

Queensland



LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

**Reprinted as in force on 27 May 1994
(includes amendments up to Act No. 70 of 1993)**

Reprint No. 1 revised edition

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Information about this reprint

This Act is reprinted as at 27 May 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- use gender neutral office names (s 25)
- correct spelling and use different spelling consistent with current legislative drafting practice (s 26(2))
- use standard punctuation consistent with current legislative drafting practice (s 27)
- use conjunctives and disjunctives consistent with current legislative drafting practice (s 28)
- use expressions consistent with current legislative drafting practice (s 29)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- omit provisions that are no longer required (ss 36 and 39)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43)
- make all necessary consequential amendments (s 7(1)(k)).

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in the reprint, including—**
 - **table of changed names and titles**
 - **table of changed citations and remade laws**
 - **table of obsolete and redundant provisions**
 - **table of renumbered provisions.**

Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.



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LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

[as amended by all amendments that commenced on or before 27 May 1994]

An Act to provide for the creation of a local government area at Aurukun and a local government area at Mornington Island and for purposes connected therewith

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Local Government (Aboriginal Lands) Act 1978*.

Meaning of terms

3.(1) In this Act—

“**Aboriginal Council**” means an Aboriginal Council established pursuant to section 31 of the *Aborigines Act 1971*;

“**Aboriginal land**” has the meaning given by section 2.04 of the *Aboriginal Land Act 1991*;

“**Aurukun Reserve**” means the reserve that existed for the benefit of the Aboriginal inhabitants of the State at Aurukun and that was abolished by order in council dated 6 April 1978 published in the Gazette Extraordinary of the same date;

“**liquor**” means wines, spirits, beer, ale, porter, stout, cider, perry or any other spirituous or fermented fluid whatever of an intoxicating nature;

“**Mornington Reserve**” means the reserve that existed for the use of the

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Aboriginal inhabitants of the State at Mornington Island and that was abolished by order in council dated 6 April 1978 published in the Gazette Extraordinary of the same date;

“**public purposes**” means any purpose defined as such by the *Land Act 1962* and the purpose of townships.

PART 2—INCORPORATION OF ABORIGINAL COUNCILS AND GRANT OF LEASE

Grant of leases to councils

6.(1) As soon as practicable after the passing of this Act, the Governor in Council shall, subject to subsection (3), grant—

- (a) to Council of the Shire of Aurukun, incorporated by section 4(2), a lease of the whole of the land comprising the Shire of Aurukun declared by section 9; and
- (b) to Council of the Shire of Mornington, incorporated by section 4(2), a lease of the whole of the land comprising the Shire of Mornington declared by section 10.

(1A) The land to which such a grant relates together with improvements included in the grant is in this Act referred to as the “**demised land**”.

(2) A grant pursuant to subsection (1)—

- (a) shall be made under and in accordance with this Act by way of a lease for the objects and purposes of this Act; and
- (b) shall be subject to the conditions and reservations set out in Schedule 1; and
- (c) shall be construed in accordance with this Act; and
- (d) save as is prescribed by subsection (4), shall not be one to which the *Land Act 1962* applies.

(2A) The reservation and setting apart, prior to the date of commencement of Part 2 of the *Local Government (Aboriginal Lands) Act*

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Amendment Act 1978, of land, which pursuant to section 9 or 10 is part of the Shire of Aurukun or, as the case may be, Shire of Mornington, as a reserve for any public purpose is hereby cancelled and each order in council by which the same was reserved and set apart shall be deemed to have been rescinded.

(3) When making a grant pursuant to subsection (1) the Governor in Council may reserve to the Crown—

- (a) in the case of the grant to Council of the Shire of Aurukun—the right to reserve and set apart for 1 or more of prescribed public purposes, whether specified or not—
- (i) parts of the demised land being the shaded areas shown on the plan contained in Schedule 2; and
 - (ii) parts of the demised land in or adjacent to the existing township in the shire being of an aggregate area of 4 ha approximately;

without specifying, in relation to the parts referred to in subparagraph (ii), in the grant or in the instrument of lease evidencing the same the parts of the demised land affected by the reservation;

- (b) in the case of the grant to Council of the Shire of Mornington—the right to reserve and set apart for 1 or more of prescribed public purposes, whether specified or not—
- (i) parts of the demised land being the shaded areas shown on the plan contained in Schedule 3; and
 - (ii) parts of the demised land in or adjacent to the existing township in the shire being of an aggregate area of 4 ha approximately;

without specifying, in relation to the parts referred to in subparagraph (ii), in the grant or in the instrument of lease evidencing the same the parts of the demised land affected by the reservation;

- (c) in the case of each grant—the right to reserve and set apart for public purposes, whether specified or not, any part or parts of the demised land of an area to be specified but not exceeding 500 ha

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in the case of the grant to Council of the Shire of Aurukun and 100 ha in the case of the grant to Council of the Shire of Mornington, without specifying in the grant or in the instrument of lease evidencing the same the part or parts of the demised land affected by the reservation.

(3A) For the purposes of subsection (3)(a) and (b) a prescribed public purpose is 1 of the following purposes—

- (a) departmental and official purposes;
- (b) educational institutions or education purposes;
- (c) health purposes or hospitals;
- (d) police purposes.

(3B) The reservation and setting apart of land pursuant to the right reserved under subsection (3) shall be effected by the Governor in Council by order in council and the provisions of Part 11 of the *Land Act 1962* apply in relation thereto as of the land in question were Crown land and the reservation and setting apart were authorised by that Part of that Act.

(3C) Upon publication in the Gazette of the order in council—

- (a) the land so reserved and set apart shall thereby be excised from the demised land, shall be taken to have been reserved and set apart for the public purpose specified by the order in council and may be dealt with in accordance with Part 11 of the *Land Act 1962*;
- (b) the Registrar of Titles shall make all necessary entries and endorsements in and on the registers of dealings affecting land under the *Land Act 1962* and the relevant instrument of lease to evidence the excision of the land so reserved and set apart from the demised land.

(3D) Compensation in respect of the excision of land from the demised land pursuant to the right reserved under subsection (3) shall be limited to the value of any improvements on the land so excised that are not the property of the Crown.

(4) The provisions of the *Land Act 1962* that provide for registration of grants made pursuant to that Act and of instruments of lease evidencing

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such grants and of other instruments affecting the same apply to a grant made pursuant to subsection (1) and to an instrument of lease evidencing the grant and any other instrument affecting the same.

