

Western Australia

**Aboriginal Affairs Planning Authority Act
Regulations 1972**

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Aboriginal Affairs Planning Authority Act Regulations 1972

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Aboriginal Affairs Planning Authority Act Regulations 1972

1. Citation

These regulations may be cited as the *Aboriginal Affairs Planning Authority Act Regulations 1972*¹.

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

3. Interpretation

In these regulations unless the context requires otherwise —
the Act means the *Aboriginal Affairs Planning Authority Act 1972*; words and expressions used in these regulations have when so used the same respective meanings as are given to them in and for the purposes of the Act.

4. Officers of the Authority

- (1) The Commissioner shall determine the duties to be performed by the respective officers of the Authority and shall assign such duties to those officers.
- (2) An officer of the Authority, in the exercise of his powers and duties, may enter at any time into or upon any land or premises where persons of Aboriginal descent are in any circumstance or where he has reasonable cause to suspect that they may be found.

- (3) For the purposes of these regulations a certificate under the hand of the Commissioner in the Form No. 1 in the Schedule is evidence of the appointment of the person named therein as an officer of the Authority.

5. Obstruction of officers

A person who hinders, delays or obstructs an officer of the Authority in the exercise of his powers and duties under these regulations commits a breach of these regulations.

6. Delegation

- (1) A delegation of any power or function under section 9 or section 11 of the Act in relation to a matter or class of matter may be by written instrument under the hand of the Authority or of the Commissioner, as the case may require.
- (2) Where any delegation under section 9 or section 11 of the Act is revoked, the revocation shall be effected by notice in writing.
- (3) In a prosecution or other legal proceeding under the Act or these regulations, judicial notice shall be taken of the signature of the Authority or of the Commissioner, as the case may be, on an instrument of delegation made in accordance with the provisions of this regulation.

7. Authority to enter reserves

Members of the police force, public health officials, and officers of public authorities are persons authorised under these regulations to enter or remain within the boundaries of a reserve, if and so long as any such authorised person so enters and remains for the purpose of the lawful exercise and performance of the functions and duties appertaining to his office to the degree permitted in the community in general.

8. Permission to enter reserves

- (1) Whenever any person, not being a person of Aboriginal descent or a person authorised under the Act or these regulations to enter or remain within the boundaries of a reserve, desires for

any stated reason to enter or remain in any reserve, he shall apply to the Minister for permission so to do and the Minister may grant such permission to enter accordingly.

- (2) Subject to the provisions of subregulation (3) the Minister may in his discretion grant the permission referred to in subregulation (1) which permission shall be in the Form No. 2 in the Schedule, and shall specify therein the conditions to be observed by the person to whom it is granted, but the Minister may at any time, if he thinks fit, revoke any permission so granted.
- (3) Before granting any permission to a person to enter or remain within the boundaries of a reserve pursuant to this regulation, the Minister shall consult the Aboriginal Lands Trust in the matter, but if the decision of the Minister differs in any material way from the views in the matter expressed to the Minister by the Aboriginal Lands Trust the Minister shall cause a report on the matter and the reason for his decision to be notified to the Aboriginal Lands Trust and laid before each House of Parliament as soon as may be practicable thereafter.

[Regulation 8 amended in Gazette 7 Nov 1978 p. 4217.]

9. Estates of deceased persons of Aboriginal descent

- (1) Where a person of Aboriginal descent dies or has died intestate leaving real or personal estate and in accordance with the provisions of section 35 of the Act the estate is vested in the Public Trustee under the *Public Trustee Act 1941*, if —
 - (a) after payment of the just debts of the deceased there is an unexpended balance of the estate remaining in the hands of the Public Trustee; and
 - (b) the deceased had not married in accordance with the laws relating to marriage,

the persons entitled, within the meaning and for the purposes of subsection (1) of that section, to succeed to the balance of the estate of the deceased and the order in which they are so entitled shall be as follows: —

