

**WESTERN AUSTRALIA**

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**LAND (TITLES AND TRADITIONAL  
USAGE) ACT 1993**

**(No. 21 of 1993)**

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1. Principal Act
2. Section 62A inserted
3. Section 69A amended
4. Division 3A inserted in Part III and transitional provision

**PART 4 — PETROLEUM (SUBMERGED LANDS) ACT 1982**

1. Principal Act
2. Section 52A inserted
3. Section 66A inserted
4. Section 74A amended
5. Division 4A inserted in Part III and transitional provision

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**PART 6 — PUBLIC WORKS ACT 1902**

1. Principal Act
2. Section 17 amended
3. Part IIA inserted and transitional provision

**PART 7 — PEARLING ACT 1990**

1. Principal Act
2. Sections 23A and 23B inserted
3. Division 3 inserted in Part 3 and transitional provision

# LAND (TITLES AND TRADITIONAL USAGE) ACT 1993

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No. 21 of 1993

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**AN ACT to confirm certain titles to land, to extinguish other titles that may exist in relation to land, to provide entitlements to the continued enjoyment of traditional usages of land and to provide for compensation in respect of extinguishment or impairment of certain titles to or traditional usages of land, to amend certain Acts, and for related purposes.**

*[Assented to 2 December 1993]*

## **Reasons for enacting this Act**

1. Since the Crown acquired sovereignty over Western Australia, the administration of land titles and land management in Western Australia has proceeded on the basis of the principles —
  - (a) that, on the acquisition of that sovereignty, the Crown acquired absolute beneficial possession of

all land, sole possession in law of all land, and exclusive power to grant title to all land; and

- (b) that, after the acquisition of that sovereignty, no title to land could exist other than a title held by the Crown, granted by the Crown, or derived from a title granted by the Crown,

and the people of Western Australia and those dealing with them have conducted their affairs accordingly.

2. In *Mabo v. Queensland [No. 2]* (1992) 175 CLR 1 the High Court of Australia found that in the Murray Islands in the Torres Strait —

- (a) the Crown did not become the absolute beneficial owner of all land on the annexation of the islands to Queensland; and
- (b) certain rights in relation to land existed after that annexation which were not held by the Crown, had not been granted by the Crown and were not derived from titles granted by the Crown.

3. Statements made by the High Court of Australia in *Mabo v. Queensland [No. 2]* as to principles of the kind referred to in paragraph 2 being generally applicable to all parts of Australia have raised serious questions among the people of Western Australia, and those dealing with them, as to the security and certainty of titles to land held by the Crown, granted by the Crown, or derived from titles granted by the Crown.

4. If Aboriginal people are entitled to rights in relation to land which were not granted by the Crown and are not derived from rights granted by the Crown, it is desirable in the interests of all the people of Western Australia, both Aboriginal and non-Aboriginal, that those rights be recognized by and derived from the written laws of Western

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Australia so that those rights can be administered as part of a single system of land titles and land management and, in particular, so that appropriate compensation can be provided if those rights are extinguished or impaired.

The Parliament of Western Australia enacts as follows:

## PART 1 — PRELIMINARY

### Short title

1. This Act may be cited as the *Land (Titles and Traditional Usage) Act 1993*.

### Commencement

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

### Interpretation

3. (1) In this Act, unless the contrary intention appears —

“**Aboriginal person**” means a member of the Aboriginal race of Australia;

“**Aboriginal group**” means one or more Aboriginal persons who are members of —

(a) a community of Aboriginal persons; or

(b) a clan, tribe or language group of Aboriginal persons;

“**Aboriginal tradition**” means the body of traditions, observances, customs and beliefs of the members of an Aboriginal group and includes those traditions, observances, customs and beliefs as applied in relation to particular people, sites, areas of land, things or relationships;

“**coastal waters**” means the coastal waters of the State within the meaning of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

**“compensation claim”** means a claim for compensation under section 28 or 29;

**“court”** includes a tribunal or an arbitrator;

**“exercise”**, in relation to rights, includes enjoy;

**“forest produce”** has the same meaning as in the *Conservation and Land Management Act 1984*;

**“grant”** includes the bringing into existence of a title to land, however the grant is or was described and also includes a contract to grant;

**“impairment”** includes limitation, restriction or disturbance;

**“interest”** in land includes —

- (a) a legal or equitable estate or interest in the land; and
- (b) a right to occupy, use or traverse the land or any other right over or in connection with the land; and
- (c) an easement, charge, power, licence or permit over or in connection with the land;

**“land”** means land in Western Australia and includes —

- (a) coastal waters and other water; and
- (b) land covered or sometimes covered by coastal waters or other water; and
- (c) land within coastal waters;

**“minerals”** and **“mining operations”** have the same meanings as in the *Mining Act 1978*;

**“native title”** means one or more rights or entitlements of a kind recognized by the common law, being rights or entitlements —

(a) to the occupation or use of land; or

(b) otherwise relating to land,

exercisable by Aboriginal persons in accordance with Aboriginal tradition;

**“objector”** means a person who has made an objection under the regulations in relation to a compensation claim and has not withdrawn that objection;

**“pastoral lease”** has the same meaning as in the *Land Act 1933*;

**“petroleum”** has the same meaning as in the *Petroleum Act 1967*;

**“prescribed period”** means the period from 31 October 1975 up to and including the commencement of Parts 2 and 3;

**“register of declarations and claims”** means the register maintained under section 42 (1);

**“rights of traditional usage”** means one or more rights of traditional usage created by section 7 (1) (b);

**“title”** to land includes —

(a) ownership of the land; and

(b) an interest in or in respect of the land, whether proprietary or otherwise,

but does not include native title or rights of traditional usage.

(2) In paragraph (b) of the definition of “interest” in subsection (1), “**use**” includes use for, or for a purpose associated with or incidental to, mining operations, operations for the recovery of petroleum, prospecting or exploration.

(3) In this Act a reference to the “**extent**” of rights or entitlements in relation to land includes a reference to the nature, content, kind, or manner of exercise, of such rights or entitlements.

### **Act binds the Crown**

**4.** This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, in all its other capacities.

**PART 2 — CONFIRMATION OF TITLES****Confirmation of titles already granted**

5. (1) The grant of a title during the prescribed period has effect, and is to be regarded as having always had effect, according to its tenor.

(2) A title to land granted during the prescribed period, or any act, matter or thing done in reliance on or by reference to such a title, is not, and is not to be regarded as having ever been —

- (a) invalid or subject to any defect because of the existence when the title was granted of any native title to the land, or any part of it; or
- (b) affected by or subject to the existence when the title was granted of any native title to the land, or any part of it.

(3) If the effect of this section is to extinguish or impair native title —

- (a) section 7 (1) does not apply in relation to that native title; and
- (b) a claim for compensation may be made under section 28 in relation to the extinguishment or impairment.

**PART 3 — RIGHTS OF TRADITIONAL USAGE  
TO REPLACE NATIVE TITLE**

***Division 1 — Creation of rights of traditional usage***

**Previous extinguishment or impairment not affected**

**6.** If native title has been extinguished or impaired by any event or action that took place before the commencement of this section, nothing in this Act revives that native title or removes that impairment.

**Native title replaced by statutory rights of traditional usage**

**7.** (1) On the commencement of, and by operation of, this section —

- (a) any native title to land that existed immediately before that commencement is extinguished; and
- (b) the members of an Aboriginal group who held native title to land immediately before that commencement become entitled to exercise rights of traditional usage in relation to that land under and subject to this Act.

(2) Rights of traditional usage created by subsection (1) (b) in relation to land replace the rights and entitlements that were incidents of the native title to that land extinguished by subsection (1) (a) and, unless this Act provides otherwise, are equivalent in extent to the rights and entitlements that they replace.

**Rights of traditional usage can be exercised without being declared or registered**

8. (1) Where rights of traditional usage exist they may be exercised under the authority of this Act without any need for the entitlement to exercise those rights to be declared, determined or registered in any way.

(2) Subsection (1) does not authorize members of an Aboriginal group to exercise (or purport to exercise) rights of traditional usage in relation to land contrary to, or in a manner inconsistent with —

- (a) this Act; or
- (b) the rights of holders of title; or
- (c) a notice issued to the Aboriginal group by the Minister under section 26 (1); or
- (d) a declaration made by the Supreme Court under section 10, 11 or 12 (2).

**Maintenance of rights of traditional usage**

9. (1) The extent from time to time of rights of traditional usage in relation to any land, and the identity from time to time of the persons entitled to exercise them, are to be determined by reference to the Aboriginal traditions that continue to be observed by Aboriginal persons in relation to that land.

(2) Rights of traditional usage in relation to land continue only so long as members of the relevant Aboriginal group maintain their traditional connection with the land in accordance with Aboriginal tradition.

(3) Traditional connection with land may be regarded as having been maintained for the purpose of this section even if occupation or use of, or presence on, the land was not continuous

so long as it was maintained in accordance with Aboriginal tradition.

(4) Rights of traditional usage are inalienable other than by surrender under section 25.

***Division 2 — Declarations as to rights of traditional usage***

**Declaration of entitlement**

10. If members of an Aboriginal group consider that they are being prevented from exercising rights of traditional usage in relation to land by any person (including a member of another Aboriginal group), the Aboriginal group may apply to the Supreme Court for a declaration as to whether, and to what extent, its members are entitled to exercise rights of traditional usage in relation to the land, and the Supreme Court is authorized to make such a declaration and any interlocutory and consequential orders it considers appropriate.

**Application by Minister for declaration in case of doubt or dispute**

11. If members of an Aboriginal group are exercising (or claim to be entitled to exercise) rights of traditional usage in relation to land and the Minister is of the opinion —

- (a) that members of the Aboriginal group are not entitled to exercise those rights or are exercising those rights unlawfully or contrary to this Act or to the rights of holders of title; or
- (b) that there is a dispute between that Aboriginal group and any person (including members of another Aboriginal group) as to whether members of the Aboriginal group are entitled to exercise those rights,

or as to the extent of those rights or as to whether those rights are being exercised unlawfully or contrary to this Act or to the rights of holders of title,

the Minister may apply to the Supreme Court for a declaration as to whether, and to what extent, the members of that Aboriginal group are entitled to exercise rights of traditional usage in relation to the land, and the Supreme Court is authorized to make such a declaration and any interlocutory or consequential orders it considers appropriate.

