



Western Australia

## **Aboriginal Affairs Planning Authority Act 1972**

Compare between:

[31 May 2005, 02-d0-02] and [01 Mar 2006, 02-e0-02]



Western Australia

## **Aboriginal Affairs Planning Authority Act 1972**

**An Act to make provision for the establishment of an Aboriginal Affairs Planning Authority, a Commissioner for Aboriginal Planning 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*, and for incidental and other purposes.**

## **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.<sup>1</sup>

[2A. *Repealed by No. 54 of 1984 s.3.*]

[3. *Repealed by No. 54 of 1984 s.4.*]

### **4. Interpretation**

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;

“**Commissioner**” means the Commissioner for Aboriginal Planning appointed under section 10, and includes any person for the time being discharging the duties of the office of Commissioner;

“**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;

“**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;

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

**“the Department”** means the department in which the officers referred to in section 15(1) are employed;

**“the repealed Act”** means the *Native Welfare Act 1963*;

**“the Trust”** means the Aboriginal Lands Trust referred to in section 20.

*[Section 4 amended by No. 113 of 1987 Schedule 2.]*

**5. Crown bound**

This Act binds the Crown.

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

## **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;
  - (b) the Council;
  - (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 by No. 113 of 1987 Schedule 2.]*

**10. Commissioner for Aboriginal Planning**

- (1) Subject to this Act, there shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* a fit and proper person to be Commissioner for Aboriginal Planning.

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- (2) Subject to this Act, the *Financial Administration and Audit Act 1985* and to the directions of the Minister, the Commissioner is responsible for the administration of this Act and for the administration and control of the Department, of which the Commissioner is the chief executive officer.
- (3) Subject to subsection (4), there shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* a person to be the deputy of the Commissioner and that person when so appointed is authorized to exercise any power and perform any duty that the Commissioner may exercise or is required to perform under this Act, when the Commissioner is absent; but the appointment of a deputy does not affect the exercise or discharge by the Commissioner himself of any power or duty.
- (4) Without limiting the operation of section 6, the persons who immediately prior to the coming into operation of this Act were, respectively, the Commissioner of Native Welfare and the deputy of the Commissioner, under the provisions of the repealed Act, shall be deemed to have been appointed in accordance with this Act the Commissioner for Aboriginal Planning and the deputy of the Commissioner, respectively.

*[Section 10 amended by No. 98 of 1985 Schedule 1; No. 113 of 1987 Schedule 2; amended by No. 32 of 1994 s.3(2).]*

**11. Delegation by Commissioner**

- (1) The Commissioner 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 Commissioner 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 Commissioner.



**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;
  - (b) recognize and support as may be necessary the traditional Aboriginal culture;
  - (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;
  - (d) foster the involvement of persons of Aboriginal descent in their own enterprises in all aspects of commerce, industry and production, including agriculture;
  - (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;
  - (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.

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**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 Commissioner 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.

**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 by No. 113 of 1987 Schedule 2; No. 32 of 1994 s.3(2).]*

**16. Application of *Public Service Act 1978*<sup>2</sup> and other Acts**

The provisions of sections 10 and 15 do not render the provisions of the *Public Service Act 1978*<sup>2</sup> or the *Superannuation and Family Benefits Act 1938* applicable to a person if those Acts did not apply to him on the coming into operation of this Act, or affect the application to him of the provisions of any of those Acts if they applied to him before the coming into operation of this Act.

*[Section 16 amended by No. 113 of 1987 Schedule 2; No. 1 of 1995 s.35.]*

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**17. Exemption from personal liability**

A person who occupies or has occupied the office of Minister, or Commissioner, or deputy of the Commissioner, 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.