(5) The Governor in Council may grant a further lease to the Council of the Shire of Aurukun or the Council of the Shire of Mornington for such term and upon such conditions and reservations as the Governor in Council thinks fit if the Governor in Council is satisfied—

- (a) that the terms and conditions of the lease granted to the council concerned pursuant to subsection (1) have been satisfactorily complied with; and
- (b) that it is desirable in the light of all the circumstances existing at that time that a further lease should be granted.

Grant to include improvements

7. A grant made pursuant to section 6 (1) shall include and shall be taken to include improvements, the property of the Crown, which—

- (a) are on the land to which the grant relates at the time when the grant is made; or
- (b) are erected on the demised land after the time when the grant is made.

Councils to be trustees

8. All interests in land held by Council of the Shire of Aurukun or Council of the Shire of Mornington, the bodies incorporated by section 4(2) or by the Council of the Shire of Aurukun or the Council of the Shire of Mornington, the local governments constituted under the *Local Government Act 1993*, shall be deemed to be held in trust for the benefit of persons who for the time being reside on any part of the land and the holder of those interests shall be deemed to be a trustee of the same for that purpose.

PART 3—LOCAL GOVERNMENT AREAS AND COUNCILS

Shire of Aurukun

9. The area delineated on map No. SC 211 deposited in the Department of Mapping and Surveying at Brisbane as the Shire of Aurukun is hereby declared to be an area and a shire within the meaning of the *Local Government Act 1993* which, unless its name is duly altered according to law, shall be called by the name, Shire of Aurukun.

Shire of Mornington

10. The area delineated on map No. SC 212 deposited in the Department of Mapping and Surveying at Brisbane as the Shire of Mornington is hereby declared to be an area and a shire within the meaning of the *Local Government Act 1993* which, unless its name is duly changed according to law, shall be called by the name, Shire of Mornington.

Copies of maps to be held

11.(1) A copy of the map referred to in section 9 shall be held in the office of the chief executive of the department at Brisbane and in the office of Council of the Shire of Aurukun.

(3) A copy of the map referred to in section 10 shall be held in the office of the chief executive of the department at Brisbane and in the office of the Council of the Shire of Mornington.

(4) The obligation to hold a map specified in subsections (1) and (3) in an office specified therein shall continue only until another map is substituted for that map following an alteration of the boundaries to which that map relates.

Aurukun and Mornington Shire Councils

12. Each of them the Council of the Shire of Aurukun and the Council of the Shire of Mornington shall be a local government within the meaning of

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the *Local Government Act 1993*, shall be deemed to be constituted under that Act and, subject to this Act, shall have the functions, powers, duties and obligations of a local government under that Act in respect of its area.

Application of Local Government Act

14. Subject to this Act, the provisions of the *Local Government Act 1993* apply to and in relation to—

- (a) the areas and shires declared by sections 9 and 10 each of which shall be deemed to be an area constituted under that Act; and
- (b) the councils constituted for those shires as prescribed by that Act and the bodies corporate deemed to be such councils as prescribed by this Act.

Modification of power to dissolve shire councils

16. The Council of the Shire of Aurukun or the Council of the Shire of Mornington may be dissolved under section 113 (Dissolution of local government) of the *Local Government Act 1993* only after consultation between appropriate State and Commonwealth Ministers.

PART 4—COORDINATING AND ADVISORY COMMITTEES

Appointment of committees

17.(1) As soon as practicable after the passing of this Act there shall be appointed and, for the prescribed period, maintained 2 committees each of which shall be called the Coordinating and Advisory Committee.

(1A) One such committee shall be appointed for the Shire of Aurukun and the other such committee shall be appointed for the Shire of Mornington.

(2) The prescribed period referred to in subsection (1) is 3 years

commencing on the date on which the committee in question is first appointed and, if the council of the shire for which the committee is appointed requests that the committee be continued in existence, such further period or periods as the council so requests.

Composition of committees

18.(1) Each Coordinating and Advisory Committee shall be comprised of—

- (a) a representative of the Minister;
- (b) a representative of the Minister for Aboriginal and Island Affairs;
- (c) a representative of the Minister of State for the Commonwealth for Aboriginal Affairs.

(2) Each person proposed for membership of a committee shall be nominated by the Minister whom the person is to represent and, subject to section 20, shall be appointed by the Governor in Council by notification published in the Gazette.

(3) The term of appointment of each member of a committee shall be 3 years commencing on the date on which the member's appointment is notified in the Gazette.

Appointment of substitute members

19. Upon a vacancy in the office of a member of a Coordinating and Advisory Committee before the expiration by effluxion of time of the member's term of appointment or at any time during the term of appointment of a member of a committee another person may be appointed in the manner prescribed by section 18(2) to be a member of the committee—

- (a) in the case of a vacancy—for the balance of the term of appointment of the member in whose office the vacancy has occurred; and
- (b) in any other case—during the absence or incapacity of the member for whom the person is appointed as a substitute.

Approval of nominees

20. A person shall not be appointed as a member of a Coordinating and Advisory Committee unless the person is acceptable as such to all Ministers who are entitled to nominate a proposed member.

Functions of committees

21. The functions of a Coordinating and Advisory Committee are—

- (a) to assist the council of the shire for which the committee is appointed in the formulation of policy towards the control and management of the shire for which the committee is appointed;
- (b) to assist in the fiscal management and economic planning of the shire for which the committee is appointed;
- (c) to advise the council of the shire for which the committee is appointed with respect to by-laws proposed by the council of that shire;
- (d) to advise generally the council of the shire for which the committee is appointed on matters relevant to the interests of the residents of that shire;
- (e) to keep the Minister, the Minister for Aboriginal and Island Affairs and the Minister of State for the Commonwealth for Aboriginal Affairs informed of matters in respect of which the committee has tendered advice or provided assistance.

Assistance to councils

22.(1) The Governor in Council may, of the Governor in Council's own motion or on the recommendation of the Minister, direct any Minister of the Crown in right of Queensland to provide such assistance as, in the opinion of the Governor in Council, is necessary to enable the Council of the Shire of Aurukun or the Council of the Shire of Mornington to perform its functions.

(2) A person who is assigned to perform work by way of assistance to either council aforesaid shall be taken to be performing a function under this Act while so engaged.