**Questions as to traditional rights arising in other proceedings**

12. (1) If in any proceedings in a court (other than the Supreme Court) a determination is made on a question in connection with the existence or extent of rights of traditional usage in relation to land, that determination has effect for the purposes of those proceedings only and is not binding or effective in respect of people other than the parties to those proceedings.

(2) If a question of the kind mentioned in subsection (1) arises in proceedings in a court (other than the Supreme Court), the Minister may join the proceedings or, by notice in writing to the court hearing those proceedings, direct the court to adjourn the proceedings and refer the question to the Supreme Court so that a declaration can be made on the question, and —

(a) the court is to comply with the direction;

(b) the Supreme Court is authorized to make such a declaration.

(3) Where an application for a declaration is made under section 10, 11 or 34 (1), or a question is referred for a declaration to be made under subsection (2), evidence given in other proceedings referred to in subsection (1) or (2) may be admitted by the Supreme Court as if the evidence had been given before the Supreme Court.

(4) If a question of the kind mentioned in subsection (1) arises in proceedings in the Supreme Court to which the Minister is not a party, the Minister may join those proceedings.

### **Procedure relating to applications**

**13.** (1) Regulations may be made requiring notice to be given or published in accordance with the regulations before an application or reference is made to the Supreme Court under section 10, 11 or 12 (2).

(2) Rules of Court may be made to regulate matters relating to the procedure and practice to be followed on an application or reference to the Supreme Court under section 10, 11 or 12 (2) including the notice to be given or published when an application or reference is made.

(3) The Minister is a respondent to any application under section 10 and the Supreme Court may permit any other person to join the proceedings as a party.

(4) The Supreme Court may permit any person to join proceedings for a declaration under section 11 as a party.

(5) The Minister is a party to proceedings for a declaration under section 12 (2) and the Supreme Court may permit any other person to join the proceedings as a party.

### **Rights of traditional usage and other matters to be identified**

**14.** If in proceedings for a declaration under section 10, 11 or 12 (2) the Supreme Court finds that members of an Aboriginal group are entitled to exercise rights of traditional usage in relation to land, the Supreme Court is to —

- (a) identify and declare the rights; and

- (b) identify the members of the group and the boundaries of the land to which the rights apply,

with as much particularity as the circumstances of the case allow.

### **Onus in establishing claims**

15. In proceedings for a declaration under section 10, 11 or 12 (2) the onus of proving, on the balance of probabilities, the matters referred to in section 14 lies on the members of the Aboriginal group claiming to be entitled to exercise the rights of traditional usage.

### **Effect of declaration**

16. A declaration made by the Supreme Court under section 10, 11 or 12 (2) is to be given effect and observed according to its tenor.

### ***Division 3 — Nature and effect of rights of traditional usage***

### **Laws of general application not affected by rights of traditional usage**

17. (1) In this section “**general laws**” means written laws or other laws as in force from time to time that apply generally to land or members of the public.

(2) Unless another written law expressly states otherwise, the existence, or possible existence, of rights of traditional usage in relation to land does not affect the application of general laws to land that is, or may be, the subject of rights of traditional usage or to Aboriginal groups whose members are, or may be, entitled to exercise such rights.

**Right to gather for sustenance or ceremonial purposes**

18. Despite section 19, members of an Aboriginal group exercising rights of traditional usage in relation to land may, subject to sections 8 (2) and 17, take and use food, water and materials from the land for sustenance or for purposes relating to Aboriginal tradition.

**No ownership of minerals etc.**

19. Rights of traditional usage in relation to land do not confer ownership of, or control over, minerals, petroleum, forest produce or water on or under the land.

**Rights of title holders take precedence**

20. The exercise of rights of traditional usage in relation to land is subject to, and does not restrict or impair the exercise of, the rights of the holder of a title to the land.

**Public access to certain areas not affected**

21. Rights of traditional usage in relation to beaches, foreshores, coastal waters, waterways, national parks, public reserves and similar areas do not affect public access to, and enjoyment of, those areas.

**Claim for compensation may arise**

22. If the effect of this Division, other than section 17, is to extinguish or impair a right or entitlement that was an incident of native title that existed before the commencement of section 7, a claim for compensation may be made under section 28 as if such an extinguishment or impairment had occurred.

***Division 4 — Extinguishment or suspension of  
rights of traditional usage***

**How rights are extinguished**

**23.** Rights of traditional usage in relation to land are declared to be extinguished if and when any of the following events or actions takes place after the commencement of section 7 —

- (a) any legislative or executive action which is clearly and plainly —
  - (i) intended to extinguish the rights; or
  - (ii) inconsistent with the continued exercise of the rights;
- (b) the grant of freehold title or leasehold title (including pastoral leases) in relation to the land under any written law relating to land grants, land administration or land titles, except to the extent that the grant expressly reserves any right of traditional usage;
- (c) the grant of a lease in relation to the land under any law relating to mining, except to the extent that the grant expressly reserves any right of traditional usage;
- (d) the dedication, reservation or use of the land for public or other works or purposes to the extent that the dedication, reservation or use is inconsistent with the continued exercise of the rights;
- (e) the surrender of the rights by the Aboriginal group whose members are entitled to exercise them, by agreement with the Minister under section 25;

- (f) the abandonment or surrender of the rights by the Aboriginal group whose members are entitled to exercise them;
- (g) the loss by the members of the relevant Aboriginal group of their traditional connection with the land;
- (h) the death of the last member of the Aboriginal group entitled to exercise the rights;
- (i) the giving of a notice under section 26 (1) (a) to the Aboriginal group whose members are entitled to exercise the rights.

**Grants etc. may occur despite existence or possible existence of rights of traditional usage**

**24. The fact —**

- (a) that rights of traditional usage exist or may exist in relation to land; or
- (b) that a notice has been issued under section 26 (1) (b) in relation to the exercise of rights or claimed rights of traditional usage in relation to land; or
- (c) that any question in connection with the existence or extent of rights of traditional usage in relation to land is the subject of or relevant to any proceedings in a court,

does not prevent the Crown or any statutory body, authority or officer from granting title to the land or taking any other action in relation to the land that may result in the extinguishment, suspension or impairment of any rights of traditional usage that may exist in relation to the land.

**Extinguishment of rights by surrender**

25. (1) An Aboriginal group may, by agreement in writing with the Minister, surrender rights of traditional usage that members of the group are entitled to exercise, and the Minister is authorized to enter into such an agreement.

(2) An agreement under subsection (1) does not have effect unless it has been approved by the Supreme Court on application made by the Minister.

(3) The Supreme Court is to give its approval if it is satisfied that the members of the Aboriginal group who have entered into the agreement on behalf of the group have authority to negotiate and make binding commitments on behalf of the group.

**Rights may be extinguished or suspended by notice**

26. (1) The Minister may, by notice in writing given or published in the prescribed manner —

- (a) extinguish rights of traditional usage; or
- (b) suspend rights of traditional usage for such period as is specified in the notice,

if the Minister considers the extinguishment or suspension to be necessary for any purpose for which land could be taken or resumed compulsorily under any written law.

(2) A proposal to give or publish a notice under subsection (1) may be referred by or on behalf of the Minister to the Commissioner for Aboriginal Planning referred to in section 10 of the *Aboriginal Affairs Planning Authority Act 1972* and, where a proposal is so referred, sections 33F (2) and (3), 33G, 33H, 33I and 33J (1) of the *Public Works Act 1902* apply in relation to the proposal (with any necessary adaptations) as if it were a proposal referred to the Commissioner under section 33F of that Act.

(3) The Minister is to cause a copy of a notice under subsection (1) to be recorded in the register of declarations and claims within 7 days after the notice is given or published.

### **Application of rules of natural justice**

**27.** (1) To the extent to which the application of the rules known as the rules of natural justice (including any duty of procedural fairness) is not provided for by this Act or any other written law, regulations may be made providing for the manner in which those rules are to be applied in relation to acts, matters and things that may extinguish, suspend or impair rights of traditional usage.

(2) Regulations made under subsection (1) are to have effect even if they are inconsistent with another written law.

(3) A title to land to which this subsection applies, or any act, matter or thing done in reliance on or by reference to such a title, is not invalid or subject to any defect on the grounds that, when the grant was made, the rules referred to in subsection (1) were not applied, or are alleged not to have been applied, in respect of a person who was entitled, or may have been entitled, to exercise rights of traditional usage in relation to that land.

(4) Subsection (3) applies to a title to land granted —

(a) after the commencement of this Part but before 1 January 1994; or

(b) at any time after the commencement of this Part in the course of or as a result of a procedure that was initiated before that commencement by the making of an application, or the service or publication of a notice or the doing of any other act, matter or thing under an Act mentioned in Schedule 1 or under any other written law.

**PART 4 — COMPENSATION**

***Division 1 — Compensation claims***

**Compensation for extinguishment or impairment of native title**

28. (1) Compensation may be claimed from the Crown under and subject to this Part for the extinguishment or impairment of native title to land by the granting of a title to the land, or by any other legislative or executive action (other than the enactment of section 7 (1) (a)), during the prescribed period.

(2) A claim under this section may be made by the members for the time being of the Aboriginal group whose members held the native title that was extinguished or impaired.

(3) A claim under this section has to be submitted to the Minister under section 31 within 18 months after the commencement of Parts 2 and 3.

(4) If more than one claim is made under this section in relation to the same land those claims may be dealt with together under this Part.

**Compensation for extinguishment, suspension or impairment of rights of traditional usage**

29. (1) Compensation may be claimed from the Crown under and subject to this Part for —

- (a) the extinguishment or impairment of rights of traditional usage in relation to land by the granting of a title to the land or by any other legislative or executive action; or

- (b) the extinguishment of rights of traditional usage by agreement under section 25; or
- (c) the suspension of rights of traditional usage in relation to land by a notice given under section 26 (1) (b).

(2) A claim under this section may be made by the members of the Aboriginal group who were or are entitled to exercise the rights of traditional usage that have been extinguished, suspended or impaired.

(3) A claim under this section has to be submitted to the Minister under section 31 within 12 months after the extinguishment, suspension or impairment is claimed to have taken place.

(4) If more than one claim is made under this section in relation to the same action or event those claims may be dealt with together under this Part.

