

South Australia

# Aboriginal Lands Trust Act 2013

An Act to continue the Aboriginal Lands Trust; to enable the Trust to acquire, hold and deal with land for the continuing benefit of Aboriginal South Australians; to repeal the *Aboriginal Lands Trust Act 1966*; to make related amendments to other Acts; and for other purposes.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Interaction between this Act and certain other Acts and laws
- 5 Objects
- 6 Principles
- 7 Power of delegation
- 8 Consultation

### Part 2—The Aboriginal Lands Trust

#### Division 1—The Trust

- 9 Continuation of Trust
- 10 Expressions of interest
- 11 Selection panel
- 12 Composition of Trust
- 13 Presiding member and deputy presiding member
- 14 Conditions of membership
- 15 Allowances and expenses
- 16 Validity of acts
- 17 Functions of Trust
- 18 Committees
- 19 Power of delegation
- 20 Trust's procedures
- 21 Trust Fund and Trust moneys
- 22 Accounts and audit
- 23 Annual report
- 24 Minister may require Trust to provide report

#### Division 2—Chief Executive and other staff

- 25 Chief Executive
- 26 Functions of Chief Executive
- 27 Staff of Trust

28 Use of facilities

### Division 3—Direction and suspension of Trust

29 Minister may direct Trust to take certain action etc  
30 Minister may suspend Trust in certain circumstances  
31 Use of facilities  
32 Offence

### Part 3—Commercial Development Advisory Committee

33 Commercial Development Advisory Committee  
34 Presiding member  
35 Conditions of membership  
36 Allowances and expenses  
37 Validity of acts  
38 Functions of Commercial Development Advisory Committee  
39 Procedures of Commercial Development Advisory Committee  
40 Use of facilities

### Part 4—Trust Land

#### Division 1—Acquiring Trust Land

41 Transfer of certain land to Trust  
42 Register of Trust Land

#### Division 2—Dealing with Trust Land

43 Inalienability of Trust Land  
44 Dealing with Trust Land

#### Division 3—Trust may appoint person to manage Trust Land

45 Trust may appoint person or body to manage Trust Land  
46 Manager may direct lessee  
47 Offences

### Part 5—Commercial and other activities of Trust

48 Trust may enter into commercial transactions etc as it thinks fit

### Part 6—Regulation of liquor and other substances on Trust Land

49 Regulations may prohibit consumption etc of regulated substances on Trust Land  
50 Application of the *Public Intoxication Act 1984* to certain Trust Land

### Part 7—Mining operations etc on Trust Land

51 Interpretation  
52 Interaction between this Act and mining Acts  
53 Permission required to carrying out mining operations etc on Trust Land  
54 Arbitration  
55 Royalty  
56 Certain payments or other consideration to Trust must represent fair compensation

---

## Part 8—Delivery of services under *Local Government Act 1999* and *Outback Communities (Administration and Management) Act 2009*

57 Trust to liaise with councils etc

## Part 9—Dispute resolution

58 Conciliator

59 Dispute resolution by conciliator

60 Order compelling compliance with direction of conciliator

## Part 10—Miscellaneous

61 Exemption from stamp duty

62 Liability of directors

63 General defence

64 Confidentiality

65 Service

66 Evidentiary provision

67 Review of Trust Land

68 Review of Act by Aboriginal Lands Parliamentary Standing Committee

69 Regulations

## Schedule 1—Related amendments, repeals and transitional provisions

### Part 1—Preliminary

1 Amendment provisions

### Part 2—Amendment of *Aboriginal Heritage Act 1988*

2 Amendment of section 45—Commencement of prosecutions

### Part 3—Amendment of *Aboriginal Lands Parliamentary Standing Committee Act 2003*

3 Amendment of section 3—Interpretation

4 Amendment of section 6—Functions of Committee

### Part 4—Amendment of *Real Property Act 1886*

5 Substitution of section 6

6 Inconsistency with other Acts

### Part 5—Repeal of *Aboriginal Lands Trust Act 1966*

6 Repeal of Act

### Part 6—Transitional provisions

7 Offices of Trust vacated on commencement of Act

8 Transfer of employment of Trust staff

9 Appointment of managers of Trust Land under repealed Act to continue

10 Continuation of leases and licences

11 Transitional provision for purposes of section 49

12 Transitional provisions for purposes of section 50

13 Transitional provisions—mining

## Legislative history

**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Aboriginal Lands Trust Act 2013*.

**2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

**3—Interpretation**

(1) In this Act—

*Aboriginal Lands Trust* or *Trust* means the Aboriginal Lands Trust constituted under the repealed Act and continued in existence under section 9;

*administrator* means an administrator appointed under section 30;

*Chief Executive*, of the Trust, means the Chief Executive from time to time appointed under section 25;

*Commercial Development Advisory Committee* means the Commercial Development Advisory Committee established under section 33;

*conciliator* means the conciliator for the purposes of this Act appointed under section 58;

*deal with* Trust Land—see subsection (3);

*determination of native title* has the same meaning as in the *Native Title Act 1993* of the Commonwealth;

*manager of Trust Land* means a person or body appointed as the manager of the relevant Trust Land under section 45;

*native title holder*, in respect of particular Trust Land, means a native title holder in respect of the Trust Land within the meaning of the *Native Title (South Australia) Act 1994*;

*Register* means the Register kept in accordance with section 42;

*repealed Act* means the *Aboriginal Lands Trust Act 1966*;

*representative body* has the same meaning as in the *Native Title Act 1993* of the Commonwealth;

*Trust Fund* means the fund established for the purposes of section 21;

*Trust Land* means—

- (a) any land currently owned by the Trust that was Trust Land within the meaning of the repealed Act (as in force immediately before the commencement of this section); and
- (b) any land transferred to the Trust pursuant to section 41; and

- (c) any other land owned by the Trust that is declared by the regulations to be Trust Land,

but does not include land declared by the regulations not to be Trust Land.

- (2) Unless the contrary intention appears, a reference in this Act to Trust Land will be taken to include a reference to a part of Trust Land.
- (3) For the purposes of this Act, to *deal with* Trust Land means—
  - (a) to transfer or grant the fee simple of the Trust Land; or
  - (b) to grant a lease over the Trust Land; or
  - (c) to mortgage the Trust Land; or
  - (d) to grant a licence in relation to the Trust Land; or
  - (e) to create other interests in or over the Trust Land of a kind declared by the regulations to be included in the ambit of this subsection,

in accordance with this Act (and a *dealing with* Trust Land has a corresponding meaning).

#### **4—Interaction between this Act and certain other Acts and laws**

- (1) If the provisions of this Act are inconsistent with the *Real Property Act 1886*, this Act prevails to the extent of the inconsistency.
- (2) For the purpose of determining whether particular Trust Land is a public place within the meaning of some other Act or law, any restrictions under this Act in respect of accessing the Trust Land will be disregarded.
- (3) For the purposes of the *Road Traffic Act 1961*, the *Motor Vehicles Act 1959* or the *Australian Road Rules*, a reference in those Acts or Rules to a road will be taken to include a reference to any road on Trust Land.

#### **5—Objects**

The objects of this Act include—

- (a) enabling the Trust to acquire, hold and deal with Trust Land in accordance with this Act for the continuing benefit of Aboriginal South Australians; and
- (b) ensuring that Trust Land is not alienated except in accordance with this Act; and
- (c) establishing mechanisms for the efficient and effective administration of the Trust; and
- (d) providing for the efficient and effective management and development of Trust Land; and
- (e) ensuring Aboriginal people with an interest in particular Trust Land are consulted, and their views considered, in any decisions relating to that Trust Land; and
- (f) increasing opportunities for economic development on Trust Land.