PART 5—PROVISIONS CONCERNING THE SHIRES AND THEIR COUNCILS

Right of residence in shires

23. The following persons are authorised to enter, to reside in and to be in the Shire of Aurukun or the Shire of Mornington—

- (a) an Aborigine who on 5 April 1978 was lawfully entitled to reside in the Aurukun Reserve or, as the case may be, the Mornington Reserve;
- (b) a descendant of an Aborigine referred to in paragraph (a);
- (c) an Aborigine who at any time lawfully resided in the Aurukun Reserve or, as the case may be, the Mornington Reserve or in the Shire of Aurukun or, as the case may be, the Shire of Mornington and who has obtained the approval of the council of the shire concerned to return to reside in the shire;
- (d) a descendant of an Aborigine referred to in paragraph (c);
- (e) a descendant of an Aborigine who, if the Aborigine had obtained the approval of the appropriate council would be an Aborigine referred to in paragraph (c), which descendant has obtained the approval of the council of the shire concerned to reside in the shire;
- (f) a person, other than one referred to in paragraphs (a) to (e), who intermarries or has intermarried with an Aborigine who is authorised or becomes authorised to reside in the Shire of Aurukun or, as the case may be, the Shire of Mornington;
- (g) a person who seeks entry to or is in the Shire of Aurukun or, as the case may be, the Shire of Mornington for the purpose of performing or exercising in the shire a function or power under this or any other Act or under an Act of the Commonwealth, if it is necessary or desirable for the proper performance or exercise of that function or power that the person be resident in the shire and if such function or power is directed to the needs or service of the shire or of any resident in the shire;

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- (h) a person who is the holder of land in the Shire of Aurukun or, as the case may be, the Shire of Mornington as trustee for a public purpose or who is the holder of a lease, licence, permit or other authority issued under any Act which in its express terms authorises the person to enter upon land that is in the Shire of Aurukun or, as the case may be, the Shire of Mornington, if it is necessary or desirable for the proper exercise of the entitlement conferred by the lease, licence, permit or other authority that the person be resident in the shire;
- (i) a person who is assisting or is acting under the direction or control of a person authorised by paragraph (g) or (h) to reside in the Shire of Aurukun or, as the case may be, the Shire of Mornington, whether or not such last mentioned person resides in the shire.

Entry upon and temporary stay in shires

24.(1) The following persons are authorised to enter and to be in the Shire of Aurukun or the Shire of Mornington and to remain therein until the purpose of their entry to the shire is fulfilled—

- (a) the Governor-General of Australia and the Governor of Queensland;
- (b) a person whose purpose in the shire is to bring to residents of the shire religious instruction, material comforts or medical aid;
- (c) a person whose purpose in the shire is to instruct himself or herself on affairs within the shire as a member of the Legislative Assembly of Queensland or of either House of the Parliament of the Commonwealth;
- (d) a person whose purpose in the shire is to campaign as a bona fide candidate for election to the Legislative Assembly of Queensland or either House of the Parliament of the Commonwealth at an election for which a writ that requires its holding has been duly issued;
- (e) a person who is assisting or is acting under the direction or control of a person referred to in paragraphs (a) to (d), if such last

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mentioned person is in the shire.

(2) A person shall not be taken to have the purpose of bringing religious instruction to residents of either shire referred to in subsection (1) unless the person is a person or is of a class of person ordinarily used by a church or other religious organisation, which itself is recognised as such throughout Australia, as a religious instructor.

Local laws may regulate presence in shires

25.(1) Each of them the Council of the Shire of Aurukun and the Council of the Shire of Mornington may, pursuant to its power to make local laws conferred by the *Local Government Act 1993* as modified by this Act—

- (a) make local laws that authorise persons of a class specified therein to enter, to be in or to reside in its area;
- (b) make local laws not inconsistent with this Act that exclude persons of a class specified therein from its area or prohibit or restrict persons of a class specified therein from entering, being in or residing in its area.

(2) The Council of the Shire of Aurukun or the Council of the Shire of Mornington must not make a local law under subsection (1) in respect of Aboriginal land in its area unless—

- (a) the grantees of the land—
 - (i) have consented to the proposed local law; and
 - (ii) have explained to the Aboriginal people particularly concerned with the land the nature, purpose and effect of the proposed local law; and
- (b) the Aboriginal people have been given adequate opportunity to express their views on, and are generally in agreement with, the proposed local law; and
- (c) it has subsequently given the Aboriginal people notice of not less than 1 month of its intention to make the local law.

(3) If land immediately before becoming Aboriginal land was subject to a local law made by the Council of the Shire of Aurukun or the Council of the

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Shire of Mornington under this section, the local law continues in force, but expires 1 year after the land becomes Aboriginal land.

Power of ejectment and control

26.(1) In addition to all other powers had by it to remove persons from land of which it is lessee, the Council of the Shire of Aurukun and the Council of the Shire of Mornington may cause its agents to summarily remove from its area—

- (a) any person who is there without authority conferred by this Act or by the local laws of the council;
- (b) any person—
 - (i) who belongs to a class of person that is excluded from its area by its local laws; or
 - (ii) who belongs to a class of person whose entry to its area is prohibited by its local laws; or
 - (iii) who, being a member of a class of person whose entry to, being in or residing in its area is restricted by its local laws, has contravened or failed to comply with the relevant local laws.

(2) Any police officer, upon being requested so to do by an agent of either council referred to in subsection (1), shall assist in the summary removal of any person under that subsection and, while so acting, is authorised to be in the shire concerned.

(2A) No liability shall attach to any police officer by reason only of the fact that a person in whose removal from an area the police officer has assisted should not have been so removed.

(3) It is lawful to use reasonable force in the exercise of the power conferred by subsection (1) and in assisting therein.

(4) A person who is lawfully removed from the Shire of Aurukun or from the Shire of Mornington and who at the time of the person's removal was qualified to be nominated as a candidate and to be elected as mayor or councillor of the local government of the shire shall, after the person's removal, not be qualified to be nominated as a candidate or to be elected or

appointed or to act as mayor or councillor of that local government unless the person becomes a resident in the shire, duly authorised according to law.

Reason for exclusion—right of appeal

27.(1) If any person is refused entry to or is prevented from entering upon or remaining in the Shire of Aurukun or the Shire of Mornington the council of the shire concerned shall, on the demand of that person, cause to be given to the person a notice in writing that sets out the reason for the refusal or prevention.