### **No action for compensation except under this Part**

**30.** No proceedings for compensation for extinguishment, suspension or impairment of native title to land or rights of traditional usage in relation to land can be taken or maintained in any court otherwise than under this Part.

### **How a compensation claim is made**

**31.** (1) Members of an Aboriginal group who are entitled to make a compensation claim may submit the claim to the Minister, in writing, within the period specified in section 28 (3) or 29 (3), whichever applies.

- (2) A compensation claim has to —
- (a) give details of the Aboriginal group by whose members the claim is made (referred to in this Part and section 43 as “**the claimants**”) with sufficient particularity to enable those members to be identified;
  - (b) specify the land in respect of which the claim is made (referred to in this Part as “**the relevant land**”) with sufficient particularity to enable the boundaries of that land to be identified;
  - (c) give particulars, in accordance with the regulations, of the native title or rights of traditional usage to which the claim relates;
  - (d) state the facts on which the claimants rely to prove the existence of the native title or rights of traditional usage, as the case may be;
  - (e) nominate representatives of the claimants as required by section 43 (3); and
  - (f) comply with any other requirements of the regulations as to the form or content of compensation claims.

**Claims procedure: Notice, publication, objections, submissions**

**32.** (1) The Minister is to cause notice of compensation claims to be given and published in accordance with the regulations.

(2) Regulations may be made providing for and regulating the making of objections and submissions in relation to compensation claims.

***Division 2 — Resolution or determination of  
compensation claim***

**Negotiation and agreement on issues**

**33.** (1) The Minister is to conduct negotiations with the claimants and the objectors (if any) with a view to settling the following issues so far as they are relevant to the compensation claim —

- (a) in the case of a claim under section 28, whether native title to land has been extinguished or impaired as referred to in section 28 (1);
- (b) in the case of a claim under section 29, whether rights of traditional usage in relation to land have been extinguished, suspended or impaired as referred to in section 29 (1),

and, if extinguishment, suspension or impairment has occurred —

- (c) the extent of —
  - (i) the rights and entitlements that were incidents of the native title that has been extinguished or impaired; or
  - (ii) the rights of traditional usage that have been extinguished, suspended or impaired;
- (d) the boundaries of the land in respect of which the extinguishment, suspension or impairment has occurred;
- (e) the identity of the members of an Aboriginal group affected by the extinguishment, suspension or impairment;

- (f) the amount and form of compensation to be awarded for the extinguishment, suspension or impairment.

(2) If any of the issues mentioned in subsection (1) is settled under that subsection with the claimants the Minister is to enter into an agreement with the claimants, and with any objector who wishes to be a party to the agreement, setting out the terms of the settlement.

(3) If all the objectors are parties to an agreement under subsection (2) on an issue mentioned in subsection (1) (a), (b), (c), (d) or (e), the issue is to be regarded as having been resolved by agreement.

(4) If an objector is not a party to an agreement under subsection (2) on an issue mentioned in subsection (1) (a), (b), (c), (d) or (e), the Minister is to cause a copy of the agreement to be given to the objector in accordance with the regulations and unless the objector objects to the agreement within the prescribed time and in the prescribed manner, the issue is to be regarded as having been resolved by agreement.

(5) An agreement under subsection (2) as to the amount and form of compensation resolves that issue whether or not any objector is a party to the agreement.

(6) Before entering into an agreement under subsection (2) the Minister is to have regard to any submissions made by any person, under the regulations, in relation to the compensation claim.

(7) The Minister is not to enter into an agreement before the end of the claims period.

(8) In subsection (7) "**claims period**" means —

- (a) in the case of a claim under section 28, the period of 18 months after the commencement of Parts 2 and 3;

- (b) in the case of a claim under section 29, the period of 12 months after the extinguishment, suspension or impairment is claimed to have taken place.

### **Issues not resolved may be referred to the Supreme Court**

**34.** (1) If in relation to a compensation claim an issue mentioned in section 33 (1) is not resolved by agreement under section 33 (2), an application may be made to the Supreme Court for —

- (a) a declaration resolving that issue; or
- (b) in the case of the issue mentioned in section 33 (1) (f), an order as to the amount and form of compensation to be awarded for the extinguishment, suspension or impairment,

and the Supreme Court is authorized to make such declarations and orders.

(2) An application for a declaration may be made by the claimants, the Minister or an objector, and an application for an order may be made by the claimants or the Minister.

(3) A declaration and an order may be applied for in the same application.

(4) An application —

- (a) has to be accompanied by a copy of the compensation claim and such other information as is prescribed by Rules of Court; and
- (b) has to give particulars of each issue that is to be resolved.

(5) The making of an application under subsection (1) in relation to an issue does not prevent that issue from being resolved by agreement under section 33.

(6) If at the expiration of 3 years after the end of the claims period defined in section 33 (8) an issue mentioned in section 33 (1) has not been resolved and an application has not been made under subsection (1) in relation to the issue, the compensation claim lapses.

### **Procedure relating to applications under section 34**

**35.** (1) Rules of Court may be made to regulate matters relating to the practice and procedure to be followed on an application to the Supreme Court under section 34 (1) including the notice to be given or published when an application is made.

(2) Any party to the negotiations under section 33 (1) is entitled to be a party to the proceedings on an application under section 34 (1) and the Supreme Court may permit any other person to join as a party in accordance with Rules of Court.

### **Onus relating to disputed issues**

**36.** In proceedings for a declaration under section 34 (1) the onus of proving on the balance of probabilities —

- (a) that native title to land has been extinguished or impaired as referred to in section 28 (1); or
- (b) that rights of traditional usage in relation to land have been extinguished, suspended or impaired as referred to in section 29 (1),

and the consequential issues mentioned in section 33 (1) (c), (d) and (e), lies on the claimants.

### **How compensation is agreed or determined**

**37.** (1) In conducting negotiations under section 33 (1) (f) the Minister —

- (a) is to have regard to the principles set out in section 38 (1) but is not bound by any limitation imposed by those principles and can agree to the provision of compensation going beyond those principles; and
- (b) is not limited to negotiating monetary compensation but can agree to award compensation in one or more of the following forms —
  - (i) monetary compensation;
  - (ii) compensation in the form of title to land;
  - (iii) compensation in the form of interests conferring rights over other land similar in extent to rights of traditional usage;
  - (iv) compensation by way of the provision of services or facilities;
  - (v) compensation by way of the provision of employment or community programmes or other privileges or opportunities having economic, cultural or social value;
  - (vi) any other form the Minister thinks fit.

(2) In making an order under section 34 (1) the Supreme Court —

- (a) is to have regard to the principles set out in section 38 (1); and
- (b) can only award compensation in a monetary form.

### **Compensation principles**

**38.** (1) In the negotiation by the Minister, or the determination by the Supreme Court, of the compensation to be awarded under this Part for the extinguishment, suspension or impairment of native title to land or rights of traditional usage in relation to land —

- (a) regard is to be had primarily to what constitutes fair compensation for actual loss of or interference with the entitlement to exercise the affected rights; and
- (b) regard is to be had to any form of compensation that the Crown or any other person has already provided, or arranged to provide, for the extinguishment, suspension or impairment whether under a written law, or under an Act of the Commonwealth, or by agreement or otherwise; and
- (c) the maximum amount of compensation that can be awarded is the amount that could have been determined under the *Public Works Act 1902* if the land had been held under or subject to a title and had been taken or resumed compulsorily; and
- (d) regard is not to be had to any purpose for which the land is to be used following the extinguishment, suspension or impairment; and
- (e) compensation is not to be awarded in respect of any minerals or petroleum known or supposed to be on or under the land; and
- (f) compensation is not to be awarded for loss or interference for which compensation cannot be assessed according to common law principles in monetary terms; and

- (g) in the case of a claim under section 28 the value of the loss or interference is to be assessed according to values as at the commencement of Parts 2 and 3; and
- (h) despite the preceding paragraphs, an additional amount of compensation may also be awarded for loss of or interference with special attachment to the land or spiritual or cultural connection with the land but this amount is not to exceed 20% of the amount that would be assessable under paragraphs (a) and (c) if no regard were had to paragraph (b) and to section 63 (c) of the *Public Works Act 1902*.

(2) The reference in subsection (1) (c) to a title is a reference to the title the nature and content of which most closely resemble the affected rights.

(3) In this section “**the affected rights**” means —

- (a) the rights and entitlements that were incidents of the native title that has been extinguished or impaired; or
- (b) the rights of traditional usage that have been extinguished, suspended or impaired.

### **Compensation may be held in trust**

**39.** Compensation (so far as it consists of money or other property) may be paid or passed to, and held by, a trustee on behalf of the claimants.

### **Arrangements for compensation**

**40.** (1) The Minister is authorized to —

- (a) take any action; and

- (b) make any arrangement with another Minister, a public authority or any other person,

that may be necessary to give effect to an agreement as to compensation entered into under section 33 (2).

(2) Moneys payable under an agreement as to compensation entered into under section 33 (2) or an order of the Supreme Court under section 34 (1) are to be paid out of moneys appropriated by Parliament for the purposes of this Act.

**PART 5 — ADVANCEMENT OF ABORIGINAL INTERESTS**

**Power to grant titles and interests to Aboriginal persons generally**

41. (1) For the purposes of advancing the interests of Aboriginal persons the Minister may make arrangements with an Aboriginal group or other Aboriginal persons and with the Minister administering the *Land Act 1933* for —

- (a) title to land; or
- (b) interests in land conferring rights similar in extent to rights of traditional usage,

to be granted to or for the benefit of that group or those persons under and subject to the *Land Act 1933*.

(2) This section applies whether or not native title has been extinguished or impaired, or rights of traditional usage have been extinguished, suspended or impaired, under or as referred to in this Act.

## **PART 6 — MISCELLANEOUS**

### **Register of declarations and claims**

- 42.** (1) The Minister is to cause a public register of —
- (a) declarations made under sections 10, 11, 12 (2) and 34 (1);
  - (b) agreements entered into under section 25;
  - (c) notices of extinguishment or suspension under section 26;
  - (d) compensation claims;
  - (e) submissions and objections in relation to compensation claims;
  - (f) agreements entered into under section 33 (2);
  - (g) orders made under section 34 (1); and
  - (h) arrangements entered into under section 41,
- to be established and maintained.

