. 1 cl. 1(4).]

41. Authority's powers to deal in lands for disposal

(1) The Authority may —

(a) acquire and hold land for the purpose of disposal to persons of Aboriginal descent in any manner the Authority thinks fit; and

(b) effect, acquire, maintain, or repair, improvements on any land so acquired or held; and

(c) sell, lease or otherwise dispose of any such land or improvements to any person of Aboriginal descent on such conditions and for such purposes as the Authority thinks fit.

(2) The conditions to be imposed on a sale of land or improvements under this section may include a provision that upon part payment of the purchase price and the giving of security for the balance and interest remaining unpaid the Authority will transfer the fee simple in the land and vest the ownership in the improvements in the purchaser subject to that security.

(3) The Authority, in addition to the powers conferred by subsection (1), may lend money to any person of Aboriginal descent to enable him to improve and develop any land owned or held by him, or to acquire further land upon the security of a mortgage to the Authority of the estate and interest of the borrower in that land and the improvements thereon with or without such additional security as the Authority may require.

(4) The provisions of the *Land Administration Act 1997*, and the regulations made under that Act, that are capable of being applied with or without adaptation for the purpose of giving effect to subsection (1), may be applied with or without adaptation for that purpose; but the Governor may, nevertheless, make such regulations as he thinks necessary or convenient for the purpose of giving effect to that subsection.

[Section 41 amended: No. 31 of 1997 s. 141.]

42. Availability of facilities and services provided from public moneys

Any facilities or services provided or made available by —

(a) any department of the State or any agency, authority or instrumentality of the Crown in right of the State; or

(b) any body or organisation where the facilities or services are made available by the body or organisation wholly or principally from moneys derived from the Consolidated Account, or moneys supplied to it by a department, agency, authority or instrumentality of the Crown in right of the State,

shall be provided for or made available to persons of Aboriginal descent in like manner as they are provided for or made available to persons generally.

[Section 42 amended: No. 6 of 1993 s. 11 and 14(1); No. 77 of 2006 s. 4.]

43. Financial provisions

(1) The funds necessary for the effectual exercise by the Authority of the powers conferred and the duties imposed by this Act consist of —

(a) moneys from time to time appropriated by Parliament; and

(b) the proceeds of the disposal of or dealing with any land, natural resource or other property that the Authority is authorised to effect under this Act; and

(c) moneys from time to time derived by the Authority from the management of any land or property; and

(d) the proceeds of investment of any moneys standing to the credit of the Authority under the provisions of section 44; and

(e) gifts, devises, bequests or other moneys falling to be controlled by the Authority; and

(f) the moneys that immediately prior to the date of the commencement of this Act were standing to the credit of the account kept at the Treasury under the provisions of section 35 of the repealed Act; and

(g) any other moneys lawfully received by, made available to, or payable to the Authority.

(2) An agency special purpose account called the Aboriginal Affairs Planning Authority Account is established under section 16 of the *Financial Management Act 2006* to which the moneys referred to in subsection (1) are to be credited.

(3) All expenditure incurred by the Authority, for the purpose of giving effect to this Act, shall be charged to the Aboriginal Affairs Planning Authority Account.

(4) If in any year the whole of the annual sum appropriated by Parliament for the purpose of the Authority is not expended, the unexpended balance shall be retained by the Authority and

expended in the performance of the duties of the Authority in any subsequent year.

[Section 43 amended: No. 49 of 1996 s. 64; No. 28 of 2006 s. 348; No. 77 of 2006 Sch. 1 cl. 1(5).]

44. Investment of moneys

Where any moneys standing to the credit of the Aboriginal Affairs Planning Authority Account are not immediately required for the purposes of this Act, the Authority may invest them in any investment authorised by law as in force immediately before the coming into operation of the *Trustees Amendment Act 1997* for the investment of trust funds.

[Section 44 amended: No. 1 of 1997 s. 18.]

45. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Authority and its operations.

[Sections 45 inserted: No. 98 of 1985 s. 3; amended: No. 77 of 2006 Sch. 1 cl. 1(6).]