(2) A person who is refused entry to or is prevented from entering upon or remaining in a shire referred to in subsection (1) and who claims to be authorised by this Act or local laws referred to in section 25 to enter, be in or reside in the shire may appeal in respect of such refusal or prevention by written application to a Stipendiary Magistrate who for the time being is appointed as a Local Government (Aboriginal Lands) Appeals Magistrate.

(2A) The Governor in Council may by notification published in the Gazette appoint such number of Stipendiary Magistrates as the Governor in Council thinks fit to be Local Government (Aboriginal Lands) Appeals Magistrates as the Governor in Council thinks fit.

(3) Upon an application referred to in subsection (2) having been made the Magistrate may require the applicant and the council of the shire to which the application relates to furnish such information as the Magistrate deems necessary to enable the Magistrate to determine the matter of the application.

(4) Upon receipt of the information sought or in default of any such information being furnished within a time specified by the Magistrate, when the Magistrate is satisfied of the facts of the case, the Magistrate may make such order as appears to the Magistrate to be in accordance with law.

(5) The order of the Magistrate—

- (a) shall be final; and
- (b) shall bind the applicant and the council of the shire concerned and its agents; and
- (c) shall be given effect.

Person not to be in shires without authority

28.(1) A person shall not be in the Shire of Aurukun or the Shire of Mornington unless the person is authorised by this Act or local laws of the council of the shire.

(2) A person who is authorised to enter, be in or reside in either of them the Shire of Aurukun or the Shire of Mornington shall not, by reason of that authority alone, be authorised to enter, be in or reside in the other of the said shires.

Preservation of Aborigines' hunting and gathering rights

29.(1) Notwithstanding the provisions of any Act an Aborigine who lawfully resides in the Shire of Aurukun or the Shire of Mornington—

- (a) may capture, have in possession, and kill within the shire any specimen of native fauna and consume the same to the extent necessary for the sustenance of the Aborigine and members of the Aborigine's family or household;
- (b) may gather, dig and remove forest products, quarry material and similar material within the shire to the extent that the Aborigine requires the same for the Aborigine's domestic use.

(2) An Aborigine must not enter Aboriginal land for a purpose mentioned in subsection (1) unless the Aborigine is entitled or permitted to enter the land under Aboriginal tradition.

Mineral rights in shires

30.(1) From a grant made pursuant to section 6(1) there shall be reserved to the Crown—

- (a) all gold and minerals within the meaning of the *Mining Act 1968* and all mines of gold and minerals on or below the surface of the demised land;
- (b) all petroleum within the meaning of the *Petroleum Act 1923* on or below the surface of the demised land;
- (c) the free right of access, including ingress, egress and regress into,

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upon, over and out of the demised land for the purpose of searching for or working gold and minerals or mines of gold or minerals or of searching for or conducting the operations of obtaining petroleum;

- (d) all rights of way for access and for pipe lines and conveyors and for other purposes requisite for obtaining and conveying petroleum, gold, minerals, ore and other material from the demised land.

(2) Sections 29 and 30 of the *Aborigines Act 1971* apply in respect of prospecting or mining in the Shire of Aurukun and the Shire of Mornington as if each of those shires were a reserve for Aborigines established under that Act but for the purpose of that application—

- (a) a reference therein to the trustee of the reserve shall be read and construed as a reference to the council of the shire in which the prospecting or mining may occur;
- (b) a reference therein to the Minister shall be read and construed as a reference to the Governor in Council.

(3) Nothing in subsection (2) or in the provisions of law therein referred to shall affect the rights conferred by or the obligations assumed under or the status of any person under the agreement made with respect to mining bauxite in the Aurukun Reserve, a copy of which agreement is set out in the *Aurukun Associates Agreement Act 1975*, or under any amendment of that agreement.

Forestry rights in shires

31.(1) From a grant made pursuant to section 6(1) there shall be reserved to the Crown all forest products and quarry material within the meaning of the *Forestry Act 1959*, which Act shall apply to the demised land as if it were a Crown holding within the meaning of that Act.

(2) Notwithstanding the provisions of the *Forestry Act 1959* the Council of the Shire of Aurukun and the Council of the Shire of Mornington may authorise the gathering, digging and removal of forest products and quarry material on or in the demised land for the purpose of improving the demised land or of using the same on the demised land and the same may

be gathered, dug and removed to the extent duly authorised without the payment of royalty in respect thereof.

Restriction on councils' power over land

32. Notwithstanding the provisions of the *Local Government Act 1993* or section 4 of this Act each of them, the Council of the Shire of Aurukun, the body corporate incorporated by section 4 in that name, the Council of the Shire of Mornington and the body corporate incorporated by section 4 in that name is not empowered—

- (a) to sublet the land to which a grant made pursuant to section 6(1) relates or any part of the demised land or to create any interest in the demised land or any part thereof less than the interest held by it under such grant;
- (b) to sell or otherwise dispose of the interest in the demised land held by it under such grant;
- (c) to grant any licence to occupy or other right to exclusive possession in the demised land or any part thereof;
- (d) to mortgage or otherwise charge the interest in the demised land held by it under such grant;
- (e) to subdivide or agree to the subdivision of the demised land or any part thereof;
- (f) to acquire or hold land or any interest in land otherwise than as provided in section 6(1);

save in accordance with proposals submitted by the council or, as the case may be, the body corporate to the Minister and approved by the Governor in Council.

Law and order in shires

33.(1) For the purposes of any law that confers powers exercisable in public places the Shire of Aurukun and the Shire of Mornington shall be deemed to be public places except for such parts thereof as are used by a resident therein as the resident's residence or place of business.

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(1A) Persons exercising or about to exercise such powers or any of them are authorised to be in the shire in which the exercise is occurring or is about to occur.

(2) The function of maintaining peace and good order in all parts of the demised land in the Shire of Aurukun or the Shire of Mornington shall be that of persons who are appointed, for the time being, as Aboriginal police for the shire pursuant to subsection (2A).

(2A) The council of each of the Shires aforesaid may, subject to the approval of the Minister for Police, appoint such number of persons as it considers necessary for the peace and good order of the shire to be Aboriginal police for the shire and shall equip such persons appointed with a uniform and such other marks of authority as it thinks fit to enable such persons to perform their function.