(2) The Minister may cause or arrange for the register of declarations and claims to be maintained in conjunction with any register maintained under another written law.

### **Representation of Aboriginal groups**

- 43.** (1) Where the Minister is authorized or required under this Act to give a notice to an Aboriginal group the Minister may address the notice to, and give it to, a member or members of the group identified by the Minister as a representative or representatives of the group, and giving the notice in that way is to be regarded as giving the notice to the group for the purposes of this Act.

(2) An application under section 10 may be made by a member or members of an Aboriginal group on behalf of the group, and an application so made is to be regarded as having been made by the group.

(3) A compensation claim is to nominate those of the claimants who are to be the representatives of all of the claimants and to act on the claimants behalf under Part 4, and anything done by the representatives when so acting is binding on the claimants.

(4) An agreement under section 25 or an arrangement under section 41 with an Aboriginal group may be entered into by the Minister with members of the group identified by the Minister as having authority to negotiate and make binding commitments on behalf of the group, and, subject to section 25 (2), an agreement or arrangement so entered into is binding on, or applies for the benefit of, all members of the group.

## **Regulations**

44. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for the purposes of this Act.

## **Consequential amendments**

45. Schedule 1 has effect.

## **Transitional provisions as to proceedings**

46. (1) The operation of sections 12 and 30 extend to proceedings instituted before the commencement of this Act.

(2) The provisions of Parts 2, 3 and 4 may be pleaded in any proceedings instituted before the commencement of this Act.

SCHEDULE 1

[section 45]

CONSEQUENTIAL AMENDMENTS

PART 1 — *MINING ACT 1978*

**Principal Act**

1. In this Part the *Mining Act 1978\** is referred to as the principal Act.

[\* *Reprinted as at 1 August 1988.*

*For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, pp. 138-9.]*

**Section 19 amended**

2. After section 19 (6) of the principal Act the following subsection is inserted —

“

(6a) The Minister shall before granting a mining tenement under subsection (6) consult with the responsible Minister under Division 5A of Part IV and obtain that Minister's recommendation on the proposed grant so far as it may affect traditional usage of the kind to which that Division applies.

”

**Section 39A inserted**

3. Immediately before section 40 of the principal Act the following section is inserted —

“

**This Division subject to Division 5A**

**39A.** (1) This Division has effect subject to Division 5A.

(2) The provisions of this Division relating to objections to the granting of an application do not apply to an objection of the kind referred to in section 94F, and objections of that kind can only be made under that section.

”

**Section 49 amended**

4. After section 49 (2) of the principal Act the following subsection is inserted —

“ (3) The right referred to in subsection (1) is subject to the provisions of Division 5A but the responsible Minister, as defined in section 94C, may only recommend to the Minister for Mines for the purposes of section 94H (3) the conditions that should be attached to the grant having regard to rights of traditional usage claimed in a notice of objection.

”

**Section 56 amended**

5. After section 56 (1) of the principal Act the following subsection is inserted —

“ (1a) An appeal does not lie under subsection (1) where in accordance with section 94K the warden refuses to grant an application or attaches any condition to a grant.

”

**Section 56A amended**

6. After section 56A (5) of the principal Act the following subsection is inserted —

“ (5a) An appeal does not lie under subsection (5) where the warden refuses to grant an application in accordance with section 94K.

”

**Section 56AA inserted**

7. Immediately before section 56B of the principal Act the following section is inserted —

“

**This Division subject to Division 5A**

**56AA.** (1) This Division has effect subject to Division 5A.

(2) The provisions of this Division relating to objections to the granting of an application do not apply to an objection of the kind referred to in section 94F, and objections of that kind can only be made under that section.

”

**Section 67 amended**

8. After section 67 (2) of the principal Act the following subsection is inserted —

“

(3) The right referred to in subsection (1) is subject to the provisions of Division 5A but the responsible Minister, as defined in section 94C, may only recommend to the Minister for Mines for the purposes of section 94H (3) the conditions that should be attached to the grant having regard to rights of traditional usage claimed in a notice of objection.

”

**Section 70 amended**

9. After section 70 (5) of the principal Act the following subsection is inserted —

“

(5a) An appeal does not lie under subsection (5) where the warden refuses to grant an application in accordance with section 94K.

”

**Section 700 inserted**

10. Immediately before section 71 of the principal Act the following section is inserted —

“

**This Division subject to Division 5A**

700. (1) This Division has effect subject to Division 5A.

(2) The provisions of this Division relating to objections to the granting of an application do not apply to an objection of the kind referred to in section 94F, and objections of that kind can only be made under that section.

”

**Section 75 amended**

11. After section 75 (5) of the principal Act the following subsection is inserted —

“

(5a) The right provided for by subsection (5) is subject to the provisions of Division 5A but the responsible Minister, as defined in section 94C, may only recommend to the Minister for Mines for the purposes of section 94H (3) the conditions that should be attached to the grant having regard to rights of traditional usage claimed in a notice of objection.

”

**Section 85C inserted**

12. Immediately before section 86 of the principal Act the following section is inserted —

“

**This Division subject to Division 5A**

85C. (1) This Division has effect subject to Division 5A.

(2) The provisions of this Division relating to objections to the granting of an application do not apply to an objection of the kind referred to in section 94F, and objections of that kind can only be made under that section.

”

**Section 90A inserted**

**13.** Immediately before section 91 of the principal Act the following section is inserted —

“

**This Division subject to Division 5A**

**90A.** (1) This Division has effect subject to Division 5A.

(2) The provisions of this Division relating to objections to the granting of an application do not apply to an objection of the kind referred to in section 94F, and objections of that kind can only be made under that section.

”

**Section 94 amended**

**14.** After section 94 (3) of the principal Act the following subsection is inserted —

“

(3a) An appeal does not lie under subsection (3) where in accordance with section 94K the warden refuses to grant an application or attaches any condition to a grant.

”

**Division 5A inserted in Part IV and transitional provision**

**15.** (1) After Division 5 of Part IV of the principal Act the following Division is inserted —

*Division 5A — Objections based on rights  
of traditional usage*

**Definitions**

**94C.** In this Division, unless the contrary intention appears —

**“Aboriginal group”** has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*;

**“Commissioner”** means the Commissioner for Aboriginal Planning referred to in section 10 of the *Aboriginal Affairs Planning Authority Act 1972*;

**“Crown land”** includes land reserved under Part III of the *Land Act 1933* or under the *Conservation and Land Management Act 1984*;

**“Minister for Mines”** means the Minister to whom the administration of this Act is for the time being committed by the Governor;

**“responsible Minister”** means the Minister to whom the administration of the *Land (Titles and Traditional Usage) Act 1993* is for the time being committed by the Governor;

**“rights of traditional usage”** has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*.

**Notice to Commissioner of Aboriginal Planning in certain cases**

**94D.** (1) An applicant for a mining lease or a general purpose lease in respect of Crown land shall within 14 days of lodging the application give notice of the application to the Commissioner.

(2) Notice may be given by posting a copy of the application by certified mail to the Commissioner in Perth.

(3) The copy of the application shall be accompanied by a map of the land in respect of which the tenement is sought.

(4) The map shall contain such information as is prescribed.

**Commissioner to inform Aboriginal groups**

**94E.** (1) Where the Commissioner receives notice under section 94D he shall —

(a) consider whether any Aboriginal group may have rights of traditional usage in relation to the land; and

(b) if the Commissioner considers any Aboriginal group may have such rights, send a copy of the application in whatever way the Commissioner thinks appropriate to that group or such representatives of that group as he thinks fit.

(2) The duty imposed by subsection (1) shall be performed within 14 days after the day on which notice under section 94D (1) is received by the Commissioner.

**Notice of objection may be lodged**

**94F.** (1) Any Aboriginal group that objects to the grant of a mining lease, a general purpose lease or any other mining tenement in respect of Crown land, on grounds relating to rights of traditional usage, may lodge a notice of objection in the prescribed manner at the office of the mining registrar.

(2) Any such notice shall be lodged within the prescribed period which may be different for different parts of the State but shall in no case end more than 70 days after the day on which the application was lodged.

(3) A group that lodges a notice of objection shall forthwith give a copy of the notice to the applicant.

**Contents of notice**

**94G.** A notice of objection shall include —

- (a) a description of the Aboriginal group with sufficient particularity to enable the members to be identified;
- (b) a map of the land in respect of which rights of traditional usage are claimed;
- (c) particulars of the rights of traditional usage claimed;
- (d) a statement of the manner in which the proposed grant may interfere with the claimed rights of traditional usage;
- (e) the names of members of the group or other persons who are authorized to represent and act on behalf of the group; and
- (f) such other particulars as may be prescribed.

**Action to be taken by responsible Minister**

**94H.** (1) Where a notice of objection is lodged under section 94F by an Aboriginal group the mining registrar shall forthwith give a copy of the notice to the responsible Minister.

(2) Where an Aboriginal group —

- (a) has lodged a notice of objection; and
- (b) appears to the responsible Minister to have a *bona fide* claim to rights of traditional usage,

the responsible Minister shall —

- (c) consult with that group in a way, and by the agency of persons, that he thinks appropriate to the customs, traditions and other circumstances of the group; and
- (d) give such weight as he thinks fit to the information so obtained.

(3) The responsible Minister, within 3 months after the end of the prescribed period under section 94F (2) —

- (a) where section 94K applies, shall recommend to the Minister for Mines the terms in which that Minister should make his determination under section 94I;
- (b) in any other case shall —
  - (i) advise that Minister that, so far as rights of traditional usage claimed in a notice of objection are concerned, there is no reason why that Minister should not grant the application either with or without conditions specified by the responsible Minister; or

- (ii) recommend to that Minister that the application be refused on grounds relating to rights of traditional usage claimed in a notice of objection.

(4) The responsible Minister may, within 3 months after the end of the prescribed period under section 94F (2), give a certificate to the Minister for Mines for the purposes of section 94M.

(5) Any advice, recommendation or certificate of the responsible Minister is not liable to be challenged, reviewed or called in question by a court on account of anything which the responsible Minister has done or failed to do for the purposes of this section.

(6) The Minister for Mines must give due weight to, but is not bound to accept, any recommendation or advice of the responsible Minister under subsection (3).