## 6—Principles

The following principles apply in relation to the operation and administration of this Act:

- (a) Aboriginal interests in Trust Land should be accounted for and reflected in any decision-making relating to the Trust Land;
- (b) Aboriginal and other people with an interest in Trust Land are entitled to be consulted in respect of decisions under the Act that may affect them;
- (c) Aboriginal people with interests in Trust Land are entitled to improve their economic well-being through the management and development of the Trust Land in accordance with this Act;
- (d) the Trust and Trust Land should, where appropriate, be administered, managed and developed in a way that strengthens the relationships between Aboriginal communities and the Trust;
- (e) the Trust and Trust Land should be administered, managed and developed in a way that strengthens Aboriginal communities and enables them to widen their regional involvement;
- (f) Trust Land should be managed and developed in a way that preserves and protects Aboriginal heritage in accordance with the *Aboriginal Heritage Act 1988* and any other relevant Act or law;
- (g) the Trust should be administered in a way that complies with appropriate standards of good governance, transparency and financial accountability;
- (h) Trust Land should, where appropriate, be administered, managed and developed in a way that achieves improved environmental outcomes on the Trust Land, including through the adoption of good natural resources management practices;
- (i) Trust Land should be administered, managed and developed in a way that, insofar as may be appropriate, optimises the overall value of Trust Land.

## 7—Power of delegation

- (1) The Minister may delegate a function or power under this Act (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Minister to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

- (4) A person to whom a function has been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform the functions must disclose the nature of the interest in writing to the Minister.

Maximum penalty: \$20 000.

- (5) It is a defence to a charge of an offence against subsection (4) for the defendant to prove that he or she was not, at the time of the alleged offence, aware of his or her interest in the matter.

## 8—Consultation

A requirement under this Act that the Trust consult with a specified person or body in respect of particular Trust Land in accordance with this section will be taken to require the Trust to consult, in accordance with any requirements set out in the regulations, with each of the following persons and groups:

- (a) Aboriginal persons who, in accordance with Aboriginal tradition, have social, economic and spiritual affiliations with, and responsibilities for, the Trust Land or any part of it (including, but not limited to, native title holders in respect of the land);
- (b) residents on the Trust Land;
- (c) any other person with an interest in the Trust Land,

(however nothing in this section operates to give priority in any matter to a particular person or group of persons).

## Part 2—The Aboriginal Lands Trust

### Division 1—The Trust

#### 9—Continuation of Trust

- (1) Subject to this section, the *Aboriginal Lands Trust* continues in existence.

**Note—**

The Trust was constituted under the *Aboriginal Lands Trust Act 1966*.

- (2) The Trust—
- (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) can sue and be sued in its corporate name; and
  - (d) subject to this Act, can enter into contracts and arrangements (including commercial contracts and arrangements); and
  - (e) is an instrumentality of the Crown; and
  - (f) has the functions and powers assigned or conferred by or under this or any other Act.

- (3) If a document appears to bear the common seal of the Trust, it will be presumed, in the absence of proof to the contrary, that the common seal of the Trust was duly fixed to the document.

## **10—Expressions of interest**

- (1) The Minister must, in relation to any appointment to the Trust, call for expressions of interest under a scheme determined by the Minister for the purposes of this section.
- (2) The Minister must, in relation to the scheme referred to in subsection (1)—
  - (a) cause details of the scheme to be published in the Gazette; and
  - (b) ensure that details of the scheme are published on the Internet and kept available for public inspection without charge during normal office hours at the principal office of the Trust.

## **11—Selection panel**

- (1) The Minister may from time to time establish a selection panel for the purposes of recommending persons for appointment to the Trust.
- (2) The selection panel will consist of such number of other Aboriginal persons as the Minister thinks fit, of whom—
  - (a) 1 must be a person who is a member of a body that represents, or acts in, the interests of Aboriginal people; and
  - (b) 1 must be a person who is a public sector employee (within the meaning of the *Public Sector Act 2009*); and
  - (c) 1 must be a person who is employed in the private sector.
- (3) A member of the selection panel will hold office for a term, and on conditions, determined by the Minister and is, at the expiration of a term of office, eligible for reappointment.
- (4) A member of the selection panel is entitled to fees, allowances and expenses approved by the Governor.
- (5) An act or proceeding of the selection panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (6) In recommending a member of the Trust, the selection panel—
  - (a) should, as far as is reasonably practicable, endeavour to achieve a gender balance on the Trust; and
  - (b) must have regard to the requirements as to knowledge, skills and experience of members under section 12(1); and
  - (c) must have regard to whether a particular person is a fit and proper person to be a member of the Trust; and
  - (d) must have regard to the fact that the Trust, in addition to dealing with Trust Land, needs to manage Trust Land and, in particular, must be able to consider the needs of communities living on Trust Land; and
  - (e) must have regard to any other matter specified by the Minister.

- (7) The selection panel is (other than in determining whether or not to recommend a particular person for appointment to the Trust) subject to the direction and control of the Minister.
- (8) Without limiting subsection (7), if a person recommended by the selection panel for appointment to the Trust is not acceptable to the Minister, the Minister may require the selection panel to recommend another person, or a panel of persons from which the Minister may select a person for appointment.
- (9) Subject to this Act, the selection panel may determine its own procedures.

## 12—Composition of Trust

- (1) The Trust consists of 8 members appointed by the Governor (being persons nominated by the Minister on the recommendation of the selection panel), being Aboriginal persons who collectively have knowledge, skills and experience in the following areas:
  - (a) South Australian Aboriginal community life and culture generally;
  - (b) residential community life and culture on Trust Land;
  - (c) the management and conservation of natural resources;
  - (d) the management of agricultural and pastoral land;
  - (e) commercial enterprise development;
  - (f) property management and development;
  - (g) ecologically sustainable development;
  - (h) corporate governance and administration.
- (2) The Governor may appoint a suitable person to be the deputy of a member of the Trust.
- (3) A deputy may act as a member of the Trust during any period of absence of the member in relation to whom the deputy has been appointed.

## 13—Presiding member and deputy presiding member

The Minister must, after consultation with the Trust, appoint a member (the *presiding member*) to preside at meetings of the Trust and another member (the *deputy presiding member*) to preside at meetings of the Trust in the absence of the presiding member.

## 14—Conditions of membership

- (1) Subject to this section, a member of the Trust will hold office on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.
- (2) A member of the Trust cannot hold office for consecutive terms that exceed 9 years in total.
- (3) The Governor may remove a member of the Trust from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or

- (b) for mental or physical incapacity to carry out duties of office satisfactorily; or
  - (c) for neglect of duty; or
  - (d) for dishonourable conduct.
- (4) The office of a member of the Trust becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is found guilty of a prescribed offence; or
  - (e) is removed from office by the Governor under subsection (3); or
  - (f) accepts employment as the Chief Executive of the Trust, or as a member of the staff of the Trust.

### **15—Allowances and expenses**

A member of the Trust is entitled to fees, allowances and expenses approved by the Governor.