(2B) Aboriginal police appointed for a shire shall have and may exercise, within the area of their jurisdiction prescribed by subsection (2), such powers as are conferred on them by local law of the council of the shire, and if at any time a police officer is stationed in the shire or is in the shire in execution of the police officer's duty they shall perform their function and exercise their powers subject to the direction and control of such police officers.

(3) It is lawful for a person charged by subsection (2) with the maintenance of peace and good order to use reasonable force in the performance of that function.

Appointment of chief executive officer of councils

34.(1) Until a date to be appointed by the Governor in Council on the recommendation of the Minister made after consultation with the Minister for Aboriginal and Island Affairs and the Minister of State for the Commonwealth for Aboriginal Affairs, a person appointed by the Council of the Shire of Aurukun or the Council of the Shire of Mornington or by a body corporate deemed to be such a council to be chief executive officer of the shire shall be taken not to be such chief executive officer unless, before the person's appointment the person was approved for such appointment by the Minister after such consultation as aforesaid.

(2) Subject to subsection (1), the appointment of a person as chief

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executive officer of the Shire of Aurukun or, as the case may be, the Shire of Mornington shall be taken to have been duly made under the *Local Government Act 1993* and the appointee shall be taken to be chief executive officer of the shire notwithstanding that the appointee has not the qualifications required of such a chief executive officer by that Act.

(3) If at any time the Council of the Shire of Aurukun or the Council of the Shire of Mornington or a body corporate deemed to be such a council fail to duly appoint a person to be chief executive officer of the shire, the person nominated by the Governor in Council to perform the duties of chief executive officer of the shire in question shall be taken to be such chief executive officer while the person continues to perform such duties.

Sale and supply of beer in shires

36.(1) Each of them, the Council of the Shire of Aurukun and the Council of the Shire of Mornington, is authorised to establish and maintain within its shire premises for the sale and supply of beer to persons in the shire and to conduct within its shire the business of selling and supplying beer to such persons.

(2) The authority conferred by subsection (1) on the Council of the Shire of Mornington includes authority to take over and maintain the premises known as 'the Canteen' on Mornington Island and to conduct in and from those premises the business of selling and supplying beer to persons in the shire.

(3) If the authority conferred by subsection (1) is exercised by a council, it shall be exercised as a function of local government and as an undertaking of that council subject to and in accordance with the *Local Government Act 1993* and may be exercised through such person or persons as are nominated by the council and approved by the Governor in Council by order in council.

(4) The provisions of the *Liquor Act 1912*, other than sections 58(1), 59, 60, 61, 61A, 61B, 61C, 61D, 79, 80, 81, 82, 95 and 152 to 159 (both inclusive) thereof, do not apply in respect of the establishment or maintenance of premises for the sale and supply of beer pursuant to the authority conferred by subsection (1) or in respect of the conduct therein and therefrom of the business of selling and supplying of beer pursuant to that

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authority or in respect of the consumption of beer so sold and supplied.

(4A) For the purpose of the application of provisions of the *Liquor Act 1912* in respect of such premises in the Shire of Aurukun or the Shire of Mornington the premises shall be deemed to be premises of a licensee within the meaning of that Act and the person for the time being conducting such business therein as nominee of the relevant council shall be deemed to be the licensee of the premises within the meaning of that Act.

(4B) The provisions of section 58(1) of the *Liquor Act 1912* authorising a court to order the forfeiture of a license within the meaning of that Act do not apply in relation to a person who, by virtue of this section, is deemed to be the licensee of licensed premises within the meaning of that Act.

(5) Each of them the Council of the Shire of Aurukun and the Council of the Shire of Mornington may, pursuant to its power to make local laws conferred by the *Local Government Act 1993* as modified by this Act, make local laws with respect to the establishment and maintenance within its shire of premises in and from which beer may be sold and supplied; with respect to the sale, supply and consumption of beer sold and supplied in and from such premises; and with respect to the conduct of such premises.

(6) Surplus moneys in the undertaking fund established or maintained for an undertaking conducted under the authority conferred by subsection (1) may, after payment of or making proper allowance for payment of costs and expenses of the undertaking, be applied for the welfare of residents of the shire in which it is conducted and for works and services directed towards such welfare notwithstanding that the purpose of such application is not a purpose for which a local government may lawfully apply, or does ordinarily apply, any of its funds.

Prohibition orders upon liquor abuse

37.(1) If it appears to the Council of the Shire of Aurukun or the Council of the Shire of Mornington that the life, health or wellbeing of any person ordinarily resident in its shire is or is likely to be threatened by any other person ordinarily resident in its shire or that the peace and good order of its shire is or is likely to be threatened by any person, in either case by reason of having consumed liquor, the relevant council may, by its resolution, direct the chief executive officer of its shire or a person authorised by it in

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that behalf, generally or in a particular case, to issue to the person who poses or is likely to pose the threat a notice under this section.

(2) Upon receiving a direction under subsection (1) the chief executive officer of the shire or other authorised person shall issue under his or her hand a notice in writing to the person concerned calling on the person to show cause to the council of the shire, at a time and place specified in the notice, why the person should not be made subject to a prohibition order made under this section.

(2A) A notice issued under subsection (2) may be given to the person to whom it is issued—

- (a) by delivering it to the person personally; or
- (b) by leaving it at or sending it by post addressed to the person at the address of the person's place of residence or business last known to the person who issued the notice.

(3) If at the time and place specified in a notice issued under subsection (2) or at any time and place to which the matter may be adjourned the person called on by the notice does not show cause sufficient in the opinion of the council of the shire why the person should not be made subject to a prohibition order the council shall, by its resolution, make and direct the issue of such an order in relation to that person.

(3A) The order shall be issued by the chief executive officer of the shire under the seal of the council of the shire.

(3B) Cause may be shown under subsection (3) by written submission, or by oral submission made in person by the person called on to show cause.

(4) A prohibition order made under subsection (3)—

- (a) shall be in or to the effect of a form adopted by resolution of the council that made and directed the issue of the order; and
- (b) shall continue in effect for a period of 6 months from the date of its making or for such less period as is specified therein in that behalf, unless it is sooner rescinded upon an appeal made under this Act in respect of the making of the order; and
- (c) shall forbid—

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- (i) the person subject to the order to have in the person's possession or to consume liquor within the shire in which the order is made; and
- (ii) all persons to supply liquor to the person subject to the order in circumstances such that it is reasonable to expect that the person's possession or consumption of the liquor will be a breach of the order;

and a copy of the order shall be given to the person subject to it and the council shall cause a further copy to be exhibited in a prominent place within the shire and to be kept so exhibited for as long as the order continues in effect.