**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 Commissioner, or in his absence the deputy of the Commissioner, who shall be the chairman of the Committee;
  - (b) the chairman for the time being of the Aboriginal Advisory Council; and
  - (c) the officer immediately responsible to a Minister of the Crown for each of the following departments of the Public Service of the State, that is to say the Treasury, the Health Department of Western Australia, the Department ~~for~~[as defined in section 3 of the \*Children and Community Services<sup>3</sup> Services Act 2004\*](#), the

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Education Department, and the State Housing Commission.

- (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 by No. 100 of 1973 s. 5; No. 121 of 1984 s. 33; No. 34 of 2004 s. 251.]*

**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.

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- (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) Subsection (1) does not empower the Trust to delegate to a member of the Trust or an officer of the Department its functions referred to in that subsection in relation to a person who —
    - (a) applies to the Minister for an entry authority for —
      - (i) the purpose of exercising rights over the reserved lands to which that application relates or over the mineral resources of those reserved lands; or
      - (ii) any purpose related to the purpose referred to in subparagraph (i);
- and



- (b) is not a person to whom subsection (3) applies.
- (3) This subsection applies to every person who —
- (a) carries on the business of exploring for or exploiting or exploring for and exploiting any mineral resources;
  - (b) holds an entry authority; and
  - (c) by reason of a change in the personnel employed by him or acting on his behalf in or in connection with the reserved lands to which the entry authority held by him relates applies to the Minister for that entry authority to be replaced by a fresh entry authority in relation to those reserved lands.
- (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.
- (8) In this section —
- “mineral resources”** means resources of —
- (a) minerals as defined by section 8 of the *Mining Act 1904*<sup>4</sup>; or

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- (b) petroleum as defined by section 5 of the *Petroleum Act 1967*.

*[Section 21A inserted by No.107 of 1982 s.3; No.113 of 1987 Schedule 2.]*

**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 the 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 the Authority to the 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

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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;
  - (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*, 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 by 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 authorize 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.

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**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**

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.

Provided that nothing in this section shall affect or be construed to derogate from the operation of the *Mining Act 1904*<sup>4</sup> or the *Petroleum Act 1967* or any other Act relating to minerals or petroleum.

**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;

- (b) a member of either House of the Parliament of the State or of the Commonwealth;
  - (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 authorized in that behalf under the regulations.
- (2) A prosecution for an offence under subsection (1) must not be commenced without the authority of the Commissioner.

*[Section 31 amended by No. 84 of 2004 s. 80.]*

**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.

## **Part IV — Estates and property of Aboriginal persons**

### **33. Application of Part**

The provisions of this Part apply to and in relation to a person of Aboriginal descent only if he is also of the full blood descended from the original inhabitants of Australia or more than one-fourth of the full blood.

### **34. Testate estates**

The estate of a deceased person of Aboriginal descent, if he died testate, shall be distributed in accordance with the terms of his will, and if he died intestate, shall be distributed in accordance with the provisions of section 35.

### **35. Distribution of estate of intestate person of Aboriginal descent**

- (1) All property and rights of property vested in any person of Aboriginal descent who dies intestate shall vest in the Public Trustee under and subject to the provisions of the *Public Trustee Act 1941*, upon trust to pay the just debts of the deceased and to distribute the balance amongst the persons entitled thereto according to the laws of the State relating to the administration of estates of persons dying intestate, if any of the persons so entitled can be ascertained, otherwise amongst those persons who may by regulation be prescribed as the persons entitled to succeed to the property of the deceased.
- (2) A regulation made for the purposes of this section shall, so far as that is practicable, provide for the distribution of the estate in accordance with the Aboriginal customary law as it applied to the deceased at the time of his death.
- (3) Where there is no person entitled to succeed to the property of the deceased under the regulations, and no valid claim is made to the balance of the estate within 2 years after the date of death of the deceased, the Governor may, on application, and



notwithstanding the provisions of any other Act, order that such balance be distributed beneficially amongst any persons having a moral claim thereto but where no such order is made or is made in respect of a portion of the balance of the estate only, the Public Trustee shall thereupon vest the property of the deceased in the Authority upon trust that it shall be used for the benefit of persons of Aboriginal descent.