### **16—Validity of acts**

An act or proceeding of the Trust is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### **17—Functions of Trust**

- (1) Subject to this Act, the functions of the Trust are—
- (a) to acquire, hold and deal with Trust Land in accordance with this Act for the ongoing benefit of Aboriginal South Australians; and
  - (b) to manage Trust Land in accordance with this and any other relevant Act or law; and
  - (c) to engage in commercial and other activities in accordance with this Act for the ongoing benefit of Aboriginal South Australians; and
  - (d) to consult for the purposes of this Act; and
  - (e) to advise the Minister in relation to matters related to the Trust; and
  - (f) to carry out other functions assigned to the Trust under this or any other Act or by the Minister.
- (2) In performing a function under this Act, the Trust must have regard to, and seek to give effect to, the principles set out in section 6.

### **18—Committees**

- (1) The Trust may establish committees for the purposes of this Act.
- (2) The membership of a committee will be determined by the Trust and may, but need not, consist of, or include, members of the Trust.
- (3) The Trust will determine who will be the presiding member of a committee.

- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the Trust; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

## 19—Power of delegation

- (1) The Trust may delegate a function or power under this Act (other than a prescribed function or power)—
  - (a) to a member of the Trust, the Chief Executive or an employee of the Trust; or
  - (b) to a committee established by the Trust; or
  - (c) to a specified body or person (including a person for the time being holding or acting in a specified office or position).
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Trust to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) A person to whom a function has been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform the functions must disclose the nature of the interest in writing to the Trust.  
Maximum penalty: \$20 000.
- (5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- (6) In this section—

***prescribed function or power*** means—

  - (a) a function or power comprising dealing with Trust Land; or
  - (b) any other function or power prescribed by the regulations for the purposes of this definition.

## 20—Trust's procedures

- (1) Subject to this Act, a quorum of the Trust consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (2) A meeting of the Trust will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Trust must choose 1 of their number to preside at the meeting.

- (3) A decision carried by a majority of the votes cast by members of the Trust at a meeting is a decision of the Trust.
- (4) Each member present at a meeting of the Trust has 1 vote on any question arising for decision.
- (5) A conference by telephone or other electronic means between the members of the Trust will, for the purposes of this section, be taken to be a meeting of the Trust at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Trust for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the Trust becomes a valid decision of the Trust despite the fact that it is not voted on at a meeting of the Trust if—
  - (a) notice of the proposed resolution is given to all members of the Trust in accordance with procedures determined by the Trust; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, fax, email or other written communication setting out the terms of the resolution.
- (7) The Trust must have accurate minutes kept of its meetings.
- (8) Subject to this Act, the Trust may determine its own procedures.

## **21—Trust Fund and Trust moneys**

- (1) All money received by the Trust must be paid into an account at an ADI maintained by the Trust for the purposes of this Act (the *Trust Fund*).
- (2) Subject to subsection (3), money held by the Trust (including the proceeds of any sale, lease or other dealing with any Trust Land and the income from any investment of Trust moneys) may only be used for the following purposes:
  - (a) to pay any costs associated with the operations of the Trust and the administration of this Act;
  - (b) the development and improvement of Trust Land;
  - (c) the acquisition and development of further lands for the purposes of this Act;
  - (d) engaging in commercial and other activities in accordance with this Act;
  - (e) any other purpose specified by the regulations for the purposes of this section.
- (3) If—
  - (a) the Treasurer pays to the Trust an amount under section 55; or
  - (b) payments of a kind contemplated by section 56 are paid to the Trust,then the Trust must apply—
  - (c) in the case of an amount paid under section 55—one half of the amount paid; and
  - (d) in the case of payments of a kind contemplated by section 56—a reasonably proportionate amount of the payments,

towards improving the Trust Land to which the payment relates, or for the direct benefit of any community living on the Trust Land.

## **22—Accounts and audit**

- (1) The Trust must keep proper accounting records in relation to its financial affairs, and must have annual statements of accounts prepared in respect of each financial year.
- (2) The accounts must be audited at least once in every year by the Auditor-General.

## **23—Annual report**

- (1) The Trust must, on or before 30 November in each year, deliver to the Minister a report on the administration of this Act and the activities of the Trust during the financial year ending on the preceding 30 June.
- (2) The report must—
  - (a) include the information prescribed by the regulations in relation to the relevant financial year; and
  - (b) incorporate the audited accounts of the Trust for the relevant financial year.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **24—Minister may require Trust to provide report**

- (1) The Minister may, by notice in writing, require the Trust to prepare and submit to the Minister a report in relation to the exercise, or proposed exercise, of a function or power of the Trust under this Act.
- (2) A report—
  - (a) may relate to a specific matter, or the operations of the Trust generally; and
  - (b) must be made in a manner and form determined by the Minister; and
  - (c) must be prepared and submitted to the Minister on or before the day specified in the notice.

## **Division 2—Chief Executive and other staff**

### **25—Chief Executive**

- (1) There will be a Chief Executive of the Trust.
- (2) The Chief Executive will be appointed by the Trust on terms and conditions determined by the Trust.
- (3) Despite a provision of the *Equal Opportunity Act 1984* or any other Act or law, the Trust—
  - (a) may require that an applicant for the position of Chief Executive be an Aboriginal person; or
  - (b) may give preference to an applicant for the position of Chief Executive on the grounds that they are an Aboriginal person.

## **26—Functions of Chief Executive**

The functions of the Chief Executive are—

- (a) to implement the resolutions of the Trust in an efficient manner; and
- (b) to ensure that records required under this or another Act are properly kept and maintained; and
- (c) to discharge any duties under this or any other Act relating to financial and annual reports; and
- (d) to exercise, perform or discharge any other powers, functions or duties conferred on the Chief Executive by the Trust, or by or under this or any other Act.

## **27—Staff of Trust**

The Trust's staff consists of persons employed by the Trust, on terms and conditions determined by the Trust.

## **28—Use of facilities**

The Trust may, under an arrangement approved by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

## **Division 3—Direction and suspension of Trust**

### **29—Minister may direct Trust to take certain action etc**

- (1) Subject to subsection (2), if the Minister is satisfied that—
  - (a) —
    - (i) the Trust—
      - (A) has refused or failed to exercise, perform or discharge a power, function or duty under this Act, or may do so; or
      - (B) has failed to give effect to the objects and principles of this Act (whether generally or in relation to a particular matter), or may do so; and
    - (ii) the refusal or failure has resulted in, or may result in, a detriment to Aboriginal South Australians generally, or to a substantial section of Aboriginal South Australians; or
  - (b) the Trust has acted, or intends to act, outside of the powers conferred by this Act (whether generally or in relation to a particular matter); or
  - (c) the Trust is at risk of becoming insolvent,the Minister may direct the Trust to take, or not to take, such action as the Minister may require to remedy or prevent the matter.
- (2) Before giving a direction under subsection (1), the Minister must, by notice in writing—
  - (a) notify the Trust that he or she is considering directing the Trust under this section; and

- (b) specify a further period within which the Trust may remedy or prevent the relevant matter (as the case requires); and
  - (c) advise the Trust that if it does not remedy or prevent the matter (as the case requires) within the specified period, he or she will direct the Trust to do so under this section.
- (3) If a direction under subsection (1) is not complied with, the Minister (or any other person authorised by the Minister for the purpose of this subsection) may take any action required by the direction.
- (4) A person must not hinder or obstruct the Minister or another person taking action under subsection (3).  
Maximum penalty: \$5 000.
- (5) The reasonable costs and expenses incurred by the Minister in taking action under this section may be recovered by the Minister as a debt from the Trust.
- (6) The Trust cannot claim compensation from the Crown, the Minister or any person acting under subsection (3) in respect of any action taken under this section.
- (7) If the Minister gives a direction under this section—
  - (a) the Minister must prepare a report on the matter and cause a copy of the report to be laid before each House of Parliament; and
  - (b) the Trust must cause details of the direction to be published in its next annual report.