*[**46.** Deleted: No. 98 of 1985 s. 3.]*

Part VI — Miscellaneous

47. Presumptions

In the absence of proof to the contrary, if a statement is made in a prosecution notice or an indictment containing a charge of an offence against this Act —

(a) that a person therein referred to is or is not a person of Aboriginal descent; or

(b) that the proceedings are commenced in accordance with a direction of, or under the authority of, the CEO; or

(c) that a place or area therein referred to is within the boundaries of any land to which the provisions of Part III apply,

all courts and persons acting judicially shall presume the statement proved.

[Section 47 amended: No. 84 of 2004 s. 80; No. 28 of 2006 s. 349.]

48. Right of representation in proceedings

Despite the *Legal Profession Uniform Law (WA)* section 10, any person generally or specifically authorised in writing by the Minister for that purpose may in any legal proceedings in any court to which a person of Aboriginal descent is a party, or in which a person of Aboriginal descent is indicted for or charged with any crime or offence, address the court or the jury on behalf of that person and examine and cross-examine witnesses.

[Section 48 amended: No. 121 of 1984 s. 35; No. 57 of 1997 s. 14; No. 34 of 2004 Sch. 2 cl. 1(5); No. 70 of 2004 s. 82; No. 9 of 2022 s. 332.]

[Section 48. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

*[**49.** Deleted: No. 84 of 2004 s. 78.]*

50. Penalties

A person who commits an offence against this Act for which no penalty is specifically provided is liable on conviction to —

(a) for a first offence, $1 000 or imprisonment for 9 months;

(b) for a second or subsequent offence, $5 000 or imprisonment for 12 months.

[Section 50 inserted: No. 50 of 2003 s. 34(3).]

51. Regulations

(1) The Governor may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted for carrying out or giving effect to the objects of this Act, and any such regulation may confer upon a specified person or body a discretionary authority.

(2) Without limiting the generality of the powers conferred by subsection (1), the Governor may make regulations for or with respect to —

(a) the control of the receipt and payment of money, classification of accounts, authorisation of expenditure, and all matters pertaining to the management of the accounts;

(b) the management and the use of reserved lands;

(c) entry upon reserved lands by specified persons or classes of persons for specified purposes, and the conditions under which those persons may enter or remain thereon, and providing for the revocation of such authority in any case;

(d) provision of appropriate means of consultation with representative persons of Aboriginal descent;

(e) prescribing fees payable for the purposes of this Act.

(3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a penalty of —

(a) for a first offence, $1 000 and imprisonment for 9 months;

(b) for a second or subsequent offence, $5 000 and imprisonment for 12 months.

[Section 51 amended: No. 78 of 1995 s. 147; No. 50 of 2003 s. 34(4).]

Part VII — Savings provisions: *Aboriginal Affairs Planning Authority Amendment Act 2012*

[Heading inserted: No. 38 of 2012 s. 5.]

52. Estates of persons who died before commencement day

(1) In this section —

commencement day means the day on which the *Aboriginal Affairs Planning Authority Amendment Act 2012* section 4 comes into operation;

former provisions means Part IV of this Act as it was in force immediately before its deletion by the *Aboriginal Affairs Planning Authority Amendment Act 2012*.

(2) The estate of a person who died before commencement day must be distributed or otherwise dealt with after commencement day as if the former provisions had not been deleted.

[Section 52 inserted: No. 38 of 2012 s. 5.]

First Schedule — Constitutional provisions relating to the Aboriginal Affairs Co-ordinating Committee

[s. 19]

[Heading amended: No. 100 of 1973 s. 6; No. 19 of 2010 s. 4.]

1. Tenure of office

(1) The term of tenure of a member appointed *ex officio* continues until the member ceases to occupy the office by virtue of which he was appointed.

(2) A member, other than a member appointed *ex officio*, may resign his office by a written notice given under his hand to, and accepted by, the Minister.

(3) A member who ceases to hold office shall, unless otherwise disqualified, be eligible for re-appointment.

2. Disqualification

If a member —

(a) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*; or

(b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(c) is convicted of an indictable offence; or

(d) had his appointment terminated by the Governor for inability, inefficiency or misbehaviour,

his office becomes vacant and he is not eligible for re-appointment.

[Clause 2 amended: No. 24 of 1990 s. 123; No. 18 of 2009 s. 6.]