- (i) Where the deceased was a male and has left him surviving any female person of Aboriginal descent who according to the social structure of the tribe to which he belonged was his wife, and has also left him surviving a child born of the union of the deceased with that wife, that wife, and that child, shall be entitled to such balance of the estate, and if there are more than one such wife or children they shall all be entitled in equal shares.
- (ii) Where the deceased was a female, and has left her surviving a male person of Aboriginal descent, who, according to the social structure of the tribe to which she belonged, was her husband whether or not she has also left her surviving any child born of her union with that husband, the husband shall be entitled to the whole of the balance of the estate.
- (iii) Where the deceased was a male, and has not left him surviving any female person of Aboriginal descent who, according to the social structure of the tribe to which he belonged, was his wife, but has left him surviving a child born of his union with a female person of Aboriginal descent who, according to the social structure of the tribe to which he belonged, was his wife or were his wives, that child (if there be only one) shall be entitled to the whole of the balance of the estate, and those children (if there be more than one such child) shall be entitled to the balance of the estate in equal shares.
- (iv) Where the deceased was a female and has not left her surviving any male person of Aboriginal descent who, according to the social structure of the tribe to which she belonged, was her husband, but has left her surviving a child born of her union with a male person of Aboriginal descent who, according to the social structure of the tribe to which she belonged, was her husband, that child (if there be only one) shall be entitled to the whole of the balance of the estate, and those children (if there be

more than one such child) shall be entitled to the balance of the estate in equal shares.

- (v) Where the deceased (whether a male or a female) has not left him or her surviving any of the persons mentioned in any of subparagraph (i), (ii), (iii) or (iv), but has left him or her surviving a male person of Aboriginal descent who according to the social structure of the tribe to which he or she belonged was his or her father by reason of a tribal marriage, that father shall be entitled to the whole of the balance of the estate.
 - (vi) Where the deceased (whether a male or female) has not left him or her surviving any of the persons mentioned in any of subparagraphs (i), (ii), (iii), (iv) or (v), but has left him or her surviving a female person of Aboriginal descent who, according to the social structure of the tribe to which he or she belonged, was his or her mother by reason of a tribal marriage, that mother shall be entitled to the whole of the balance of the estate.
 - (vii) Save and except as provided in subparagraphs (i), (ii), (iii), (iv), (v) and (vi), no person claiming to be a relation of a deceased person of Aboriginal descent (whether a male or a female) to which this regulation applies shall have any right to or interest whatsoever in the estate of that deceased person.
- (2) Where, under the provisions of subregulation (1), any person of Aboriginal descent (whether a male or female) is entitled to the estate or to a share in the estate of a deceased person, then notwithstanding any tribal law or custom to the contrary, that person is so entitled for his or her own separate and personal use, and the Public Trustee shall, so far as lies in his power, within the provisions of the Act, manage, control and administer that estate or that share in the estate for the personal benefit and advancement of the person of Aboriginal descent so entitled thereto.

- (3) The Public Trustee shall as soon as reasonably may be after the death of a person to whom this regulation applies, cause all reasonable inquiries to be made to ascertain and satisfy himself whether or not there is any person of Aboriginal descent surviving the deceased who is entitled to succeed to the estate or to a share in the estate in accordance with the provisions of this regulation, and if, after such inquiries, the Public Trustee is satisfied that there is any such person of Aboriginal descent, he shall, by a certificate in writing signed by him, certify accordingly and shall state in his certificate such particulars as may be necessary to identify that and his or her or their place or places of abode.
- (4) If, after making inquiries pursuant to subregulation (3), the Public Trustee either —
- (a) has been unable to ascertain; or
 - (b) is not satisfied,
- that there is any person of Aboriginal descent entitled to succeed to the estate or to a share in the estate of the deceased in accordance with the provisions of this regulation, the Public Trustee shall, by a certificate in writing signed by him, certify accordingly and shall state in his certificate the nature of the inquiries made by him, the result thereof, and the grounds upon which he has disallowed the claim (if any) under this regulation of any person of Aboriginal descent to succeed to the estate or to a share of the estate of the deceased.
- (5) Where a person alleges that he has a moral claim to the proceeds or any portion thereof of the estate of a deceased person of Aboriginal descent and is desirous that an order be made by the Governor pursuant to the provisions of section 35(3) of the Act, he shall sign and forward to the Public Trustee an application in the Form No. 3 in the Schedule.
- (6) The Public Trustee shall, as soon as reasonably practicable after receiving an application referred to in subregulation (5), investigate or cause to be investigated the claim of the applicant

and report in writing the result of the investigation to the Minister who, if satisfied that the case is one in which an order may be made, shall so recommend to the Governor.