### **30—Minister may suspend Trust in certain circumstances**

- (1) Subject to subsection (2), if the Trust—
  - (a) refuses or fails to prepare or submit a report to the Minister required under section 24; or
  - (b) refuses or fails to comply with a direction of the Minister under section 29, the Minister may, by notice in the Gazette, suspend the Trust for a period specified in the notice or until further notice in the Gazette.
- (2) Before suspending the Trust under subsection (1), the Minister must, by notice in writing—
  - (a) notify the Trust that he or she is considering suspending the Trust under this section; and
  - (b) specify a further period within which the Trust may comply with the relevant direction or prepare and submit the relevant report (as the case requires); and
  - (c) advise the Trust that if it does not comply with the direction or prepare and submit the report (as the case requires) within the specified period, he or she will suspend the Trust.

- (3) Despite any other provision of this Act, if the Trust is suspended the following provisions apply:
- (a) the Minister may, by notice in the Gazette, appoint an administrator, on terms and conditions determined by the Minister, to administer the affairs of the Trust in the name of, and on behalf of, the Trust during the period of the suspension;
  - (b) the administrator is entitled to remuneration, allowances and expenses determined by the Minister;
  - (c) the Minister may remove a person from the office of administrator for any reason the Minister thinks fit;
  - (d) the office of administrator becomes vacant if the administrator—
    - (i) dies; or
    - (ii) completes a term of office; or
    - (iii) resigns by written notice to the Minister; or
    - (iv) is removed from office under paragraph (c);
  - (e) the Minister may appoint a person to act as the administrator—
    - (i) during a vacancy in the office of administrator; or
    - (ii) when the administrator is absent from, or unable to discharge, official duties;
  - (f) the administrator has all the functions and powers of the Trust;
  - (g) the *Public Sector (Honesty and Accountability) Act 1995* applies to the administrator as if the administrator were a senior official and the Minister administering this Act were the relevant Minister;
  - (h) any liability incurred by the administrator in the course of the administration will be paid or satisfied out of the funds of the Trust;
  - (i) in any legal proceedings, an apparently genuine document purporting to bear the common seal of the Trust and the signature of the administrator attesting the affixation of the seal will be presumed, in the absence of proof to the contrary, to have been duly executed by the Trust;
  - (j) the administrator must, in the course of the administration, have regard to, and seek to give effect to, the objects and principles set out in sections 5 and 6.

### **31—Use of facilities**

An administrator may, under an arrangement approved by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

### **32—Offence**

A person who—

- (a) hinders or obstructs an administrator, or a person assisting an administrator, in the exercise of powers or functions under this Act; or

- (b) falsely represents, by words or conduct, that he or she is assisting an administrator in the exercise of powers or functions under this Act, is guilty of an offence.
- Maximum penalty: \$5 000.

## Part 3—Commercial Development Advisory Committee

### 33—Commercial Development Advisory Committee

- (1) The Minister may establish a committee (the *Commercial Development Advisory Committee*) for the purposes of this Act.
- (2) The Commercial Development Advisory Committee is to consist of—
  - (a) the presiding member of the Trust (*ex officio*); and
  - (b) such other number of members as may be appointed by the Minister, being persons who collectively have, in the opinion of the Minister, extensive knowledge, skills and experience in the following areas:
    - (i) commercial enterprise development;
    - (ii) property management and development;
    - (iii) corporate governance and administration;
    - (iv) the management of natural resources;
    - (v) the management of agricultural and pastoral land.
- (3) In appointing members of the Commercial Development Advisory Committee, the Minister should, as far as is reasonably practicable, endeavour to achieve a gender balance on the committee.
- (4) The Minister may appoint a suitable person to be the deputy of a member of the Commercial Development Advisory Committee.
- (5) A deputy may act as a member of the Commercial Development Advisory Committee during any period of absence of the member in relation to whom the deputy has been appointed.

### 34—Presiding member

The Minister must appoint a member (the *presiding member*) to preside at meetings of the Commercial Development Advisory Committee.

### 35—Conditions of membership

- (1) A member of the Commercial Development Advisory Committee will be appointed on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) A member of the Commercial Development Advisory Committee cannot hold office for consecutive terms that exceed 9 years in total.

- (3) The Governor may remove a member of the Commercial Development Advisory Committee from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of a member of the Commercial Development Advisory Committee becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (3).

### **36—Allowances and expenses**

A member of the Commercial Development Advisory Committee is entitled to remuneration, allowances and expenses determined by the Minister.

### **37—Validity of acts**

An act or proceeding of the Commercial Development Advisory Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### **38—Functions of Commercial Development Advisory Committee**

The functions of the Commercial Development Advisory Committee are—

- (a) to advise the Trust in relation to its commercial activities; and
- (b) to advise the Minister on any matter relating to the commercial activities of the Trust; and
- (c) any other functions assigned to the Commercial Development Advisory Committee by this Act or the Minister.

### **39—Procedures of Commercial Development Advisory Committee**

- (1) A quorum of the Commercial Development Advisory Committee consists of one half of the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (2) If the presiding member of the Commercial Development Advisory Committee is absent from a meeting of the Commercial Development Advisory Committee, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting of the Commercial Development Advisory Committee is a decision of the Commercial Development Advisory Committee.
- (4) Each member present at a meeting of the Commercial Development Advisory Committee has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

- (5) A conference by telephone or other electronic means between the members of the Commercial Development Advisory Committee will, for the purposes of this section, be taken to be a meeting of the Commercial Development Advisory Committee at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Commercial Development Advisory Committee for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the Commercial Development Advisory Committee becomes a valid decision of the Commercial Development Advisory Committee despite the fact that it is not voted on at a meeting of the Commercial Development Advisory Committee if—
  - (a) notice of the proposed resolution is given to all members of the Commercial Development Advisory Committee in accordance with procedures determined by the Commercial Development Advisory Committee; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.
- (7) The Commercial Development Advisory Committee must have accurate minutes kept of its meetings.
- (8) Subject to this Act, the Commercial Development Advisory Committee may determine its own procedures.

#### **40—Use of facilities**

The Commercial Development Advisory Committee may, under an arrangement approved by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

**Note—**

This includes the services or staff of the Trust.

## **Part 4—Trust Land**

### **Division 1—Acquiring Trust Land**

#### **41—Transfer of certain land to Trust**

- (1) Despite any other Act or law, the following land may, by transfer or grant of the fee simple made in accordance with a resolution of both Houses of Parliament, be transferred to the Trust:
  - (a) unalienated Crown land (within the meaning of the *Crown Land Management Act 2009*);
  - (b) land owned by a Minister.
- (2) Sections 24(2), 25 and 26 of the *Crown Land Management Act 2009* do not apply to, or in relation to, a transfer of land to the Trust under this section.

- (3) The Registrar-General must take such steps under the *Real Property Act 1886* as may be necessary to give effect to a transfer of land under this section.

#### **42—Register of Trust Land**

- (1) The Trust must keep a register of Trust Land (the *Register*).
- (2) The Register must include, in relation to each piece of Trust Land, the information required by the regulations and may include such other information as the Trust thinks fit.
- (3) The Chief Executive is responsible to the Trust for the form and maintenance of the Register.
- (4) The Chief Executive must correct an entry in the Register that is not, or has ceased to be, correct.
- (5) The Register must be kept available for inspection by any person during ordinary office hours at the principal office of the Trust and may be made available to the public by electronic means.
- (6) A person may, on payment of the prescribed fee, obtain a copy of any part of the Register.