~~(4) A certificate under the hand of the Director-General of the department established under section 4 of the *Community Services Act 1972* shall be conclusive evidence as to the person or persons entitled under the regulations to succeed to the estate of any deceased or missing person of Aboriginal descent or that there is no person so entitled.~~

~~[(4) repealed]~~

- (5) Where an order is made by the Governor pursuant to the provisions of subsection (3), no claim thereafter lies against the Public Trustee, the Treasurer, the Authority, ~~the Director-General of the department established under section 4 of the *Community Services Act 1972*~~ or any person in whose favour the order is made, for or in respect of any money or property that is, or is obtained through, the subject of the order.

*[Section 35 amended by No. 121 of 1984 s.34; No. 57 of 1997 s.14.7; No. 34 of 2004 s. 251.]*

**36. Property of deceased or missing persons of Aboriginal descent to be paid and delivered to executor or Public Trustee**

- (1) Any wages due to or property known to belong to a person of Aboriginal descent who is deceased or who cannot be found, and any estate or other moneys to which such a person was entitled howsoever, shall forthwith, be paid or delivered by the employer, trustee, debtor or other person liable to pay or deliver the same to the executor of the will of the deceased person, if

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known to him, or otherwise to the Public Trustee, and failure to do so is an offence against this Act.

- (2) The Public Trustee may recover any such wages or property by action in his name in any court of competent jurisdiction.
- (3) In the case of a person of Aboriginal descent who cannot be found, and in the event of no claim being made within a period of 3 years, the Public Trustee shall hand over any such money or property to the Authority to be applied for the purposes of this Act and shall thereupon be discharged.

**37. Property may be vested in Authority**

Where any money or other property derived from or held on behalf of a person of Aboriginal descent is in the possession of the Public Trustee or the Commissioner and no other provision is made for its disposal under this Part, and if after reasonable inquiry no person having a valid legal or moral claim has been ascertained that property may, if the Authority so agrees, be vested in the Authority by force of this section and the Authority shall thereupon hold the same subject to any trust that related thereto immediately prior to the vesting and the Authority shall be deemed to give an effectual discharge for the same.

*[38. Repealed by No. 98 of 1985 Schedule 1.]*

## Part V — Financial provisions

### 39. Establishment of the Aboriginal Trading Fund

- (1) The account which was immediately prior to the date of commencement of this Act kept in the Treasury under the provisions of section 24 of the repealed Act shall continue so to be kept, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, but shall be known under the name of the “Aboriginal Trading Fund”.
- (2) The Aboriginal Trading Fund consists of —
  - (a) the proceeds of the disposal of or dealing with artifacts or other property acquired by the Commissioner from persons of Aboriginal descent;
  - (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 Fund 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 Commissioner and are credited to the Fund.
- (3) The amount of any advance made to the Fund by the Treasurer, to the extent to which such advance is for the time being not repaid, is a charge on the Fund.
- (4) The Fund shall be controlled by the Commissioner and, subject to the approval of the Minister, may be administered and dealt with in such manner as the Treasurer may authorize.

*[Section 39 amended by No. 98 of 1985 Schedule 1; No. 49 of 1996 s. 64.]*

**s. 40**

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**40. Use of Aboriginal Trading Fund**

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

- (a) in the purchase from persons of Aboriginal descent of artifacts and other articles for re-sale by the Commissioner;
- (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 authorized 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 by No. 1 of 1997 s.18.]*

**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;
  - (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 by 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 organization where the facilities or services are made available by the body or organization wholly or principally from moneys derived from the Consolidated Fund, 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 by No. 6 of 1993 ss.11. and 14.]*

**s. 43**

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**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 for the purpose;
  - (b) the proceeds of the disposal of or dealing with any land, natural resource or other property that the Authority is authorized to effect under this Act;
  - (c) moneys from time to time derived by the Authority from the management of any land or property;
  - (d) the proceeds of investment of any moneys standing to the credit of the Authority under the provisions of section 44;
  - (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.
- (2) The moneys referred to in subsection (1) shall be credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, to be called the “Aboriginal Affairs Planning Authority Account”.
- (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 by No. 49 of 1996 s.64.]*

**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 authorized 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 by No. 1 of 1997 s.18.]*

**45. Application of *Financial Administration and Audit Act 1985***

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Authority and its operations.