(5) A person subject to a prohibition order made under subsection (3) may, in accordance with this subsection and subsection (5B), appeal against the making of the order to a Local Government (Aboriginal Lands) Appeals Magistrate referred to in section 27 who may—

- (a) require the appellant and the relevant council to furnish to the Magistrate such information as the Magistrate deems necessary to determine the matter of the appeal; and
- (b) confirm the order, rescind the order or vary the order in such manner as the Magistrate thinks just and confirm the order as so varied;

and shall cause notification of the Magistrate's decision of the appeal to be given in writing to the appellant and to the relevant council.

(5A) The decision of the Magistrate upon an appeal shall be final and binding on the appellant, the relevant council and all other persons.

(5B) An appeal shall be made in writing within 21 days after the date of issue of the prohibition order to which it relates.

(6) A person subject to a prohibition order made under subsection (3) who has in the person's possession or consumes liquor in the shire in which the prohibition order was made commits an offence against this Act.

(6A) A person who supplies liquor to a person knowing the person to be subject to a prohibition order made under subsection (3) in contravention of the prohibition order commits an offence against this Act.

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(6B) A person who is alleged to have committed an offence defined in subsection (6) or (6A) may be prosecuted in a summary way under the *Justices Act 1886* upon the complaint of—

- (a) the chief executive officer of the shire in which the order was made; or
- (b) any person authorised in that behalf, generally or in a particular case, by the council of the shire in which the order was made; or
- (c) a police officer.

(7) A person convicted of an offence defined in subsection (6) or (6A) is liable to a penalty not greater than \$200 or to a term of imprisonment not longer than 14 days and, in the case of a person subject to a prohibition order made under subsection (3) who is convicted of having liquor in the person's possession in contravention of the prohibition order, the court by which the person is convicted shall order that any liquor found in the person's possession and on which the charge against the person was based be forfeited to the Crown.

(7A) An order for forfeiture shall continue to have force and effect for as long as the conviction to which it is relevant stands.

(8) In proceedings in respect of a charge of an offence defined in this section—

- (a) a document certified under the hands of the mayor of the council of the shire whose order is alleged to have been contravened and the chief executive officer of the shire to be a true copy of the prohibition order of which it purports to be a copy shall be accepted as sufficient proof of the making of the prohibition order and of the particulars specified in the prohibition order; and
- (b) a certificate under the hands of the mayor of the council of the shire whose order is alleged to have been contravened and the chief executive officer of the shire as to the identity of—
 - (i) the person alleged in the charge to have been in possession of or to have consumed liquor; or
 - (ii) the person to whom liquor is alleged in the charge to have been supplied;

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with the person subject to the prohibition order, shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(9) In proceedings in respect of a charge of an offence defined in this section it shall be presumed, in the absence of evidence to the contrary, that liquid to which the charge relates is liquor of the description specified in the charge.

(10) The provisions of this section shall not be construed to prejudice the operation of the provisions of the *Liquor Act 1912* that provide with respect to prohibition orders.

Search for and seizure of liquor

38.(1) Within the Shire of Aurukun or the Shire of Mornington, a police officer is authorised—

- (a) to search for liquor any person who is subject to a prohibition order made under section 37(3);
- (b) to search for liquor any premises or place occupied or used by any person who is subject to a prohibition order made under section 37(3);
- (c) to search for liquor any property of or thing in the possession of any person who is subject to a prohibition order made under section 37(3);
- (d) to seize, carry away and hold as evidence all liquor found in the course of a search authorised by this subsection and suspected of being had in possession in contravention of a prohibition order made under section 37(3);
- (e) for a purpose specified in paragraph (b) or (c), and subject to subsection (2), to enter into or upon premises or a place of a description referred to in paragraph (b), by force if necessary, and to break open any property or thing of a description referred to in paragraph (c);

and, in the exercise of a power conferred by this subsection, to make use of such assistants as the police officer considers necessary.

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(2) Subsection (1) does not, in paragraph (e), authorise any person to enter into or upon any premises or place or part thereof, which premises, place or part is used solely as a dwelling unless—

- (a) the person has obtained the permission of the occupier of the premises, place or part; or
- (b) the person is in possession of a warrant of a justice that authorises the person to enter into or upon the premises, place or part for the purpose of searching for liquor therein.

(2A) For the purposes of subsection (2) the curtilage of any premises or place shall not be taken to be a part of those premises or that place used as a dwelling.

(3) A justice who is satisfied upon complaint on oath of a police officer that there is reasonable cause to suspect that in any premises or place, or in any part thereof, used solely as a dwelling there is liquor had in possession in contravention of a prohibition order made under section 37(3) may issue a warrant directed to the complainant all police officers or a particular police officer specified therein to enter into or upon the premises, place or part whether by day or night for the purpose of searching for that liquor.

(4) A warrant issued under subsection (3) shall, for a period of 1 month from the date of its issue be authority to the person to whom it is directed or a person of a description of person to which it is directed and to any person acting in aid of the person to enter into or upon the premises, place or part thereof specified in the warrant and to exercise the further powers specified in subsection (1)(e).

Roads within shires

39.(4) A road constructed or formed within the Shire of Aurukun or the Shire of Mornington, whether before or after the commencement of the *Local Government (Aboriginal Lands) Act Amendment Act 1978* shall be deemed to be a road dedicated to public use and to be a road within the meaning of—

- (a) the *Transport Infrastructure (Roads) Act 1991* and *Transport Infrastructure Act 1994*; or
- (b) the *Traffic Act 1940*; or

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(c) any other Act the application of which in or in relation to any place depends upon that place being a road or part of a road.

(5) No person shall be entitled to be on a road referred to in subsection (4) by reason of that subsection unless the person is authorised by some other provision of this Act to be in the Shire of Aurukun or, as the case may be, the Shire of Mornington at the material time.