### **Division 2—Dealing with Trust Land**

#### **43—Inalienability of Trust Land**

Except as authorised under this Part, Trust Land is inalienable.

#### **44—Dealing with Trust Land**

- (1) Subject to this section, the Trust—
  - (a) may dispose of Trust Land by transfer or grant of the fee simple; or
  - (b) may deal with Trust Land in such other manner as it thinks fit.

**Note—**

Section 3(3) defines what it means to deal with Trust Land.

- (2) The Trust may only dispose of Trust Land under subsection (1)(a) if—
  - (a) the transfer or grant is in accordance with a resolution of both Houses of Parliament; and
  - (b) any relevant requirements under the *Native Title Act 1993* of the Commonwealth have been satisfied.
- (3) Nothing in this section authorises the Trust to transfer or grant the fee simple in particular Trust Land if the estate in fee simple would, following the transfer or grant, be subject to native title.
- (4) An interest created by the Trust under subsection (1)(b) cannot be sublet, transferred, assigned or otherwise dealt with except with the written permission of the Trust (which must not be unreasonably withheld).
- (5) Before dealing with Trust Land under this section, the Trust must undertake consultation in respect of the matter in accordance with section 8.

- (6) To avoid doubt, this section applies in the case of a mortgagee or encumbrancee (within the meaning of the *Real Property Act 1886*) exercising a power of sale under the *Real Property Act 1886* or any other Act or law.
- (7) A dealing with Trust Land other than as contemplated by this section is void and of no effect.
- (8) A person with whom the Trust is required to consult under section 8 in respect of particular Trust Land is entitled to inspect (without charge) any lease or other document in the possession of the Trust relating to a dealing with the Trust Land under this section during ordinary office hours at the principal office of the Trust.

### **Division 3—Trust may appoint person to manage Trust Land**

#### **45—Trust may appoint person or body to manage Trust Land**

- (1) The Trust may, at the request of a lessee of Trust Land or of its own motion, appoint a person or body (a *manager of Trust Land*) to manage Trust Land that is the subject of a lease granted for the benefit of a particular Aboriginal community.
- (2) An appointment under this section—
  - (a) must be in writing; and
  - (b) will be on the terms and conditions determined by the Trust and specified in the instrument of appointment; and
  - (c) must comply with any requirements set out in the regulations for the purposes of this subsection.
- (3) A manager of Trust Land—
  - (a) has all the powers, functions and duties of the lessee in respect of the Trust Land and may act in the name of and on behalf of the lessee; and
  - (b) has any other power or function conferred by or under this Act or by the Trust; and
  - (c) must comply with any requirements set out in the regulations for the purposes of this subsection; and
  - (d) is subject to the direction and control of the Trust; and
  - (e) is entitled to remuneration, allowances and expenses approved by the Trust; and
  - (f) must, in the course of managing the Trust Land, endeavour to benefit the interests of the relevant Aboriginal community at all times.
- (4) Subject to this Act and any directions of the Trust, a body appointed to manage Trust Land may determine its own procedures.
- (5) All costs and expenses arising out of the management of Trust Land pursuant to this section are payable by the Trust but are recoverable by the Trust as a debt from the lessee of the Trust Land.
- (6) A lessee of Trust Land cannot claim compensation from the Trust, a manager of Trust Land or the Crown in respect of any action taken under this Division.

#### **46—Manager may direct lessee**

- (1) A manager of Trust Land may, by notice in writing, require the lessee or any person who has been involved in the management of the Trust Land to report to the manager on such matters relating to the management of the Trust Land as may be specified in the notice.
- (2) A person who fails to comply with a requirement made under this section is guilty of an offence.  
Maximum penalty: \$5 000.

#### **47—Offences**

A person who—

- (a) hinders or obstructs a manager of Trust Land, or a person assisting a manager of Trust Land, in the exercise of powers or functions under this Act; or
- (b) falsely represents, by words or conduct, that he or she is assisting a manager of Trust Land in the exercise of powers or functions under this Act,

is guilty of an offence.

Maximum penalty: \$5 000.

### **Part 5—Commercial and other activities of Trust**

#### **48—Trust may enter into commercial transactions etc as it thinks fit**

- (1) Without limiting Part 4, but subject to subsection (2), the Trust may enter into such commercial or other transactions as it thinks fit (including, without limiting the generality of this subsection, acquiring and disposing of land for commercial or investment purposes).

**Note—**

Land acquired as contemplated by this section is not generally Trust Land—see the definition of *Trust Land* in section 3.

Trust Land may only be dealt with in accordance with Part 4.

- (2) The Trust may only enter into a transaction with a value (determined in accordance with the regulations) exceeding the prescribed amount with the written approval of the Minister.

### **Part 6—Regulation of liquor and other substances on Trust Land**

#### **49—Regulations may prohibit consumption etc of regulated substances on Trust Land**

- (1) The Governor may, on the recommendation of the Trust, make regulations—
  - (a) regulating, restricting or prohibiting the consumption, possession, sale or supply of regulated substances on Trust Land;

- (b) providing for the confiscation, in circumstances in which a contravention of a regulation is reasonably suspected, of a regulated substance to which the suspected contravention relates;
  - (c) providing for the treatment or rehabilitation (or both) of any person affected by the misuse of a regulated substance;
  - (d) providing for the facilitation of proof of contraventions of the regulations;
  - (e) prescribing fines (not exceeding \$1 250) for contravention of a regulation;
  - (f) prescribing expiation fees (not exceeding \$315) for alleged offences against the regulations.
- (2) Before making a recommendation for the purposes of this section, the Trust must undertake consultation in respect of the matter in accordance with section 8.
- (3) A person who contravenes a regulation regulating, restricting or prohibiting the sale or supply of regulated substances on Trust Land is guilty of an offence.  
Maximum penalty: \$2 000 or imprisonment for 6 months.
- (4) A member of the police force may seize and impound any vehicle reasonably suspected of having been used in connection with the sale or supply of a regulated substance on Trust Land in contravention of the regulations.
- (5) If a vehicle is seized under subsection (4), the matter must be referred at the next available opportunity to a magistrate.
- (6) A magistrate may make an order for the forfeiture of a vehicle seized under subsection (4) if the magistrate is satisfied that—
- (a) the vehicle has been used in connection with the sale or supply of a regulated substance on Trust Land in contravention of the regulations; and
  - (b) any person who so used the vehicle has, on at least 1 previous occasion, been found guilty of the offence of supplying a regulated substance on Trust Land in contravention of the regulations or the repealed Act; and
  - (c) it is, in the circumstances of the case, appropriate that the vehicle be forfeited.
- (7) In this section—
- regulated substance*** means—
- (a) alcoholic liquor; or
  - (b) petrol; or
  - (c) any other substance declared by the regulations to be a regulated substance for the purposes of this section.