(7) The Minister for Mines may by notice in writing to the responsible Minister declare that a period shorter than 3 months applies for the purposes of subsection (3) or (4) in the case of a specified application for a mining tenement, and any such substituted period applies accordingly.

#### **Determination to be made by Minister for Mines**

**94I.** (1) Where section 94K applies, the Minister for Mines shall determine whether, having regard to the recommendation of the responsible Minister —

- (a) the application may be granted or is to be refused; and
- (b) if it may be granted, the conditions that are to be attached to any grant.

(2) The Minister shall notify his determination in writing to the warden.

**Right of applicant to make submissions**

**94J.** If the Minister for Mines proposes —

- (a) to refuse an application;
- (b) to impose any condition; or
- (c) to determine under section 94I that the application is to be refused,

on grounds relating to rights of traditional usage claimed in a notice of objection, he shall notify the applicant of, and give him an opportunity to make submissions on, the proposal.

**Warden to give effect to determination of Minister for Mines**

**94K.** (1) Where —

- (a) an application is made for a licence to which this section applies; and
- (b) a notice of objection is lodged under section 94F,

the warden cannot grant the licence otherwise than in accordance with the determination notified to him by the Minister for Mines under section 94I (2).

(2) Subsection (1) does not affect the warden's power to refuse to grant a licence to which this section applies on any ground not related to rights of traditional usage claimed in a notice of objection.

(3) This section applies to —

- (a) a prospecting licence;

- (b) a special prospecting licence under section 56A or 70; and
- (c) a licence under section 91.

**Warden not concerned with traditional usage**

**94L.** Except as provided in section 94K, a warden is not concerned with rights of traditional usage that may be claimed in respect of land to which an application for a mining tenement relates.

**Exclusion of mining on living areas etc.**

**94M.** (1) Where on an application for the grant of a mining tenement —

- (a) an Aboriginal group has under section 94F lodged a notice of objection to the grant in respect of any Crown land; and
- (b) the responsible Minister has given a certificate to the Minister for Mines that the land or any specified part of the land is land to which this section applies,

it is a condition of any grant that, unless consent is given under section 94O, mining shall not be carried out on land included in that certificate.

(2) This section applies to land that at the time when the application is made —

- (a) is being *bona fide* used by the Aboriginal group —
  - (i) as a permanent living area on which is constructed housing or other substantial buildings;

- (ii) as a yard, orchard, plantation or garden adjacent to such an area; or
- (iii) as an airstrip in connection with such an area,

and is being so used under a lease or reservation of the land;

- (b) is a site of a cemetery or burial ground of the Aboriginal group;
- (c) provides the Aboriginal group's water supply; or
- (d) is within 100 metres of land referred to in paragraph (a), (b) or (c).

(3) Where a mining tenement is subject to a condition under this section the instrument of grant shall include a reference to that fact.

**Responsible Minister to determine disputes under section 94M**

**94N.** (1) If a mining tenement is subject to a condition under section 94M and a dispute arises between the holder of the mining tenement and an Aboriginal group as to the boundaries of the land to which the condition applies, the question may be referred by either party to the responsible Minister for determination.

(2) Any determination of the responsible Minister under subsection (1) is final.

(3) Section 135 does not apply to a dispute of the kind described in subsection (1).

**Responsible Minister may consent for purposes of section 94M**

**94O.** Where —

- (a) a mining tenement in respect of any land is subject to a condition under section 94M following lodgment of a notice of objection by an Aboriginal group; and
- (b) the responsible Minister has consulted the group and is satisfied that the group is not opposed to mining on the land,

the responsible Minister may, on behalf of the group, consent to the carrying out of mining on the land.

**Minister for Mines may disapply this Division to particular land**

**94P.** (1) The Minister for Mines may by instrument published in the *Gazette* declare that this Division does not apply to an application for a mining tenement, or applications for a particular kind of mining tenement, in respect of an area of Crown land specified in the instrument.

(2) A declaration under subsection (1) may be made at any time, whether before or after any notice of objection has been lodged under section 94F.

(3) A declaration under subsection (1) has effect according to its tenor.

”

(2) Division 5A inserted by subsection (1) does not apply to an application for a mining tenement lodged before the commencement of this section.

**PART 2 — LAND ACT 1993**

**Principal Act**

1. In this Part the *Land Act 1993*\* is referred to as the principal Act.

[\* *Reprinted as at 2 May 1985.*

*For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, pp. 112-3 and Act No. 6 of 1993.]*

**Section 7A inserted**

2. After section 7 of the principal Act the following section is inserted —

“

**Prerequisite to all dispositions and reservations**

7A. (1) Land shall not be —

- (a) reserved for a public purpose; or
- (b) disposed of in any way,

under this Act unless —

- (c) no notice of objection has been lodged under section 27D; or
- (d) the responsible Minister, within the meaning in section 27A, has under section 27F given his advice or recommendation in respect of the disposition or reservation to the Minister for Lands.

(2) If subsection (1) has been complied with in respect of a reservation of land, that subsection does not apply to a subsequent vesting of the land for that purpose.

(3) If subsection (1) has been complied with in respect of a disposition of land, any subsequent disposition that results as of right from the first disposition is not within subsection (1).

”

**Part 1A inserted**

3. After Part 1 of the principal Act the following Part is inserted —

“

**PART 1A — DISPOSITIONS AND RESERVATIONS,  
OBJECTIONS BASED ON RIGHTS OF TRADITIONAL  
USAGE**

**Definitions**

**27A.** In this Part, unless the contrary intention appears —

“**Aboriginal group**” has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*;

“**Commissioner**” means the Commissioner for Aboriginal Planning referred to in section 10 of the *Aboriginal Affairs Planning Authority Act 1972*;

“**Minister for Lands**” means the Minister to whom the administration of this Act is for the time being committed by the Governor;

“**proposal**” means a proposal of the kind described in section 27B (1);

“**responsible Minister**” means the Minister to whom the administration of the *Land (Titles and Traditional Usage) Act 1993* is for the time being committed by the Governor;

**“rights of traditional usage”** has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*.

**Proposals to be notified to Commissioner for Aboriginal Planning**

**27B.** (1) A proposal that land be —

- (a) reserved for a public purpose; or
- (b) disposed of,

under this Act may be referred by or on behalf of the Minister for Lands to the Commissioner.

(2) The referral shall —

- (a) inform the Commissioner of the particulars of the proposal including, in the case of a proposed reservation, any power to lease that is proposed to be conferred; and
- (b) be accompanied by a map of the land to which the proposal relates.

(3) The map shall contain such information as is prescribed.

**Commissioner to inform Aboriginal groups**

**27C.** (1) Where a proposal is referred to the Commissioner under section 27B he shall —

- (a) consider whether any Aboriginal group may have rights of traditional usage in relation to the land; and

- (b) if the Commissioner considers any Aboriginal group may have such rights, send a copy of the proposal in whatever way the Commissioner thinks appropriate to that group or such representatives of that group as he thinks fit.

(2) The duty imposed by subsection (1) shall be performed within 14 days after the day on which the referral under section 27B (1) is received by the Commissioner.

### **Notice of objection may be lodged**

**27D.** (1) Any Aboriginal group that objects to a proposal, on grounds relating to rights of traditional usage, may lodge a notice of objection in the prescribed manner at the office of the responsible Minister.

(2) Any such notice shall be lodged within the prescribed period which may be different for different parts of the State, but shall in no case end more than 42 days after the day on which a copy of the proposal was sent to the group under section 27C.

### **Contents of notice**

**27E.** A notice of objection shall include —

- (a) a description of the Aboriginal group with sufficient particularity to enable the members to be identified;
- (b) a map of the land in respect of which rights of traditional usage are claimed;
- (c) particulars of the rights of traditional usage claimed;
- (d) a statement of the manner in which the proposed grant may interfere with the claimed rights of traditional usage;

- (e) the names of members of the group or other persons who are authorized to represent and act on behalf of the group; and
- (f) such other particulars as may be prescribed.

**Action to be taken by responsible Minister**

**27F.** (1) Where an Aboriginal group —

- (a) has lodged a notice of objection; and
- (b) appears to the responsible Minister to have a *bona fide* claim to rights of traditional usage,

the responsible Minister shall —

- (c) consult with that group in a way, and by the agency of persons, that he thinks appropriate to the customs, traditions and other circumstances of the group; and
- (d) give such weight as he thinks fit to the information so obtained.

(2) The responsible Minister, within 3 months after the end of the prescribed period under section 27D (2) shall either —

- (a) advise the Minister for Lands that, so far as rights of traditional usage claimed in a notice of objection are concerned, there is no reason why the proposal should not be carried out either with or without conditions specified by the responsible Minister; or
- (b) recommend to that Minister that, on grounds relating to rights of traditional usage claimed in a notice of objection, the proposal should not be carried out.

(3) Any advice or recommendation of the responsible Minister is not liable to be challenged, reviewed or called in question by a court on account of anything which the responsible Minister has done or failed to do for the purposes of this section.

(4) The Minister for Lands may by notice in writing to the responsible Minister declare that a period shorter than 3 months applies for the purposes of subsection (2) in the case of a specified proposal, and any such substituted period applies accordingly.

### **Implementation of proposal**

**27G.** Any advice or recommendation of the responsible Minister under section 27F must be given due weight, but a proposal may be carried out otherwise than in accordance with the advice or recommendation if the Minister for Lands thinks fit.

### **Minister for Lands may disapply this Part to particular land**

**27H.** (1) The Minister for Lands may by instrument published in the *Gazette* declare that this Part does not apply to a particular proposal in respect of an area of land specified in the instrument.

(2) A declaration under subsection (1) has effect according to its tenor.

”.

**PART 3 — PETROLEUM ACT 1967**

**Principal Act**

1. In this Part the *Petroleum Act 1967\** is referred to as the principal Act.

[\* *Reprinted as at 17 December 1992.*]

**Section 62A inserted**

2. After section 62 of the principal Act the following section is inserted —

“

**Section 62 limited in respect of Crown land**

**62A.** (1) Notwithstanding section 62, but without limiting section 66, where the licence area includes any Crown land it is a condition of the licence that the licensee shall not carry out any operations, other than exploration operations, or execute works on that Crown land without first obtaining the approval of the Minister.

(2) Subsection (1) does not prevent an application being made for the approval of the Minister in anticipation of a licence being granted.