*[Sections 45 inserted by No. 98 of 1985 Schedule 1.]*

*[46. Repealed by No. 98 of 1985 Schedule 1.]*

## 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 Commissioner; 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 by No. 84 of 2004 s. 80.]*

### 48. Right of representation in proceedings

~~Any officer of the department established under section 4 of the Community Services Act 1972, or any~~ Any person generally or specifically authorized 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 by No. 121 of 1984 s. 35; No. 57 of 1997 s. 14; No. 34 of 2004 s. 251; No. 70 of 2004 s. 82.]*

*[49. Repealed by 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 by 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, authorization 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.

**s. 51**

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

## First Schedule

[Section 19]

[First Schedule Heading amended by No.100 of 1973 s.6.]

### Constitutional provisions relating to the Aboriginal Affairs Co-ordinating Committee

#### 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*;
- (b) is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (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.

#### 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.

**First Schedule**

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- (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 Commissioner and of the deputy of the Commissioner the members present at any meeting may elect one of their number to preside at that meeting.

**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.

**First Schedule**

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*[First Schedule amended by No. 24 of 1990 s.123.]*

*[Second Schedule repealed by No. 54 of 1984 s. 5.]*

### Notes

- <sup>1</sup> This is a compilation of the *Aboriginal Affairs Planning Authority Act 1972* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>.

### Compilation table

| Short title   | Number and year | Assent           | Commencement  |
|---|-----------------|------------------|---|
| <i>Aboriginal Affairs Planning Authority Act 1972</i>                           | 24 of 1972      | 9 June 1972      | 1 July 1972 (see <i>Gazette</i> 30 June 1972 p.2099)        |
| <i>Aboriginal Affairs Planning Authority Act Amendment Act 1973</i>             | 100 of 1973     | 28 December 1973 | 18 January 1974 (see <i>Gazette</i> 18 January 1974 p.123)  |
| <i>Acts Amendment (Aboriginal Affairs Planning Authority) Act 1982, Part II</i> | 107 of 1982     | 7 December 1982  | 7 December 1982   |
| <i>Aboriginal Affairs Planning Authority Amendment Act 1984</i>                 | 54 of 1984      | 11 October 1984  | 1 July 1984 (see section 2)                                 |
| <i>Acts Amendment (Department for Community Services) Act 1984, Part VIII</i>   | 121 of 1984     | 19 December 1984 | 1 January 1985 (see <i>Gazette</i> 28 December 1984 p.4197) |
| <i>Acts Amendment (Financial Administrative and Audit) Act 1985, Schedule 1</i> | 98 of 1985      | 4 December 1985  | 1 July 1986 (see <i>Gazette</i> 30 June 1986 p.2255)        |
| <i>Acts Amendment (Public Service) Act 1987, section 32</i>                     | 113 of 1987     | 31 December 1987 | 16 March 1988 (see <i>Gazette</i> 16 March 1988 p.813)      |
| <i>Guardianship and Administration Act 1990, section 123</i>                    | 24 of 1990      | 7 September 1990 | 20 October 1992 (see <i>Gazette</i> 2 October 1992 p.4811)  |
| <i>Financial Administration Legislation Amendment Act 1993, Part 4</i>          | 6 of 1993       | 27 August 1993   | Deemed operative 1 July 1993                                |