### **50—Application of the *Public Intoxication Act 1984* to certain Trust Land**

- (1) Subject to this section, the *Public Intoxication Act 1984* applies to prescribed Trust Land.
- (2) For the purposes of this section, the *Public Intoxication Act 1984* is modified as follows:
  - (a) a reference to a public place will be taken to be a reference to prescribed Trust Land;

- (b) a reference to an authorised officer will be taken to be a reference to an authorised officer appointed by the Minister to whom the administration of the *Public Intoxication Act 1984* is committed on the recommendation of the Trust;
- (c) subject to this section, but without limiting any other powers he or she may have under the *Public Intoxication Act 1984*, a member of the police force or an authorised officer may exercise any of the following powers on prescribed Trust Land:
  - (i) the power, on reasonable suspicion that a drug or alcohol is in any premises or vehicle, to enter and search those premises or that vehicle, using such force as is necessary for the purpose;
  - (ii) the power to stop any vehicle for the purpose of carrying out a search under subparagraph (i);
  - (iii) the power to confiscate and dispose of a drug or alcohol.
- (3) The appointment of an authorised officer may be conditional or unconditional (including a condition that limits the prescribed Trust Land in relation to which the authorised officer can exercise his or her powers).
- (4) The Governor may, by proclamation made on the recommendation of the Trust—
  - (a) declare specified Trust Land to be prescribed Trust Land; or
  - (b) impose limitations on the exercise of the power referred to in subsection (2)(c); or
  - (c) vary or revoke a proclamation made under this subsection.
- (5) The Trust must not recommend the making of a proclamation under subsection (4) unless—
  - (a) a proposal for making the proclamation has been initiated from within the Aboriginal communities that would be affected by the proclamation; and
  - (b) the Trust is satisfied that those communities are in general agreement that the proclamation should be made.
- (6) In this section—

*prescribed Trust Land* means Trust Land declared to be prescribed Trust Land under subsection (4)(a).

## **Part 7—Mining operations etc on Trust Land**

### **51—Interpretation**

In this Part—

*mining Acts* means—

- (a) the *Mining Act 1971*; and
- (b) the *Opal Mining Act 1995*; and
- (c) the *Petroleum and Geothermal Energy Act 2000*; and

- (d) any other Act declared by the regulations to be included in the ambit of this definition;

**mining authority** means—

- (a) a mining tenement under the *Mining Act 1971*; or
- (b) a precious stones prospecting permit under the *Opal Mining Act 1995*; or
- (c) a precious stones tenement under the *Opal Mining Act 1995*; or
- (d) an authority to engage in a regulated activity under the *Petroleum and Geothermal Energy Act 2000*; or
- (e) any other authority declared by the regulations to be included in the ambit of this definition;

**mining operations** has the same meaning as in the *Mining Act 1971* or the *Opal Mining Act 1995* (as the case requires);

**regulated activities** has the same meaning as in the *Petroleum and Geothermal Energy Act 2000*.

## 52—Interaction between this Act and mining Acts

- (1) A mining authority must not be granted or renewed under a mining Act in respect of Trust Land except to a person who has permission to carry out mining operations or regulated activities on the Trust Land under this Part (however nothing in this section prevents the taking of any step under a mining Act antecedent to the grant or renewal of a mining authority).
- (2) Before a mining authority is granted or renewed under a mining Act in relation to Trust Land, the Minister to whom the administration of the mining Act is committed must allow the Trust a reasonable opportunity to make submissions relating to the conditions subject to which the mining authority should be granted or renewed.
- (3) If a person has permission to carry out mining operations or regulated activities on Trust Land under this Part, the person and his or her agents, contractors and employees—
  - (a) may, subject to any conditions of the permission and to the provisions of the relevant mining Act, enter the Trust Land for the purpose of carrying out such mining operations or regulated activities; and
  - (b) despite a provision of the relevant mining Act, is not required to serve on the Trust a notice of entry.

- (4) In this section—

**notice of entry** means—

- (a) a notice of entry contemplated by section 58A of the *Mining Act 1971*; or
- (b) a notice of entry contemplated by section 32 of the *Opal Mining Act 1995*; or
- (c) a notice of entry contemplated by section 61 of the *Petroleum and Geothermal Energy Act 2000*,

as the case requires.

### 53—Permission required to carrying out mining operations etc on Trust Land

- (1) Despite a provision of the mining Acts or any other Act or law, a person who, without the permission of the Trust granted under this Part—
- (a) carries out mining operations or regulated activities on Trust Land; or
  - (b) enters Trust Land for the purpose of carrying out mining operations or regulated activities,

is guilty of an offence.

Maximum penalty: \$120 000.

- (2) An application to the Trust for permission to carry out mining operations or regulated activities on Trust Land—
- (a) must be made in a manner and form determined by the Trust; and
  - (b) except in the case of an application for permission to prospect for minerals pursuant to section 20 of the *Mining Act 1971*—
    - (i) may only be made by a person who has applied for a mining authority in respect of the Trust Land under the relevant mining Act; and
    - (ii) must contain, or be accompanied by, all information submitted by the applicant to the Minister to whom the administration of the relevant mining Act is committed in support of the application for the mining authority.
- (3) The applicant—
- (a) must, at the request of the Trust, provide the Trust with such further information as the Trust may reasonably require to determine the application for permission; and
  - (b) must, as soon as practicable after making an application for permission, notify the Minister to whom the administration of the relevant mining Act is committed of the application.
- (4) Before determining an application for permission, the Trust—
- (a) must undertake consultation in respect of the matter in accordance with section 8; and
  - (b) must consult with any other person or body specified in the regulations for the purposes of this subsection; and
  - (c) must comply with any other requirements set out in the regulations for the purposes of this paragraph.
- (5) Subject to this section, the Trust may—
- (a) grant permission to carry out mining operations or regulated activities on the Trust Land unconditionally; or
  - (b) grant permission to carry out mining operations or regulated activities on the Trust Land subject to such conditions as the Trust thinks fit; or
  - (c) refuse permission to carry out mining operations or regulated activities on the Trust Land.

- (6) The Trust must, as soon as is reasonably practicable after determining an application, give notice in writing of the determination to—
  - (a) the applicant; and
  - (b) the Minister to whom the administration of the relevant mining Act is committed.
- (7) The reasonable costs and expenses incurred by the Trust in dealing with an application for permission may be recovered from the applicant as a debt.
- (8) Any payment made under subsection (7) must, if the application is subsequently determined in favour of the applicant but on condition that compensation be paid to the Trust, be regarded as a payment made on account of that compensation.

#### 54—Arbitration

- (1) If, in relation to an application under section 53—
  - (a) the Trust refuses permission to carry out mining operations or regulated activities on Trust Land; or
  - (b) the Trust grants its permission to carry out mining operations or regulated activities on Trust Land subject to conditions that are unacceptable to the applicant; or
  - (c) the applicant has not, within 4 months after the date of the application, received notice of a determination under section 53(6),the applicant may, in a manner and form determined by the Minister to whom the administration of the relevant mining Act is committed, request that Minister to refer the application to an arbitrator.
- (2) If the Minister to whom the administration of the relevant mining Act is committed receives a request under subsection (1), the application must be referred to an arbitrator appointed by that Minister.
- (3) At least 21 days before an arbitrator is appointed under subsection (2), the Minister to whom the administration of the relevant mining Act is committed must—
  - (a) inform the Trust of whom he or she proposes to appoint; and
  - (b) consider any submissions of the Trust in relation to the proposed appointment.
- (4) The arbitrator—
  - (a) must be—
    - (i) a judge, or retired judge, of the High Court, the Federal Court of Australia, or the Supreme Court of a State or Territory of Australia; or
    - (ii) a legal practitioner of at least 7 years standing; and
  - (b) has the powers of a commission of inquiry under the *Royal Commissions Act 1917*; and
  - (c) may refer a question of law for the opinion of the Full Court of the Supreme Court.