(3) The Minister may exercise his powers under subsection (1) having regard to all relevant considerations but in relation to rights of traditional usage referred to in Division 3A those powers shall be exercised in accordance with that Division.

”

**Section 69A amended**

3. Section 69A of the principal Act is amended by deleting “69A” and substituting the following —

“ **69J** ”.

**Division 3A inserted in Part III and transitional provision**

4. (1) After Division 3 of Part III of the principal Act the following Division is inserted —

“

***Division 3A — Licence operations, objections based  
on rights of traditional usage***

**Definitions**

**69A.** In this Division, unless the contrary intention appears —

“**Aboriginal group**” has the same meaning as in the  
*Land (Titles and Traditional Usage) Act 1993*;

“**approval**” means an approval under section 62A;

“**Commissioner**” means the Commissioner for  
Aboriginal Planning referred to in section 10 of  
the *Aboriginal Affairs Planning Authority Act 1972*;

“**Crown land**” includes land reserved under Part III  
of the *Land Act 1933* or under the *Conservation  
and Land Management Act 1984*;

“**Minister for Mines**” means the Minister to whom  
the administration of this Act is for the time  
being committed by the Governor;

“**responsible Minister**” means the Minister to  
whom the administration of the *Land (Titles  
and Traditional Usage) Act 1993* is for the time  
being committed by the Governor;

“**rights of traditional usage**” has the same  
meaning as in the *Land (Titles and Traditional  
Usage) Act 1993*.

**Notice to Commissioner of Aboriginal Planning in certain cases**

**69B.** (1) The Minister for Mines shall cause notice of every application for approval under section 62A to be given to the Commissioner within 14 days of the application being lodged at the Minister's office.

(2) Notice may be given by posting a copy of the application by certified mail to the Commissioner in Perth.

(3) The notice shall be accompanied by a map of the land in respect of which the approval is sought.

(4) The map shall contain such information as is prescribed.

**Commissioner to inform Aboriginal groups**

**69C.** (1) Where the Commissioner receives notice under section 69B he shall —

- (a) consider whether any Aboriginal group may have rights of traditional usage in relation to the land; and
- (b) if the Commissioner considers any Aboriginal group may have such rights, send a copy of the application in whatever way the Commissioner thinks appropriate to that group or such representatives of that group as he thinks fit.

(2) The duty imposed by subsection (1) shall be performed within 14 days after the day on which notice under section 69B (1) is received by the Commissioner.

**Notice of objection may be lodged**

**69D.** (1) Any Aboriginal group that objects to the grant of an approval, on grounds relating to rights of traditional

usage, may lodge a notice of objection in the prescribed manner at the office of the responsible Minister.

(2) Any such notice shall be lodged within the prescribed period which may be different for different parts of the State, but shall in no case end more than 42 days after the day on which a copy of the application was sent to the group under section 69C.

(3) A group that lodges a notice of objection shall forthwith give a copy of the notice to the applicant.

### **Contents of notice**

**69E.** A notice of objection shall include —

- (a) a description of the Aboriginal group with sufficient particularity to enable the members to be identified;
- (b) a map of the land in respect of which rights of traditional usage are claimed;
- (c) particulars of the rights of traditional usage claimed;
- (d) a statement of the manner in which the proposed grant may interfere with the claimed rights of traditional usage;
- (e) the names of members of the group or other persons who are authorized to represent and act on behalf of the group; and
- (f) such other particulars as may be prescribed.

### **Action to be taken by responsible Minister**

**69F.** (1) Where an Aboriginal group —

- (a) has lodged a notice of objection; and

- (b) appears to the responsible Minister to have a *bona fide* claim to rights of traditional usage,

the responsible Minister shall —

- (c) consult with that group in a way, and by the agency of persons, that he thinks appropriate to the customs, traditions and other circumstances of the group; and
- (d) give such weight as he thinks fit to the information so obtained.

(2) The responsible Minister, within 3 months after the end of the prescribed period under section 69D (2), shall either —

- (a) advise the Minister for Mines that, so far as rights of traditional usage claimed in a notice of objection are concerned, there is no reason why approval should not be given either with or without conditions specified by the responsible Minister; or
- (b) recommend to the Minister for Mines that, on grounds relating to the rights of traditional usage claimed in a notice of objection, approval should not be given.

(3) Any advice or recommendation of the responsible Minister is not liable to be challenged, reviewed or called in question by a court on account of anything which the responsible Minister has done or failed to do for the purposes of this section.

(4) The Minister for Mines may by notice in writing to the responsible Minister declare that a period shorter than 3 months applies for the purposes of subsection (2) in the case of a specified application, and any such substituted period applies accordingly.

**Right of applicant to make submissions**

**69G.** If the Minister for Mines proposes —

- (a) to refuse an application for approval; or
- (b) to attach any condition to the approval,

on grounds relating to rights of traditional usage claimed in a notice of objection, he shall notify the applicant of, and give him an opportunity to make submissions on, the proposal.

**Decision of Minister for Mines**

**69H.** The Minister for Mines must give due weight to, but is not bound to accept, any recommendation or advice of the responsible Minister under section 69F.

**Minister for Mines may disapply this Division to particular application**

**69I.** (1) The Minister for Mines may by instrument published in the *Gazette* declare that this Division does not apply to a particular application for approval specified in the instrument.

(2) A declaration under subsection (1) may be made at any time, whether before or after any notice of objection has been lodged under section 69D.

(3) A declaration under subsection (1) has effect according to its tenor.

”.

(2) Division 3A inserted by subsection (1) does not apply to an application for approval lodged before the commencement of this section.

**PART 4 — PETROLEUM (SUBMERGED LANDS) ACT 1982**

**Principal Act**

1. In this Part the *Petroleum (Submerged Lands) Act 1982\** is referred to as the principal Act.

[\* *Reprinted as at 24 March 1992; amended by Act No. 6 of 1993.*]

**Section 52A inserted**

2. After section 52 of the principal Act the following section is inserted —

“

**Approval required for operations and works**

52A. (1) Notwithstanding section 52, but without limiting section 56, it is a condition of a licence that the licensee shall not carry out any operations, other than exploration operations, or execute works in the licence area without first obtaining the approval of the Minister.

(2) Subsection (1) does not prevent an application being made for the approval of the Minister in anticipation of a licence being granted.

(3) The Minister may exercise his powers under subsection (1) having regard to all relevant considerations but in relation to rights of traditional usage referred to in Division 4A those powers shall be exercised in accordance with that Division.

”.

**Section 66A inserted**

3. After section 66 of the principal Act the following section is inserted —

“

**Approval required for operations and works**

66A. (1) Notwithstanding section 66, but without limiting section 70, it is a condition of a licence that the

licensee shall not carry out any operations, other than exploration operations, or execute works in the adjacent area without first obtaining the approval of the Minister.

(2) Subsection (1) does not prevent an application being made for the approval of the Minister in anticipation of a licence being granted.

(3) The Minister may exercise his powers under subsection (1) having regard to all relevant considerations but in relation to rights of traditional usage referred to in Division 4A those powers shall be exercised in accordance with that Division.

”.

#### **Section 74A amended**

4. Section 74A of the principal Act is amended by deleting “74A” and substituting the following —

“ **74J** ”.

#### **Division 4A inserted in Part III and transitional provision**

5. (1) After Division 4 of Part III of the principal Act the following Division is inserted —

“

***Division 4A — Licence operations, objections based on rights of traditional usage***

#### **Definitions**

**74A.** In this Division, unless the contrary intention appears —

“**Aboriginal group**” has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*;

“**approval**” means an approval under section 52A or 66A;

**“Commissioner”** means the Commissioner for Aboriginal Planning referred to in section 10 of the *Aboriginal Affairs Planning Authority Act 1972*;

**“Minister for Mines”** means the Minister to whom the administration of this Act is for the time being committed by the Governor;

**“responsible Minister”** means the Minister to whom the administration of the *Land (Titles and Traditional Usage) Act 1993* is for the time being committed by the Governor;

**“rights of traditional usage”** has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*.

**Notice to Commissioner of Aboriginal Planning in certain cases**

**74B.** (1) The Minister for Mines shall cause notice of every application for approval under section 52A or 66A to be given to the Commissioner within 14 days of the application being lodged at the Minister’s office.

(2) Notice may be given by posting a copy of the application by certified mail to the Commissioner in Perth.

(3) The notice shall be accompanied by a map of the land in respect of which the approval is sought.

(4) The map shall contain such information as is prescribed.

**Commissioner to inform Aboriginal groups**

**74C.** (1) Where the Commissioner receives notice under section 74B he shall —

- (a) consider whether any Aboriginal group may have rights of traditional usage in relation to the area to which the application relates; and

- (b) if the Commissioner considers any Aboriginal group may have such rights, send a copy of the application in whatever way the Commissioner thinks appropriate to that group or such representatives of that group as he thinks fit.

(2) The duty imposed by subsection (1) shall be performed within 14 days after the day on which notice under section 74B (1) is received by the Commissioner.

### **Notice of objection may be lodged**

**74D.** (1) Any Aboriginal group that objects to the grant of an approval, on grounds relating to rights of traditional usage, may lodge a notice of objection in the prescribed manner at the office of the responsible Minister.

(2) Any such notice shall be lodged within the prescribed period which may be different for different parts of the State, but shall in no case end more than 42 days after the day on which a copy of the application was sent to the group under section 74C.

(3) A group that lodges a notice of objection shall forthwith give a copy of the notice to the applicant.

### **Contents of notice**

**74E.** A notice of objection shall include —

- (a) a description of the Aboriginal group with sufficient particularity to enable the members to be identified;
- (b) a map of the area in respect of which rights of traditional usage are claimed;
- (c) particulars of the rights of traditional usage claimed;

- (d) a statement of the manner in which the proposed grant may interfere with the claimed rights of traditional usage;
- (e) the names of members of the group and other persons who are authorized to represent and act on behalf of the group; and
- (f) such other particulars as may be prescribed.

**Action to be taken by responsible Minister**

**74F.** (1) Where an Aboriginal group —

- (a) has lodged a notice of objection; and
- (b) appears to the responsible Minister to have a *bona fide* claim to rights of traditional usage,

the responsible Minister shall —

- (c) consult with that group in a way, and by the agency of persons, that he thinks appropriate to the customs, traditions and other circumstances of the group; and
- (d) give such weight as he thinks fit to the information so obtained.