3. Deputies

(1) A member appointed *ex officio* may by a written notice given under his hand to, and accepted by, the Minister nominate a responsible officer of the department of the Public Service which he represents to be his deputy, and may terminate such nomination at any time.

(2) The Minister may appoint a person to be a deputy of a Committee member, other than a member appointed *ex officio*, and may terminate such appointment at any time.

(3) While taking the place of a member a deputy has all the powers and entitlements of, and all the protection given to, the member under this Act.

(4) Any reference in this Act to a member shall be construed as including a reference to a deputy taking the place of that member.

4. Validity of proceedings

(1) A vacancy among the membership shall not invalidate the proceedings of any meeting.

(2) All acts done at any meeting shall, notwithstanding it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed.

5. Quorum

To constitute a meeting there must be not less than one-half of the members present.

6. Chairman

In the absence of the CEO and of the deputy of the CEO the members present at any meeting may elect one of their number to preside at that meeting.

[Clause 6 amended: No. 28 of 2006 s. 349.]

7. Voting

(1) Each member, including the member presiding, shall have a deliberative vote only and subject to the requirement that a quorum is present all questions shall be decided by a majority.

(2) In the case of an equality of votes the question shall be declared to be negatived.

8. Records

A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as

correct by the member presiding at that or the next succeeding meeting.

9. Meetings

The Minister or the chairman may at any time convene a meeting, and a meeting shall be convened by the chairman within 7 days of the receipt by him of a written request signed by 2 or more members specifying the business in respect of which the meeting is to be convened.

10. Committees and co-option

(1) Committees, which may consist of persons who are not members, and any person having relevant experience, may be invited to act in an advisory capacity, but the delegation of any matter to such a committee or person does not relieve the members of responsibility.

(2) The provisions of this Schedule, except in so far as the Minister may otherwise direct or approve, shall have effect in relation to a committee.

11. Remuneration etc.

A member, other than a member appointed *ex officio*, shall be entitled to such remuneration, leave of absence, travelling and other allowances as the Minister determines.

12. Disputes

In all cases of dispute, doubt or difficulty, respecting or arising out of matters of procedure or order, then, subject to the Minister, the decision of the chairman shall be final and conclusive.

13. Conduct of proceedings

Subject to this Act, and to any direction which may be given by the Minister, the proceedings may be regulated in such manner as the members think fit.

[Second Schedule deleted: No. 54 of 1984 s. 5.]

Notes

This is a compilation of the *Aboriginal Affairs Planning Authority Act 1972* and includes amendments made by other written laws [1M]. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Aboriginal Affairs Planning Authority Act 1972	24 of 1972	9 Jun 1972	1 Jul 1972 (see s. 2 and *Gazette* 30 Jun 1972 p. 2099)
Aboriginal Affairs Planning Authority Act Amendment Act 1973	100 of 1973	28 Dec 1973	18 Jan 1974 (see s. 2 and *Gazette* 18 Jan 1974 p. 123-4)
Acts Amendment (Aboriginal Affairs Planning Authority) Act 1982 Pt. II	107 of 1982	7 Dec 1982	7 Dec 1982
Aboriginal Affairs Planning Authority Amendment Act 1984	54 of 1984	11 Oct 1984	1 Jul 1984 (see s. 2)
Acts Amendment (Department for Community Services) Act 1984 Pt. VIII	121 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2 and *Gazette* 28 Dec 1984 p. 4197)
Acts Amendment (Financial Administration and Audit) Act 1985 s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and *Gazette* 30 Jun 1986 p. 2255)
Reprint of the *Aboriginal Affairs Planning Authority Act 1972* as at 30 Jul 1986 (includes amendments listed above)			
Acts Amendment (Public Service) Act 1987 s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and *Gazette* 16 Mar 1988 p. 813)
Guardianship and Administration Act 1990 s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and *Gazette* 2 Oct 1992 p. 4811)
Financial Administration Legislation Amendment Act 1993 s. 11 and 14(1)	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Acts Amendment (Public Sector Management) Act 1994 s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)