- (5) After hearing the evidence and submissions of—
- (a) the Trust; and
  - (b) the applicant; and
  - (c) the Minister to whom the administration of the relevant mining Act is committed; and
  - (d) the Minister to whom the administration of this Act is committed,
- and any other evidence and submissions he or she thinks fit to receive, the arbitrator may—
- (e) affirm, vary or reverse the determination of the Trust in respect of the application for permission; or
  - (f) if no determination has been made by the Trust in respect of the application for permission—determine the application as the arbitrator thinks fit.
- (6) The arbitrator may, if he or she thinks fit, award against the applicant and in favour of the Trust an amount that represents, in the arbitrator's opinion, the reasonable costs and expenses incurred by the Trust in relation to the arbitration.
- (7) An amount awarded under subsection (6) may be recovered by the Trust as a debt.
- (8) In determining an arbitration under this section, the arbitrator must have regard to—
- (a) the effect of granting the relevant mining authority on—
    - (i) Aboriginal persons with an interest in, and any other residents on, the Trust Land; and
    - (ii) the activities of the Trust; and
  - (b) the suitability of the applicant to carry out the proposed mining operations or regulated activities and capacity, in carrying out those operations, to minimise disturbance to the Trust Land; and
  - (c) the preservation of the natural environment; and
  - (d) the economic and other significance of the operations to the State and Australia,
- and may have regard to any other matter the arbitrator thinks appropriate.
- (9) The arbitrator must hear and determine the arbitration as expeditiously as possible.
- (10) A determination under this section is binding on the Trust, the applicant and the Crown.
- (11) The *Arbitration Act 1891* does not apply to an arbitration under this section.
- (12) The regulations may make further provision in relation to an arbitration under this section.

## 55—Royalty

- (1) Subject to subsection (2), the Treasurer must cause an amount equal to two-thirds of the total royalty paid under the mining Acts that relates to mining operations or regulated activities on Trust Land to be paid to the Trust.

**Note—**

One half of the amount paid under this section (that is, one-third of the total royalty paid) must be spent improving the Trust Land, or for the benefit of communities living on the Trust Land, where the mining occurred—see section 21(3).

- (2) If the total amount to be paid to the Trust under this section exceeds the prescribed limit in any financial year, the excess is to be paid into the Consolidated Account.

## 56—Certain payments or other consideration to Trust must represent fair compensation

- (1) This section applies to payments made, or to be made, or consideration given, or to be given, to the Trust (not being a payment of royalty under section 55) in respect of the carrying out or proposed carrying out of mining operations or regulated activities on Trust Land.
- (2) A payment or consideration to which this section applies must be reasonably proportioned to the disturbance to the Trust Land, and the ways-of-life of Aboriginal persons living on, or with responsibilities for, the Trust Land, that has resulted or is likely to result from the grant of the relevant mining authority.

**Note—**

A reasonably proportionate amount of such payments must be spent on the Trust Land, or for the benefit of communities living on the Trust Land, to which the payment relates—see section 21(3).

- (3) A person who makes or gives, or agrees to make or give, a payment or consideration to which this section applies must, within 14 days of the date of making or giving the payment or consideration, or entering into the agreement, notify the Minister to whom the administration of the relevant mining Act is committed of the amount or value of the payment or consideration, or of the terms of the agreement.

Maximum penalty: \$2 000.

## Part 8—Delivery of services under *Local Government Act 1999* and *Outback Communities (Administration and Management) Act 2009*

### 57—Trust to liaise with councils etc

- (1) Without limiting a provision of the *Local Government Act 1999*, the Trust must, in relation to Trust Land that is located within the area of a council, take reasonable steps to liaise with the council in respect of the provision of services and facilities under that Act on, or in relation to, the Trust Land.

- (2) Without limiting a provision of the *Outback Communities (Administration and Management) Act 2009*, the Trust must, in relation to Trust Land located in the outback, take reasonable steps to liaise with the Outback Communities Authority in respect of the provision of public services and facilities under that Act on, or in relation to, the Trust Land.
- (3) Without limiting this section or any other provision of this Act, the Trust must ensure that each lease granted over Trust Land contains provisions of the following kinds:
  - (a) a provision requiring the lessee of the Trust Land to grant access to the Trust Land by the relevant council, the Outback Communities Authority or specified services providers for the purpose of providing services and facilities;
  - (b) any other provision required by the regulations for the purposes of this subsection.
- (4) In this section—

*area*, in relation to a council, and *council* have the same meanings as in the *Local Government Act 1999*;

*outback* and *Outback Communities Authority* have the same meanings as in the *Outback Communities (Administration and Management) Act 2009*.

## **Part 9—Dispute resolution**

### **58—Conciliator**

- (1) There will be a conciliator for the purposes of this Act.
- (2) The conciliator will be appointed by the Minister, after consultation with the Trust, for a term, and on conditions, determined by the Minister.

### **59—Dispute resolution by conciliator**

- (1) An Aboriginal person who lives on, has responsibilities for or has an interest in Trust Land who is aggrieved by a decision of the Trust relating to the Trust Land may appeal to the conciliator against that decision.
- (2) The conciliator may refuse to hear an appeal if he or she is of the opinion—
  - (a) that the appeal lacks substance, is unnecessary or unjustifiable, or is frivolous, vexatious or not made in good faith; or
  - (b) that the matter to which the appeal relates should be determined by way of legal proceedings.
- (3) Before hearing an appeal, the conciliator should, so far as is practicable, endeavour to resolve the dispute by mediation between the parties.
- (4) The conciliator is not bound by the rules of evidence in proceedings under this section, but may inform himself or herself in such manner as he or she thinks fit.
- (5) In proceedings under this section, the conciliator must—
  - (a) give effect to the principles of this Act; and
  - (b) seek to further the objects of this Act; and

- (c) act fairly and consider the need of the Trust to act in the interests of all Aboriginal South Australians.
- (6) The conciliator may, in proceedings under this section—
  - (a) give such directions as he or she considers necessary or appropriate to resolve any matters in dispute; or
  - (b) refer the matter back to the Trust to be further dealt with in accordance with his or her directions.
- (7) A direction under this section that is inconsistent with this or any other Act or law is, to the extent of the inconsistency, void and of no effect.
- (8) The regulations may make further provisions in relation to proceedings under this section.

### **60—Order compelling compliance with direction of conciliator**

- (1) If a person or body refuses or fails to comply with a direction of the conciliator, any party to the proceedings before the conciliator may apply to the District Court for an order to compel that person or body to comply with the direction.
- (2) On an application under this section, the District Court must, unless satisfied that the direction of the conciliator is unjust or unreasonable, make an order requiring the person or body against whom the direction was made to comply with the direction.
- (3) Proceedings under this section must be conducted as expeditiously as possible and without undue formality.

## **Part 10—Miscellaneous**

### **61—Exemption from stamp duty**

No stamp duty is payable in respect of an instrument comprising, or relating to the conveyance or transfer of, or the creation of any other interest in or over, Trust Land.

### **62—Liability of directors**

If a body corporate is guilty of an offence against section 53, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the member proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

### **63—General defence**

- (1) Subject to subsection (2), it is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.
- (2) This section does not apply in relation to a person who is charged with an offence under section 53.

## 64—Confidentiality

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
- (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) in connection with the administration of this Act; or
  - (d) to an authority responsible under the law of a place outside this State, where the information is required for the proper administration of that law; or
  - (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

## 65—Service

A notice or document required or authorised by this Act to be given to a person may be given as follows:

- (a) by personal service on the person or an agent of the person;
- (b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years;
- (c) by serving it by post on the person or an agent of the person;
- (d) if the person's whereabouts are unknown—by affixing it in a prominent position on the land to which it relates, or publishing a copy of it in a newspaper circulating generally throughout the State;
- (e) in a manner prescribed by regulation.