SCHEDULE 1

section 6(2)

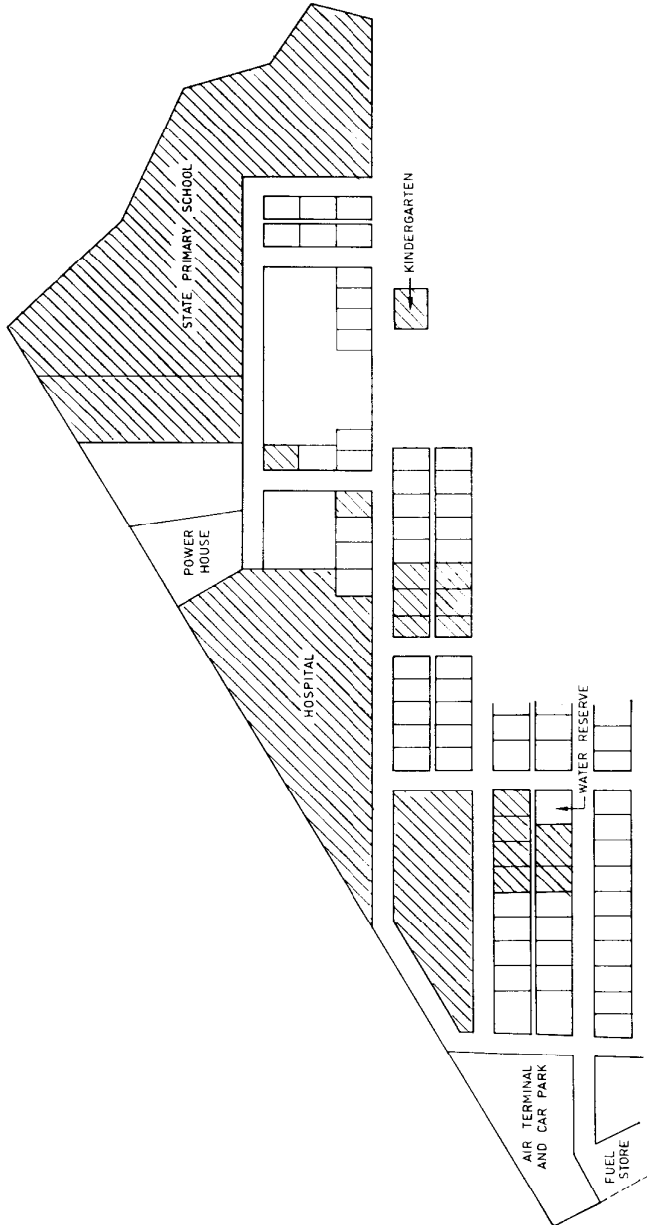
1. The term shall be 50 years commencing on the date of the grant.
2. The rent shall be \$1 per year, if demanded.
3. The area of the demised land shall be defined in the instrument of lease by reference to approximate distances and compass readings and by reference to a map deposited in the Department of Mapping and Surveying at Brisbane.
4. The boundary of the demised land shall extend to and shall be the high water mark at mean spring tides of the main sea.
5. The lessee shall maintain the airstrip on the demised land in good order and condition and shall permit the use of the airstrip by commercial aircraft and by other aircraft on reasonable terms and conditions.
6. The lessee shall maintain the demised land free from noxious plants and animal pests.
7. The lessee shall not interfere with forest products or remove quarry material within the meaning of those terms in the *Forestry Act 1959* on or in the demised land without the Minister's permission except under the authority of the *Local Government (Aboriginal Lands) Act 1978* or under the authority of and in accordance in every respect with a permit, licence, agreement or contract granted or made under the *Forestry Act 1959*.
8. The lease shall be subject to such reservations as are authorised by the *Local Government (Aboriginal Lands) Act 1978* and are specified in the instrument of lease and to such reservations as are required by that Act, whether or not so specified.
9. The lease shall contain such provisions as the Governor in Council considers necessary to secure, for the benefit of Aborigines who reside on the demised land, preservation of their traditional rights, use and occupancy of the demised land enjoyed by them as at 6 April 1978.
10. Such other conditions and reservations as the Governor in Council thinks fit to provide for any matter not inconsistent with the conditions or

SCHEDULE 1 (continued)

reservations set out in this Schedule or with the *Local Government (Aboriginal Lands) Act 1978*.

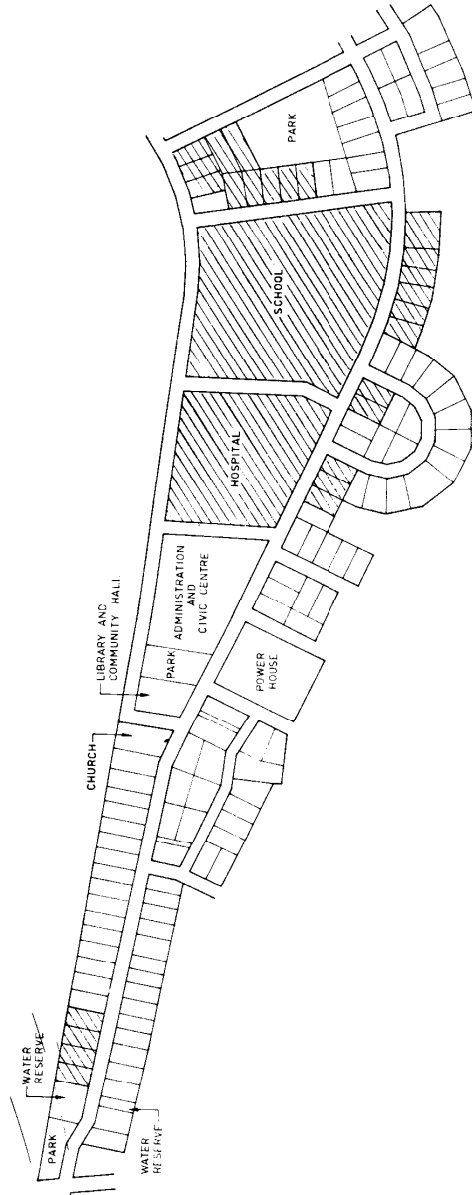
SCHEDULE 2

TOWNSHIP OF AURUKUN



SCHEDULE 3

TOWNSHIP OF MORNINGTON ISLAND



ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 27 May 1994. Future amendments of the Local Government (Aboriginal Lands) Act 1978 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation

Local Government (Aboriginal Lands) Act 1978 No. 6

date of assent 22 May 1978
 commenced on date of assent
 amending legislation—

Local Government (Aboriginal Lands) Act Amendment Act 1978 No. 87 pt 2

date of assent 15 December 1978
 commenced 18 January 1979 (proc pubd gaz 13 January 1979 p 88)