Short title	Number and year	Assent	Commencement
Industrial Legislation Amendment Act 1995 s. 35	1 of 1995	9 May 1995	1 Jan 1996 (see s. 2(2) and *Gazette* 24 Nov 1995 p. 5389)
Sentencing (Consequential Provisions) Act 1995 s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)
Financial Legislation Amendment Act 1996 s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Trustees Amendment Act 1997 s. 18	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and *Gazette* 10 Jun 1997 p. 2661)
Acts Amendment (Land Administration) Act 1997 Pt. 2 and s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Statutes (Repeals and Minor Amendments) Act 1997 s. 14	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Reprint of the *Aboriginal Affairs Planning Authority Act 1972* as at 5 Feb 1999 (includes amendments listed above)			
Sentencing Legislation Amendment and Repeal Act 2003 s. 34	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
Children and Community Services Act 2004 Sch. 2 cl. 1	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695)
Criminal Law Amendment (Simple Offences) Act 2004 s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78 and 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Reprint 3: The *Aboriginal Affairs Planning Authority Act 1972* as at 12 May 2006 (includes amendments listed above)			
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 11 Div. 1 [3, 4]	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347)
Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 1 [5]	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)

Short title	Number and year	Assent	Commencement
Petroleum Amendment Act 2007 s. 88	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and *Gazette* 18 Jan 2008 p. 147)
Reprint 4: The *Aboriginal Affairs Planning Authority Act 1972* as at 8 May 2009 (includes amendments listed above)			
Acts Amendment (Bankruptcy) Act 2009 s. 6	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Aboriginal Housing Legislation Amendment Act 2010 Pt. 3	6 of 2010	25 May 2010	1 Jul 2010 (see s. 2(b) and *Gazette* 22 Jun 2010 p. 2767)
Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 2	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and *Gazette* 17 Sep 2010 p. 4757)
Standardisation of Formatting Act 2010 s. 4 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Aboriginal Affairs Planning Authority Amendment Act 2012 Pt. 2	38 of 2012	22 Nov 2012	7 Aug 2013 (see s. 2(b) and *Gazette* 6 Aug 2013 p. 3647)
Reprint 5: The *Aboriginal Affairs Planning Authority Act 1972* as at 18 Oct 2013 (includes amendments listed above)			
Legal Profession Uniform Law Application Act 2022 Pt. 17 Div. 1	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Petroleum Legislation Amendment Act 2024 s. 433	17 of 2024	14 May 2024	28 May 2026 (see s. 2(b) and SL 2026/70 cl. 2)

Other notes

[1M] Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 2 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

[1] The provision in this Act repealing the *Native Welfare Act 1963* has been omitted under the *Reprints Act 1984* s. 7(4)(f).

[2] Repealed by the *Land Administration Act 1997*.

[3] The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 11 Div. 2 reads as follows:

Division 2 — Transitional provisions

350. ***Aboriginal Affairs Planning Authority Act 1972***

(1) A thing done or omitted to be done by, to or in relation to the Commissioner before commencement has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to the CEO.

(2) Section 35(5) of the *Aboriginal Affairs Planning Authority Act 1972* (as in force before commencement) continues to apply in relation to things done or omitted to be done before commencement by the Director-General of the department established under section 4 of the *Community Services Act 1972* (as in force immediately before commencement).

(3) In this section —

CEO has the meaning given by section 4 of the *Aboriginal Affairs Planning Authority Act 1972* as in force after commencement;

commencement means the time at which section 342 comes into operation;

Commissioner has the meaning given to "Commissioner for Aboriginal Affairs" by section 10 of the *Aboriginal Affairs Planning Authority Act 1972* as in force before commencement.

[4] The requirement to appoint a Commissioner for Aboriginal Planning was removed from the Act and references to the Commissioner were replaced by references to the CEO, see the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 11 Div. 1. Section 454 of that Act is a general transitional provision that applies to references to the Commissioner in written laws.

[5] The amendment to s. 10(2) in the *Financial Legislation Amendment and Repeal Act 2006* Sch. 1 cl. 1 (now known as the *Financial Management (Transitional Provisions) Act 2006*) is not included because the section it sought to amend was repealed by the *Machinery of Government (Miscellaneous Amendments) Act 2006* s. 344.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Aboriginal	4
Authority	4
CEO	4
commencement day	52(1)
Committee	4
Council	4
Department	4
entry authority	21A(1)
former provisions	52(1)
person of Aboriginal descent	4
repealed Act	4
reserved lands	4
Trust	4

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