10. Application of assistance

- (1) An application for assistance under section 41 of the Act shall be in writing in the Form No. 4 in the Schedule and may be made by a person of Aboriginal descent or by an officer of the Authority on his behalf.
- (2) An application under this regulation shall be forwarded to the Commissioner who shall make a recommendation in respect thereto to the Minister.
- (3) The Commissioner shall give to the applicant person of Aboriginal descent notice in writing of the determination of the Minister in relation to his application.

11. Occupation and tenure

- (1) The Minister may authorise in writing an approved applicant to occupy the land or premises the subject of his application subject to such conditions as the Minister may impose and to the terms of an agreement made between the approved applicant and the Minister.
- (2) No person other than an approved applicant and members of his family may occupy the land or premises without the approval in writing of the Minister.
- (3) The Minister may at any time order an approved applicant, or any other person whether he is authorised to occupy the land or not, to move off and remain off the land, and refusal or neglect to obey such order is a breach of these regulations.
- (4) The Minister may, on the fulfilment by the approved applicant of the terms of his agreement with the Minister, arrange for him to obtain a title to the land the subject of the agreement, which title may be in the form of a grant, a conditional purchase lease,

r. 12

a special lease, or any other form in accordance with the provisions of the *Land Act 1933*², subject to payment by the approved applicant of all fees and charges in connection therewith.

12. Residence

An approved applicant shall reside personally on the land or in the premises in respect of which his application was approved for a period of not less than 9 months of each and every 12 months unless otherwise authorised in writing by the Minister.

13. Improvements

- (1) The Minister may approve of advances to an approved applicant for the purpose of providing working capital, paying for and effecting improvements, and acquiring stock, plant and equipment subject to such conditions as are contained in an agreement entered into for the purpose between the Minister and the approved applicant.
- (2) The approved applicant shall maintain all buildings, fences and other permanent improvements in good and tenable repair, order and condition, and the Minister or an officer of the Authority may at any time enter upon the land and premises to ascertain whether the conditions of the agreement and the provisions of this regulation are being complied with, observed, and performed.
- (3) Where an approved applicant fails to observe and perform any term of his agreement or commits a breach of this regulation, the Minister may cancel the approval granted by him to that applicant and cause the land to be taken over and entered upon by another approved applicant or otherwise disposed of in such manner as the Minister thinks fit.

14. Transfers

- (1) An approved applicant shall not, without the consent in writing of the Minister first had and obtained, transfer, mortgage or encumber the land held by him under this Act or any part of that land, or enter into a contract of sale, lease, sub-lease, conveyance or other dealing in respect to that land or any part thereof.
- (2) The Minister shall not give his consent to any contract of sale, transfer, or conveyance of the land or any part thereof unless and until all amounts owing by the approved applicant to the Minister or any Crown instrumentality, authority or agent have been paid.
- (3) If an approved applicant contravenes any of the provisions of this regulation, or in the event of his insolvency or bankruptcy, the Minister may forfeit the land held by that applicant under this Act, and cause the land to be taken over and entered upon by another approved applicant or otherwise disposed of in such manner as the Minister thinks fit.
- (4) Where, within the first 5 years of his being authorised under the Act and these regulations to occupy land or premises, an approved applicant wishes because of ill health, or for any other reason satisfactory to the Minister, to determine his interest in the land or premises, the Minister may compensate him in respect of improvements essential to the working of the land which he has effected, but there shall be deducted from the amount of such compensation any moneys owing by the approved applicant to any Crown authority.

15. Purchase of improvements

An approved applicant may purchase the improvements on the land he is authorised to occupy in accordance with the terms of the agreement entered into between the applicant and the Minister.

16. Insurance of improvements

Until the full amount of any advance made by the Minister to the approved applicant to purchase improvements, and interest thereon, has been repaid, the Minister shall insure the improvements to their full insurable value in the name of the Minister against loss or damage by fire, and the premiums paid for such insurance and all incidental expenses shall be repaid by the approved applicant to the Minister on demand.

17. Penalties

A person who commits by act or omission a breach of these regulations commits an offence against these regulations and is liable upon conviction —

- (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.

[(c) deleted]

[Regulation 17 amended in Gazette 14 May 2004 p. 1446.]

Schedule

Form No. 1

Aboriginal Affairs Planning Authority Act 1972

(Section 15)

**CERTIFICATE OF APPOINTMENT AS AN OFFICER OF THE
ABORIGINAL AFFAIRS PLANNING AUTHORITY**

THIS is to certify that has been
duly appointed to be an officer of the Aboriginal Affairs Planning Authority,
with authority to act in that capacity until the termination of such appointment.