Local Government (Aboriginal Lands) Act Amendment Act 1981 No. 106

date of assent 16 December 1981
 commenced on date of assent

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Local Government (Aboriginal Lands) Act Amendment Act 1990 No. 76

date of assent 2 November 1990

commenced on date of assent

**Aboriginal and Torres Strait Islander Land (Consequential Amendments) Act
1991 No. 76 pts 1, 9**

date of assent 21 November 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1991 (1991 SL No. 223)

Nature Conservation Act 1992 No. 20 s 159 sch 2

date of assent 22 May 1992

not yet proclaimed into force

Local Government Act 1993 No. 70 s 804 sch

date of assent 7 December 1993

commenced 26 March 1994 (see s 2(5))

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
R1	=	Reprint No. 1
Sdiv	=	Subdivision
sub	=	substituted

**Provisions not included in reprint, or amended by
amendments not included in reprint, are underlined**

Arrangement of Act

s 2 amd 1981 No. 106 s 2
 om R1 (see RA s 36)

Meaning of terms

s 3 amd 1993 No. 70 s 804 sch
 def “**Aboriginal land**” ins 1991 No. 76 s 41
 def “**Aborigine**” om 1993 No. 70 s 804 sch

def “**liquor**” ins 1981 No. 106 s 3
def “**Minister**” om 1993 No. 70 s 804 sch

Incorporation of Aboriginal Councils

s 4 om 1993 No. 70 s 804 sch

Filling casual vacancies in bodies corporate

s 5 om 1993 No. 70 s 804 sch

Grant of leases to councils

s 6 amd 1978 No. 87 s 5

Grant to include improvements

s 7 amd 1978 No. 87 s 6

Shire of Aurukun

s 9 amd 1993 No. 70 s 804 sch

Copies of maps to be held

s 11 amd R1 (see RA s 39)

Aurukun and Mornington Shire Councils

s 12 amd 1978 No. 87 s 7; 1993 No. 70 s 804 sch

Incorporated bodies deemed to be Shire Councils

s 13 om 1993 No. 70 s 804 sch

Effect of election of Shire Councils

s 15 om 1993 No. 70 s 804 sch

Modification of power to dissolve shire councils

s 16 sub 1993 No. 70 s 804 sch

Right of residence in shires

s 23 amd 1978 No. 87 s 8

Local laws may regulate presence in shires

s 25 amd 1991 No. 76 s 42

Power of ejection and control

s 26 amd 1978 No. 87 s 9

Preservation of Aborigines’ hunting and gathering rights

s 29 amd 1991 No. 76 s 43; 1992 No. 20 s 159 sch 2 cl 1

Convening meetings; procedure at meetings

s 35 amd 1978 No. 87 s 10
om 1993 No. 79 s 804 sch

Sale and supply of beer in shires

s 36 ins 1978 No. 87 s 11
amd 1990 No. 76 s 2; 1993 No. 70 s 804 sch

Prohibition orders upon liquor abuse

s 37 pres s 37 ins 1981 No. 106 s 4

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Search for and seizure of liquor

s 38 ins 1981 No. 106 s 4

Roads within shires

s 39 (prev s 37) ins 1978 No. 87 s 12
renum 1981 No. 106 s 5
amd 1993 No. 70 s 804 sch

SCHEDULE 1

(prev sch) renum 1978 No. 78 s 13(a)

SCHEDULE 2—TOWNSHIP OF AURUKUN

ins 1978 No. 87 s 13(b)

SCHEDULE 3—TOWNSHIP OF MORNINGTON ISLAND

ins 1978 No. 87 s 13(b)

5 Table of changed names and titles

TABLE OF CHANGED NAMES AND TITLES
under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
by-law (of a local authority)	local law (of a local government)	Local Government Act 1993 s 755((1)(l)
chairman (of a local authority)	mayor (of a local government)	Local Government Act 1993 s 755(1)(e)
clerk (of a local authority)	chief executive officer (of a local government)	Local Government Act 1993 s 755(1)(j)
Director (of Local Government)	chief executive (of the department in which the Local Government Act 1993 is administered)	Local Government Act 1993 s 755(1)(n)
local authority	local government	Local Government Act 1993 s 755(1)(a)
member (of a local authority)	councillor (of a local government)	Local Government Act 1993 s 755(1)(i)
member (of the police force)	police officer	Police Service Administration Act 1990 s 11.1(1)(c) (see also s 1.4)
Registrar (of Dealings)	Registrar (of Titles)	Lands Legislation Amendment Act 1991 s 119(b)

6 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS

under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Local Government Act 1936	Local Government Act 1993	Local Government Act 1993 s 755(1)(o)
Main Roads Act 1920	Transport Infrastructure (Roads) Act 1991 or Transport Infrastructure Act 1994	—

7 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS

under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 35

8 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS

under the Reprints Act 1992 s 43

Previous	Renumbered as
6(1), 2nd sentence	6(1A)
6(3), 2nd sentence	6(3A)
6(3), 1st unnum para	6(3A)(a)
6(3), 2nd unnum para	6(3A)(b)
6(3), 3rd unnum para	6(3A)(c)
6(3), 4th unnum para	6(3A)(d)
6(3), 3rd sentence	6(3B)
6(3), 4th sentence	6(3C)
6(3), 5th sentence	6(3D)
17(1), 2nd sentence	17(1A)
26(2), 2nd sentence	26(2A)

27(2), 2nd sentence	27(2A)
27(4), 2nd sentence	27(5)
33(1), 2nd sentence	33(1A)
33(2), 2nd sentence	33(2A)
33(2), 3rd sentence	33(2B)
36(4), 2nd sentence	36(4A)
36(4), 3rd sentence	36(4B)
37(2), 2nd sentence	37(2A)
37(3), 2nd sentence	37(3A)
37(3), 3rd sentence	37(3B)
37(5), 2nd sentence	37(5A)
37(5), 3rd sentence	37(5B)
37(6), 2nd sentence	37(6A)
37(6), 3rd sentence	37(6B)
37(7), 2nd sentence	37(7A)
38(2), 2nd sentence	38(2A)

9 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992 s 5(c)).

Nature Conservation Act 1992 No. 20 s 159 sch 2 reads as follows—

1. Section 29(1)—

omit ‘Notwithstanding the provisions of any Act’,

insert ‘Subject to section 85 of the *Nature Conservation Act 1992*, but despite the provisions of any other Act,’.