(2) The responsible Minister, within 3 months after the end of the prescribed period under section 74D (2), shall either —

- (a) advise the Minister for Mines that, so far as rights of traditional usage claimed in a notice of objection are concerned, there is no reason why approval should not be given either with or without conditions specified by the responsible Minister; or

- (b) recommend to the Minister for Mines that, on grounds relating to the rights of traditional usage claimed in a notice of objection, approval should not be given.

(3) Any advice or recommendation of the responsible Minister is not liable to be challenged, reviewed or called in question by a court on account of anything which the responsible Minister has done or failed to do for the purposes of this section.

(4) The Minister for Mines may by notice in writing to the responsible Minister declare that a period shorter than 3 months applies for the purposes of subsection (2) in the case of a specified application, and any such substituted period applies accordingly.

### **Right of applicant to make submissions**

**74G.** If the Minister for Mines proposes —

- (a) to refuse an application for approval; or
- (b) to attach any condition to the approval,

on grounds relating to rights of traditional usage claimed in a notice of objection, he shall notify the applicant of, and give him an opportunity to make submissions on, the proposal.

### **Decision of Minister for Mines**

**74H.** The Minister for Mines must give due weight to, but is not bound to accept, any recommendation or advice of the responsible Minister under section 74F.

**Minister for Mines may disapply this Division to particular application**

**74I.** (1) The Minister for Mines may by instrument published in the *Gazette* declare that this Division does not apply to a particular application for approval specified in the instrument.

(2) A declaration under subsection (1) may be made at any time, whether before or after any notice of objection has been lodged under section 74D.

(3) A declaration under subsection (1) has effect according to its tenor.

”.

(2) Division 4A inserted by subsection (1) does not apply to an application for approval lodged before the commencement of this section.

**PART 5 — PETROLEUM PIPELINES ACT 1969**

**Principal Act**

1. In this Part the *Petroleum Pipelines Act 1969\** is referred to as the principal Act.

[\* Reprinted as at 19 February 1992.]

**Section 10A inserted**

2. After section 10 of the principal Act the following section is inserted —

“

**Part IIA to be complied with before licence decision made affecting Crown land**

**10A.** (1) Without limiting the requirements to be observed by the Minister under section 10, the Minister shall not grant to the applicant a licence that will affect any Crown land, within the meaning in section 32A, unless —

- (a) no objection has been lodged under section 32D;  
or
- (b) the responsible Minister, within the meaning in that section, has given his advice or recommendation under section 32F to the Minister for Mines.

(2) In considering an application under section 8 the Minister must give due weight to, but is not bound to accept, any recommendation or advice of the responsible Minister under section 32F.

(3) If subsection (1) has been complied with in respect of an application for a licence that will affect land, section 33E of the *Public Works Act 1902* does not apply to a subsequent taking, in accordance with section 19, of the

land for the purpose of the pipeline to which the licence relates.

”

**Part IIA inserted and transitional provision**

3. (1) After Part II of the principal Act, the following Part is inserted —

“

**PART IIA — LICENCE AFFECTING CROWN LAND,  
OBJECTIONS BASED ON RIGHTS OF TRADITIONAL  
USAGE**

**Definitions**

32A. (1) In this Part, unless the contrary intention appears —

“**Aboriginal group**” has the same meaning as in the  
*Land (Titles and Traditional Usage) Act 1993*;

“**Commissioner**” means the Commissioner for  
Aboriginal Planning referred to in section 10 of  
the *Aboriginal Affairs Planning Authority Act  
1972*;

“**Crown land**” means all land in the State —

- (a) which has not been lawfully granted or contracted to be granted in fee simple; or
- (b) which is not held under lease for any purpose except under —
  - (i) a pastoral lease within the meaning of the *Land Act 1933*, or a lease otherwise granted for grazing purposes only;
  - (ii) a lease for timber purposes; or

- (iii) a lease for the use and benefit of the Aboriginal inhabitants,

but includes land reserved under Part III of the *Land Act 1933* or under the *Conservation and Land Management Act 1984*;

**“Minister for Mines”** means the Minister to whom the administration of this Act is for the time being committed by the Governor;

**“responsible Minister”** means the Minister to whom the administration of the *Land (Titles and Traditional Usage) Act 1993* is for the time being committed by the Governor;

**“rights of traditional usage”** has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*.

(2) For the purposes of section 10A and this Part a licence will affect Crown land if the Crown land is, or is required to be, specified under section 8 (1) (f) in the application for the licence.

#### **Notice to Commissioner of Aboriginal Planning in certain cases**

**32B.** (1) The Minister for Mines shall cause notice of every application for a licence that will affect any Crown land to be given to the Commissioner within 14 days of the application being made.

(2) Notice may be given by posting a copy of the application by certified mail to the Commissioner in Perth.

(3) The notice shall be accompanied by a map of the Crown land in respect of which the licence is sought.

(4) The map shall contain such information as is prescribed.

**Commissioner to inform Aboriginal groups**

**32C.** (1) Where the Commissioner receives notice under section 32B he shall —

- (a) consider whether any Aboriginal group may have rights of traditional usage in relation to the land; and
- (b) if the Commissioner considers any Aboriginal group may have such rights, send a copy of the application in whatever way the Commissioner thinks appropriate to that group or such representatives of that group as he thinks fit.

(2) The duty imposed by subsection (1) shall be performed within 14 days after the day on which notice under section 32B (1) is received by the Commissioner.

**Notice of objection may be lodged**

**32D.** (1) Any Aboriginal group that objects to the grant of the licence, on grounds relating to rights of traditional usage, may lodge a notice of objection in the prescribed manner at the office of the responsible Minister.

(2) Any such notice shall be lodged within the prescribed period which may be different for different parts of the State, but shall in no case end more than 42 days after the day on which a copy of the application was sent to the group under section 32C.

(3) A group that lodges a notice of objection shall forthwith give a copy of the notice to the applicant.

**Contents of notice**

**32E.** A notice of objection shall include —

- (a) a description of the Aboriginal group with sufficient particularity to enable the members to be identified;
- (b) a map of the land in respect of which rights of traditional usage are claimed;
- (c) particulars of the rights of traditional usage claimed;
- (d) a statement of the manner in which the licence applied for may interfere with the claimed rights of traditional usage;
- (e) the names of members of the group or other persons who are authorized to represent and act on behalf of the group; and
- (f) such other particulars as may be prescribed.

**Action to be taken by responsible Minister**

**32F.** (1) Where an Aboriginal group —

- (a) has lodged a notice of objection; and
- (b) appears to the responsible Minister to have a *bona fide* claim to rights of traditional usage,

the responsible Minister shall —

- (c) consult with that group in a way, and by the agency of persons, that he thinks appropriate to the customs, traditions and other circumstances of the group; and
- (d) give such weight as he thinks fit to the information so obtained.

(2) The responsible Minister, within 3 months after the end of the prescribed period under section 32D (2), shall either —

- (a) advise the Minister for Mines that, so far as rights of traditional usage claimed in a notice of objection are concerned, there is no reason why the licence should not be granted in respect of the Crown land either with or without conditions or variations specified by the responsible Minister; or
- (b) recommend to the Minister for Mines that, on grounds relating to the rights of traditional usage claimed in a notice of objection, the licence should not be granted in respect of the Crown land.

(3) Any advice or recommendation of the responsible Minister is not liable to be challenged, reviewed or called in question by a court on account of anything which the responsible Minister has done or failed to do for the purposes of this section.

(4) The Minister for Mines may by notice in writing to the responsible Minister declare that a period shorter than 3 months applies for the purposes of subsection (2) in the case of a specified application, and any such substituted period applies accordingly.

### **Right of applicant to make submissions**

**32G.** If the Minister for Mines proposes —

- (a) to refuse to grant a licence in respect of the Crown land; or

- (b) to attach any condition to, or require any variation of, the licence,

on grounds relating to rights of traditional usage claimed in a notice of objection, he shall notify the applicant of, and give him an opportunity to make submissions on, the proposal.

**Minister for Mines may disapply this Part to particular application**

**32H.** (1) The Minister for Mines may by instrument published in the *Gazette* declare this Part does not apply to —

- (a) a particular application; or
- (b) particular Crown land,

specified in the instrument.

(2) A declaration under subsection (1) may be made at any time, whether before or after any notice of objection has been lodged under section 32D.

(3) A declaration under subsection (1) has effect according to its tenor.

”

(2) Part IIA inserted by subsection (1) does not apply to an application for a licence made before the commencement of this section.

**PART 6 — PUBLIC WORKS ACT 1902**

**Principal Act**

1. In this Act the *Public Works Act 1902*\* is referred to as the principal Act.

[\* *Reprinted as at 22 June 1992.*  
*For subsequent amendments see Act No. 6 of 1993.*]

**Section 17 amended**

2. Section 17 (1) of the principal Act is amended by inserting after “subsection (2)” the following —

“ and Part IIA ”.

**Part IIA inserted and transitional provision**

3. (1) After Part II of the principal Act the following Part is inserted —

“

**PART IIA — TAKING LAND, OBJECTIONS BASED  
ON RIGHTS OF TRADITIONAL USAGE IN CERTAIN  
CASES**

**Definitions**

**33C.** In this Part, unless the contrary intention appears —

“**Aboriginal group**” has the same meaning as in the  
*Land (Titles and Traditional Usage) Act 1993*;

“**Commissioner**” means the Commissioner for  
Aboriginal Planning referred to in section 10 of  
the *Aboriginal Affairs Planning Authority Act  
1972*;

**“Minister for Works”** means the Minister as defined in section 2;

**“prescribed land”** means —

- (a) Crown land;
- (b) land reserved under Part III of the *Land Act 1933* or the subject of a pastoral lease within the meaning of that Act;
- (c) land held for the use and benefit of Aboriginal people;

**“responsible Minister”** means the Minister to whom the administration of the *Land (Titles and Traditional Usage) Act 1993* is for the time being committed by the Governor;

**“rights of traditional usage”** has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*;

**“take”** means take compulsorily and includes set apart, resume or acquire compulsorily.

### **Application of this Part**

**33D.** This Part applies to the taking of prescribed land —

- (a) under this Act; or
- (b) under a written law which confers power to take land —
  - (i) under and subject to this Act; or
  - (ii) under and subject to this Act as modified by another written law.