Dated the day of 20.....

.....
Commissioner for Aboriginal Planning.

Schedule

Form No. 2

Aboriginal Affairs Planning Authority Act 1972

(Section 31)

PERMIT TO ENTER A RESERVE

IN pursuance of the provisions of section 31 of the *Aboriginal Affairs Planning Authority Act 1972*, and of the regulations made under that Act, I hereby grant permission to enter and remain on Aboriginal Reserve No.
in the State of Western Australia, subject to the conditions that the person(s) named herein shall at all times —

(Here insert conditions to be observed.)

This permit is valid from the day of
20..... and expires on the day of 20.....
unless sooner revoked by the Minister.

.....
Minister.

[Form 2 amended in Gazette 7 Nov 1978 p. 4217.]

Form No. 3

Aboriginal Affairs Planning Authority Act 1972

(Section 35)

APPLICATION FOR ORDER FOR PAYMENT OF PROCEEDS OF ESTATE OF DECEASED PERSON OF ABORIGINAL DESCENT

(a) Full name of claimant. I, (a)

(b) Address of claimant. of (b) in the State of Western Australia, being

(c) Claimant's relationship to deceased person of Aboriginal descent. (c)

(d) Full name of deceased person of Aboriginal descent. of (d) a deceased person of Aboriginal descent, hereby apply that an order be made by His Excellency the Governor pursuant to section 35 of the Aboriginal Affairs Planning Authority Act 1972, that the proceeds of the estate of the said deceased person of Aboriginal descent be paid to me, for the reason that I have a moral claim to such proceeds on the following grounds —

(e) Set out the grounds on which the claim is based. (e)

Dated the day of, 20.....

..... (Signature of Claimant)

Report and Recommendation of Local Officer:

Date

..... (Signature of Officer)

Schedule

FOR HEAD OFFICE USE ONLY.

Claim is

approved.

not approved.

.....
Public Trustee

Date

Executive Council Minutes prepared

Executive Council Approval granted

Disbursement made

.....
A/O

Form No. 4

Aboriginal Affairs Planning Authority Act 1972

(Section 41)

APPLICATION FOR ASSISTANCE

(To be submitted to the nearest Office of the Aboriginal Affairs Planning Authority)

I, (Full name), of (address) in the State of Western Australia, being a person of Aboriginal descent as defined under section 4 of the Aboriginal Affairs Planning Authority Act 1972, hereby apply for assistance under section 41 of that Act.

In support of this application I furnish the particulars as set forth hereunder.

..... (Signature)

DATE

- 1. Date and place of birth
2. Are you in receipt of any pension? If so, state particulars
3. What physical disabilities do you suffer from?
4. How much money of your own have you?
5. What other assets do you have?
6. Provide details of your dependants
7. What amount of financial assistance do you require?
8. For what purpose?
9. What is your occupation?
10. What is your average weekly income from all sources?
11. Who is your employer?

Schedule

12. How long have you been in your present position?
.....
13. At what rate could you repay any assistance given?
.....
14. Can you obtain financial assistance from any other person or authority?
.....

[Schedule amended in Gazette 7 Nov 1978 p. 4217.]

Notes

- ¹ This is a compilation of the *Aboriginal Affairs Planning Authority Act Regulations 1972* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Aboriginal Affairs Planning Authority Act Regulations 1972</i>	30 Jun 1972 p. 2178-84	1 Jul 1972 (see <i>Gazette</i> 30 Jun 1972 p. 2099)
Untitled regulations	7 Nov 1978 p. 4217	7 Nov 1978
Reprint 1: The <i>Aboriginal Affairs Planning Authority Act Regulations 1972</i> as at 17 Oct 2003 (includes amendments listed above)		
<i>Sentencing Legislation (Short Sentences) Amendment Regulations 2004</i> r. 3	14 May 2004 p. 1445-7	15 May 2004 (see r. 2 and <i>Gazette</i> 14 May 2004 p. 1445)

- ² Under the *Land Administration Act 1997* s. 281(3), a reference in a written law to the *Land Act 1933* is, unless the contrary intention appears, to be construed as if that reference were a reference to the *Land Administration Act 1997*.