## 66—Evidentiary provision

In any proceedings—

- (a) a certificate apparently signed by the Minister, or a delegate of the Minister, that on a specified date, or during a specified period, specified land was or was not Trust Land will, in the absence of proof to the contrary, be accepted as proof of the matter certified; and

- (b) a map or plan apparently signed by the Surveyor-General or an officer of the Surveyor-General will be accepted, in the absence of proof to the contrary, as an accurate map or plan of the land to which it relates; and
- (c) a certificate of value apparently signed by the Valuer-General or an officer of the Valuer-General will be accepted, in the absence of proof to the contrary, as proof of the value of the Trust Land, lease, improvements or other thing to which it relates as at the date of valuation specified in the certificate.

### **67—Review of Trust Land**

- (1) The Minister must cause a review of all Trust Land to be conducted for the purposes of—
  - (a) ensuring that all Trust Land is accurately identified and described; and
  - (b) identifying and accurately recording any easements or other encumbrances on Trust Land,and must cause a report on the results of the review to be submitted to the Minister.
- (2) The review and the report must be completed before the third anniversary of the commencement of this Act.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

### **68—Review of Act by Aboriginal Lands Parliamentary Standing Committee**

- (1) Without limiting the *Aboriginal Lands Parliamentary Standing Committee Act 2003*, the Aboriginal Lands Parliamentary Standing Committee must, as soon as is reasonably practicable after the third anniversary of the commencement of this section, review the operation of this Act.
- (2) The Aboriginal Lands Parliamentary Standing Committee must, within 6 months after the review is completed, report on the matter to both Houses of Parliament.

### **69—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of specified regulations.
- (3) The regulations—
  - (a) may be of general or limited application; and
  - (b) may make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Trust, the Minister or any other specified person or body; and
  - (d) may apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another prescribed body.

- (4) A provision may, if the regulations so provide, take effect from a day that is earlier than the day on which the provision is made but, in such a case, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the Crown), the rights of that person existing before the date of publication of the regulation; or
  - (b) to impose liabilities on any person (other than the Crown) in respect of any thing done or omitted to be done before the date of publication of the regulation.

## **Schedule 1—Related amendments, repeals and transitional provisions**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Aboriginal Heritage Act 1988***

#### **2—Amendment of section 45—Commencement of prosecutions**

Section 45(1)(c)—after "1966" insert:

or the *Aboriginal Lands Trust Act 2013*

### **Part 3—Amendment of *Aboriginal Lands Parliamentary Standing Committee Act 2003***

#### **3—Amendment of section 3—Interpretation**

Section 3, definition of *the lands*—after "1966" insert:

or the *Aboriginal Lands Trust Act 2013*

#### **4—Amendment of section 6—Functions of Committee**

Section 6(a)—delete "*Aboriginal Lands Trust Act 1966*" and substitute:

*Aboriginal Lands Trust Act 2013*

### **Part 4—Amendment of *Real Property Act 1886***

#### **5—Substitution of section 6**

Section 6—delete section 6 and substitute:

#### **6—Inconsistency with other Acts**

Unless the contrary intention is expressly indicated, in the event of an inconsistency with any other Act in respect of land to which this Act applies, this Act will prevail to the extent of the inconsistency.

## **Part 5—Repeal of *Aboriginal Lands Trust Act 1966***

### **6—Repeal of Act**

The *Aboriginal Lands Trust Act 1966* is repealed.

## **Part 6—Transitional provisions**

### **7—Offices of Trust vacated on commencement of Act**

- (1) The office of each member of the Trust is vacated on the commencement of this clause.
- (2) Section 10 does not apply in relation to the appointment of a person to fill an office vacated by this clause.

### **8—Transfer of employment of Trust staff**

- (1) A person employed by the employing authority (within the meaning of the repealed Act) immediately before the commencement of this clause is transferred to the employment of the Trust.
- (2) Except where the Governor makes a proclamation under subclause (3) that provides otherwise, a person's employment is subject to the same terms and conditions of employment that applied to the person's employment immediately before the commencement of this clause.
- (3) The Governor may, by proclamation, make further provision in relation to the transfer of a person, or class of persons, under this clause (and a proclamation under this subclause will have effect according to its terms).
- (4) A transfer of a person under this clause does not constitute a breach of the person's contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose.

### **9—Appointment of managers of Trust Land under repealed Act to continue**

- (1) On the commencement of this clause, a manager or management committee appointed in respect of particular Trust Land under section 16AA of the repealed Act will be taken to have been appointed as a manager of that Trust Land under section 45.
- (2) Subject to this Act, the appointment of a manager of Trust Land by this clause will be taken to be subject to the same conditions, and will continue for the remainder of the term, applying immediately before the commencement of this clause to the person's or body's appointment under section 16AA of the repealed Act.

### **10—Continuation of leases and licences**

A lease or licence granted under the *Aboriginal Lands Trust Act 1966* and in force immediately before the commencement of this clause continues in force in accordance with its terms as if it were a lease or licence (as the case requires) granted under this Act.

### **11—Transitional provision for purposes of section 49**

A requirement of recommendation or consultation under section 49 does not apply in relation to the first regulations made under that section to the extent that the regulations are substantially the same as the *Aboriginal Lands Trust (Umoona Community) Regulations 2007* or the *Aboriginal Lands Trust (Yalata Reserve) Regulations 2005*, in each case as in force immediately before the commencement of this clause.

### **12—Transitional provisions for purposes of section 50**

- (1) For the purposes of section 50, a person who was, immediately before the commencement of this clause, an authorised officer pursuant to section 16A(1)(b) of the repealed Act (as in force immediately before the commencement of this clause) will be taken to be an authorised officer appointed by the Minister to whom the administration of the *Public Intoxication Act 1984* is committed on the recommendation of the Trust (and any conditions or limitations prescribed or otherwise applicable under that section will continue to apply according to their terms).
- (2) Subject to this Act, a proclamation made under section 16A(2) of the repealed Act continues to have effect according to its terms as if it were a proclamation made under section 50.

### **13—Transitional provisions—mining**

- (1) This clause applies to a mining authority granted, or purportedly granted, under a mining Act and that is in force, or purportedly in force, immediately before the commencement of this clause.
- (2) Despite a provision of Part 7 of this Act, a mining authority to which this clause applies—
  - (a) will, despite a provision of the repealed Act, be taken to have been validly granted; and
  - (b) will, subject to the relevant mining Act, be taken to continue in accordance with its terms until its expiry in accordance with that Act.
- (3) Section 53 will be taken not to apply to a person who holds a mining authority to which this clause applies to the extent that the holder of the mining authority, and his or her agents, contractors and employees—
  - (a) carries out any mining operations conducted pursuant to the mining authority in accordance with the relevant mining Act; and
  - (b) complies with any conditions or limitations that apply to, or in relation to, the mining authority under the relevant mining Act.
- (4) For the purposes of this clause, a renewal (however described) of a mining authority to which this clause applies will be taken to be a grant of a new mining authority.
- (5) A term or phrase used in this clause that is defined in Part 7 of the Act has the same meaning as in that Part.

(6) In this clause—

*relevant mining Act*, in relation to a particular mining authority, means the mining Act under which the mining authority was granted or purportedly granted.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2013	81	<i>Aboriginal Lands Trust Act 2013</i>	5.12.2013	1.7.2014 ( <i>Gazette 6.2.2014 p546</i> )