**Prerequisite to the taking of certain land**

**33E.** Prescribed land shall not be taken unless —

- (a) no notice of objection has been lodged under section 33H; or
- (b) the responsible Minister has under section 33J given his advice or recommendation in respect of the taking of the land to the Minister for Works.

**Proposals to be notified to Commissioner for Aboriginal Planning**

**33F.** (1) A proposal to take prescribed land may be referred by or on behalf of the Minister for Works to the Commissioner.

(2) The referral shall —

- (a) inform the Commissioner of the particulars of the proposal; and
- (b) be accompanied by a map of the land to which the proposal relates.

(3) The map shall contain such information as is prescribed.

**Commissioner to inform Aboriginal groups**

**33G.** (1) Where a proposal is referred to the Commissioner under section 33F he shall —

- (a) consider whether any Aboriginal group may have rights of traditional usage in relation to the land; and

- (b) if the Commissioner considers any Aboriginal group may have such rights, send a copy of the proposal in whatever way the Commissioner thinks appropriate to that group or such representatives of that group as he thinks fit.

(2) The duty imposed by subsection (1) shall be performed within 14 days after the day on which the referral under section 27B (1) is received by the Commissioner.

### **Notice of objection may be lodged**

**33H.** (1) Any Aboriginal group that objects to a proposal, on grounds relating to rights of traditional usage, may lodge a notice of objection in the prescribed manner at the office of the responsible Minister.

(2) Any such notice shall be lodged within the prescribed period which may be different for different parts of the State, but shall in no case end more than 42 days after the day on which a copy of the proposal was sent to the group under section 33G.

### **Contents of notice**

**33I.** A notice of objection shall include —

- (a) a description of the Aboriginal group with sufficient particularity to enable the members to be identified;
- (b) a map of the land in respect of which rights of traditional usage are claimed;
- (c) particulars of the rights of traditional usage claimed;
- (d) a statement of the manner in which the proposed taking of land may interfere with the claimed rights of traditional usage;

- (e) the names of members of the group or other persons who are authorized to represent and act on behalf of the group; and
- (f) such other particulars as may be prescribed.

**Action to be taken by responsible Minister**

**33J.** (1) Where an Aboriginal group —

- (a) has lodged a notice of objection; and
- (b) appears to the responsible Minister to have a *bona fide* claim to rights of traditional usage,

the responsible Minister shall —

- (c) consult with that group in a way, and by the agency of persons, that he thinks appropriate to the customs, traditions and other circumstances of the group; and
- (d) give such weight as he thinks fit to the information so obtained.

(2) The responsible Minister, within 3 months after the end of the prescribed period under section 33H (2) shall either —

- (a) advise the Minister for Works that, so far as rights of traditional usage claimed in a notice of objection are concerned, there is no reason why the proposal should not be carried out either with or without conditions or amendments specified by the responsible Minister; or
- (b) recommend to that Minister that, on grounds relating to rights of traditional usage claimed in a notice of objection, the proposal should not be carried out.

(3) Any advice or recommendation of the responsible Minister is not liable to be challenged, reviewed or called in question by a court on account of anything which the responsible Minister has done or failed to do for the purposes of this section.

(4) The Minister for Works may by notice in writing to the responsible Minister declare that a period shorter than 3 months applies for the purposes of subsection (2) in the case of a specified proposal, and any such substituted period applies accordingly.

### **Implementation of proposal**

**33K.** Any advice or recommendation of the responsible Minister under section 33J must be given due weight, but a proposal may be carried out otherwise than in accordance with the advice or recommendation if the Minister for Works thinks fit.

### **Minister for Works may disapply this Part to particular land**

**33L.** (1) The Minister for Works may by instrument published in the *Gazette* declare that this Part does not apply to a particular proposal in respect of an area of land specified in the instrument.

(2) A declaration under subsection (1) has effect according to its tenor.

”

(2) Part IIA inserted by subsection (1) does not apply to a proposal to take land if a notice of intention to take the land has been published under section 17 (2) (b) of the principal Act before the commencement of this section.

**PART 7 — PEARLING ACT 1990**

**Principal Act**

1. In this Part the *Pearling Act 1990\** is referred to as the principal Act.

[\* *Act No. 88 of 1990.*]

**Sections 23A and 23B inserted**

2. After section 23 of the principal Act the following sections are inserted —

“

**Other prerequisites to decision on farm lease application**

**23A.** (1) The Executive Director shall not issue a farm lease unless no notice of objection has been lodged under section 32D.

(2) Where section 23B (2) (a) applies, the Minister shall not issue a farm lease unless the responsible Minister, within the meaning in section 32A, has given his advice or recommendation under section 32F.

(3) In considering an application for a farm lease under section 22 the Minister must give due weight to, but is not bound to accept, any recommendation or advice of the responsible Minister under section 32F.

(4) Without limiting section 23 (6) the Minister may refuse to issue a farm lease on grounds relating to rights of traditional usage within the meaning in section 32A.

**Decisions on farm lease applications to be made by  
Minister in certain cases**

**23B.** (1) If a notice of objection to the issue of a farm lease is lodged at the office of the responsible Minister under section 32D, that Minister shall notify the Executive Director of that fact.

(2) On receipt of a notification under subsection (1) the Executive Director shall refer the application for the farm lease to the Minister and on that referral —

- (a) the power to determine the application under this Act ceases to be vested in the Executive Director and becomes vested in the Minister; and
- (b) Part 4 becomes inapplicable to the determination.

”.

**Division 3 inserted in Part 3 and transitional provision**

**3.** (1) After Division 2 of Part 3 of the principal Act, the following Division is inserted —

“

***Division 3 — Issue of farm leases, objections based on  
rights of traditional usage***

**Definitions**

**32A.** In this Part, unless the contrary intention appears —

**“Aboriginal group”** has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*;

**“Commissioner”** means the Commissioner for Aboriginal Planning referred to in section 10 of the *Aboriginal Affairs Planning Authority Act 1972*;

**“Minister for Fisheries”** means the Minister to whom the administration of this Act is for the time being committed by the Governor;

**“responsible Minister”** means the Minister to whom the administration of the *Land (Titles and Traditional Usage) Act 1993* is for the time being committed by the Governor;

**“rights of traditional usage”** has the same meaning as in the *Land (Titles and Traditional Usage) Act 1993*.

**Notice to Commissioner of Aboriginal Planning in certain cases**

**32B.** (1) The Executive Director shall cause notice of every application for a farm lease to be given to the Commissioner within 14 days of the application being made.

(2) Notice may be given by posting a copy of the application by certified mail to the Commissioner in Perth.

(3) The notice shall be accompanied by a map of the area in respect of which the farm lease is sought.

(4) The map shall contain such information as is prescribed.

**Commissioner to inform Aboriginal groups**

**32C.** (1) Where the Commissioner receives notice under section 32B he shall —

- (a) consider whether any Aboriginal group may have rights of traditional usage in relation to the area; and

- (b) if the Commissioner considers any Aboriginal group may have such rights, send a copy of the application in whatever way the Commissioner thinks appropriate to that group or such representatives of that group as he thinks fit.

(2) The duty imposed by subsection (1) shall be performed within 14 days after the day on which notice under section 32B (1) is received by the Commissioner.

### **Notice of objection may be lodged**

**32D.** (1) Any Aboriginal group that objects to the issue of a farm lease, on grounds relating to rights of traditional usage, may lodge a notice of objection in the prescribed manner at the office of the responsible Minister.

(2) Any such notice shall be lodged within the prescribed period which may be different for different parts of the State, but shall in no case end more than 42 days after the day on which a copy of the application was sent to the group under section 32C.

(3) A group that lodges a notice of objection shall forthwith give a copy of the notice to the applicant.

### **Contents of notice**

**32E.** A notice of objection shall include —

- (a) a description of the Aboriginal group with sufficient particularity to enable the members to be identified;
- (b) a map of the area in respect of which rights of traditional usage are claimed;
- (c) particulars of the rights of traditional usage claimed;

- (d) a statement of the manner in which the farm lease applied for may interfere with the claimed rights of traditional usage;
- (e) the names of members of the group or other persons who are authorized to represent and act on behalf of the group; and
- (f) such other particulars as may be prescribed.

**Action to be taken by responsible Minister**

**32F.** (1) Where an Aboriginal group —

- (a) has lodged a notice of objection; and
- (b) appears to the responsible Minister to have a *bona fide* claim to rights of traditional usage,

the responsible Minister shall —

- (c) consult with that group in a way, and by the agency of persons, that he thinks appropriate to the customs, traditions and other circumstances of the group; and
- (d) give such weight as he thinks fit to the information so obtained.

(2) The responsible Minister, within 3 months after the end of the prescribed period under section 32D (2), shall either —

- (a) advise the Minister for Fisheries that, so far as rights of traditional usage claimed in a notice of objection are concerned, there is no reason why the farm lease should not be issued either with or without conditions specified by the responsible Minister; or

- (b) recommend to the Minister for Fisheries that, on grounds relating to the rights of traditional usage claimed in a notice of objection, the farm lease should not be issued.

(3) Any advice or recommendation of the responsible Minister is not liable to be challenged, reviewed or called in question by a court on account of anything which the responsible Minister has done or failed to do for the purposes of this section.

(4) The Minister for Fisheries may by notice in writing to the responsible Minister declare that a period shorter than 3 months applies for the purposes of subsection (2) in the case of a specified application, and any such substituted period applies accordingly.

#### **Right of applicant to make submissions**

**32G.** If the Minister for Fisheries proposes —

- (a) to refuse to issue a farm lease; or
- (b) to attach any condition to the farm lease,

on grounds relating to rights of traditional usage claimed in a notice of objection, he shall notify the applicant of, and give him an opportunity to make submissions on, the proposal.

#### **Minister for Fisheries may disapply this Division to particular application**

**32H.** (1) The Minister for Fisheries may by instrument published in the *Gazette* declare that this Division does not apply to an application for a farm lease specified in the instrument.

(2) A declaration under subsection (1) may be made at any time, whether before or after any notice of objection has been lodged under section 32D.

(3) A declaration under subsection (1) has effect according to its tenor.

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(2) Division 3 inserted by subsection (1) does not apply to an application for a farm lease made before the commencement of this section.