## Aboriginal Affairs Planning Authority Act 1972

| Short title  | Number and year            | Assent                      | Commencement   |
|--|----------------------------|-----------------------------|--|
| <i>Acts Amendment (Public Sector Management) Act 1994, Part 2</i>                                | 32 of 1994                 | 29 June 1994                | 1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)   |
| <i>Industrial Legislation Amendment Act 1995, section 35</i>                                     | 1 of 1995                  | 9 May 1995                  | 1 January 1996 (see <i>Gazette</i> 24 November 1995 p.5389)  |
| <i>Sentencing (Consequential Provisions) Act 1995, section 147</i>                               | 78 of 1995                 | 16 January 1996             | 4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)                                    |
| <i>Financial Legislation Amendment Act 1996, section 64</i>                                      | 49 of 1996                 | 25 October 1996             | 25 October 1996 (see section 2(1))   |
| <i>Trustees Amendment Act 1997, section 18</i>   | 1 of 1997                  | 6 May 1997                  | 16 June 1997 (see section 2 and <i>Gazette</i> 10 June 1997 p.2661)  |
| <i>Acts Amendment (Land Administration) Act 1997, Part 2 and section 141</i>                     | 31 of 1997                 | 3 October 1997              | 30 March 1998 (see section 2 and <i>Gazette</i> 27 March 1998 p.1765)  |
| <i>Statutes (Repeals and Minor Amendments) Act 1997, section 14</i>                              | 57 of 1997                 | 15 December 1997            | 15 December 1997 (see section 2)   |
| <i>Sentencing Legislation Amendment and Repeal Act 2003 s. 34</i>                                | 50 of 2003                 | 9 Jul 2003                  | 15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)  |
| <a href="#"><i>Children and Community Services Act 2004 s. 251</i></a>                           | <a href="#">34 of 2004</a> | <a href="#">20 Oct 2004</a> | <a href="#">1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)</a>                                  |
| <i>Criminal Law Amendment (Simple Offences) Act 2004 s. 82</i>                                   | 70 of 2004                 | 8 Dec 2004                  | 31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)   |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78 and 80</i> | 84 of 2004                 | 16 Dec 2004                 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |

N.B. Affecting Act — 31 of 1990, *Unclaimed Money Act 1990*, s.9.

~~<sup>1a</sup> — On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in~~



this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

| Short title   | Number and Year | Assent      | Commencement                |
|---|-----------------|-------------|-----------------------------|
| <del>Children and Community Services Act 2004 s. 251</del> <sup>5</sup> | 34 of 2004      | 20 Oct 2004 | To be proclaimed (see s. 2) |

<sup>2</sup> Repealed by *Public Sector Management Act 1994* (Act No.31 of 1994 s.110).

<sup>3</sup> ~~Title of Department changed pursuant to section 7(3)(h) of the *Reprints Act 1984*.~~

<sup>3</sup> [Footnote no longer applicable.](#)

<sup>4</sup> See the *Mining Act 1978*.

<sup>5</sup> ~~On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 251, which gives effect to Sch. 2, had not come into operation. It reads as follows:~~

“

~~**251. Other Acts amended**~~

~~Other Acts are amended as set out in Schedule 2.~~

”

~~Schedule 2 cl. 1 reads as follows:~~

“

~~**Schedule 2 Amendments to other Acts**~~

~~[s. 251]~~

~~**1. Aboriginal Affairs Planning Authority Act 1972 amended**~~

~~(1) The amendments in this clause are to the *Aboriginal Affairs Planning Authority Act 1972*.~~

~~(2) Section 19(1)(c) is amended by deleting “for Community Services” and inserting instead—~~

~~“~~

~~as defined in section 3 of the *Children and Community Services Act 2004*~~

~~”~~

~~(3) Section 35(4) is repealed.~~

- ~~(4) Section 35(5) is amended by deleting “, the Director General of the department established under section 4 of the *Community Services Act 1972*”.~~
- ~~(5) Section 48 is amended by deleting “officer of the department established under section 4 of the *Community Services Act 1972*, or any”.~~

~~”~~