

Queensland



LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

**Reprinted as in force on 4 June 1999
(includes amendments up to Act No. 19 of 1999)**

Reprint No. 2A revised edition

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 4 June 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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

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

Queensland



**LOCAL GOVERNMENT (ABORIGINAL
LANDS) ACT 1978**

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	7
3	Definitions	7
PART 2—INCORPORATION OF ABORIGINAL COUNCILS AND GRANT OF LEASE		
6	Grant of leases to councils	8
7	Grant to include improvements	11
8	Councils to be trustees	11
PART 3—LOCAL GOVERNMENT AREAS AND COUNCILS		
9	Shire of Aurukun	12
10	Shire of Mornington	12
11	Copies of maps to be held	12
12	Aurukun and Mornington Shire Councils	12
14	Application of Local Government Act	13
16	Modification of power to dissolve shire councils	13
PART 4—COORDINATING AND ADVISORY COMMITTEES		
17	Appointment of committees	13
18	Composition of committees	14
19	Appointment of substitute members	14
20	Approval of nominees	15
21	Functions of committees	15
22	Assistance to councils	15

*Local Government (Aboriginal Lands)
Act 1978*

**PART 5—PROVISIONS CONCERNING THE SHIRES
AND THEIR COUNCILS**

23	Right of residence in shires	16
24	Entry upon and temporary stay in shires	17
25	Local laws may regulate presence in shires	18
26	Power of ejectment and control	19
27	Reason for exclusion—right of appeal	20
28	Person not to be in shires without authority	20
29	Preservation of Aborigines' hunting and gathering rights	21
30	Mineral rights in shires	21
31	Forestry rights in shires	22
32	Restriction on councils' power over land	23
33	Law and order in shires	23
33A	Indemnification of Aboriginal police officer for liability for tort	24
34	Appointment of chief executive officer of councils	25
39	Roads within shires	25

**PART 6—CONTROL OF POSSESSION OR CONSUMPTION OF
ALCOHOL AT AURUKUN**

Division 1—Preliminary

40	Objects of part	26
41	Application of part	27
42	Definitions	27

Division 2—Aurukun Alcohol Law Council

43	Establishment of law council	30
44	Functions and powers	30
45	Law council is body corporate etc.	31
46	Recognised traditional groups	31
47	Composition of law council	31
48	Nominees of recognised traditional groups	31
49	Traditional groups to tell Minister of nominations etc.	31
50	Notification by Minister	32
51	Meetings of law council	32

*Local Government (Aboriginal Lands)
Act 1978*

52	Chairperson	32
53	Conduct of meetings	33
54	Arriving at decisions	33
55	Secretary	33
56	Reporting requirements	33
57	Administrative support	34
<i>Division 3—Controlled and dry places</i>		
58	Declarations	34
59	Directions about controlled places	35
60	Notice of proposal	36
61	Objections and supporting submissions	37
62	Notice about declarations	38
<i>Division 4—Permits</i>		
63	Application for permit	38
64	Consideration of application for permit	39
65	Issue of permit	39
66	Permit fees	40
67	Possession or consumption of alcohol on controlled or dry place	40
<i>Division 5—Authorisation of Aboriginal police officers</i>		
68	Police officer may authorise Aboriginal police officers to investigate	41
<i>Division 6—Authorised officer's entry to places and vehicles</i>		
69	Entry to places	41
70	Consent to entry	41
71	Warrants to enter	42
72	Warrants—applications made other than in person	43
73	General powers after entering places	44
74	Entry and search of vehicles etc.	45
75	Powers to enable vehicle to be entered	46
<i>Division 7—Power to seize evidence</i>		
76	Power to seize evidence etc.	47
77	Powers supporting seizure	47

*Local Government (Aboriginal Lands)
Act 1978*

78	Receipt for seized things	48
79	Forfeiture of seized things	49
80	Return of seized things	50
81	Access to seized things	50
<i>Division 8—General powers</i>		
82	Power to require name and address	50
83	Steps police officer may take for failure to give name and address	51
84	Power to require production of permits	52
<i>Division 9—Other enforcement matters</i>		
85	False or misleading statements	52
86	False, misleading or incomplete documents	53
87	Obstructing authorised officers	53
88	Steps a police officer may take for obstruction	54
89	Impersonating authorised officers	55
90	Forfeiture on conviction	55
91	Dealing with forfeited things etc.	55
92	Authorised officer to give notice of damage	55
93	Compensation	56
<i>Division 10—Review of decisions</i>		
94	Who may apply for review	57
95	Applying for review	57
96	Stay of operation of decision	58
97	Decision on reconsideration	58
<i>Division 11—Appeals</i>		
98	How to start appeal	59
99	Stay of operation of decisions	59
100	Powers of Magistrates Court on appeal	60
101	Effect of Magistrates Court’s decision on appeal	60
102	Appeals	60
<i>Division 12—Miscellaneous</i>		
103	Evidence of alcohol by label	61

*Local Government (Aboriginal Lands)
Act 1978*

104	Evidence of alcohol—notice of challenge required	61
105	Application forms	62
106	Filing of applications	62
107	Law council’s common seal	62
108	Certain provisions of Liquor Act do not apply to shire	63

Division 13—Expiry of part

109	Expiry of part	63
-----	--------------------------	----

PART 7—MISCELLANEOUS

110	Regulation-making power	63
-----	-----------------------------------	----

	SCHEDULE 1	64
--	-----------------------------	----

	SCHEDULE 2	66
--	-----------------------------	----

TOWNSHIP OF AURUKUN

	SCHEDULE 3	67
--	-----------------------------	----

TOWNSHIP OF MORNINGTON ISLAND

ENDNOTES

1	Index to endnotes	68
2	Date to which amendments incorporated	68
3	Key	69
4	Table of reprints	69
5	Tables in earlier reprints	69
6	List of legislation	70
7	List of annotations	71

*Local Government (Aboriginal Lands)
Act 1978*

LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

[as amended by all amendments that commenced on or before 4 June 1999]

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*.

Definitions

3. In this Act—

“**Aboriginal council**” means an Aboriginal council established under the *Community Services (Aborigines) Act 1984*, section 15(1) or (2).

“**Aboriginal land**” has the meaning given by the *Aboriginal Land Act 1991*, section 10.

“**Aboriginal police officer**” means a person who is appointed under section 33¹ as a member of the Aboriginal police force for a shire.

“**Aurukun Reserve**” means the reserve that existed for the benefit of the Aboriginal inhabitants of the State at Aurukun and that was abolished

¹ Section 33 (Law and order in shires)

*Local Government (Aboriginal Lands)
Act 1978*

by order in council dated 6 April 1978 published in the gazette extraordinary of the same date.

“Morrington Reserve” means the reserve that existed for the use of the Aboriginal inhabitants of the State at Morrington Island and that was abolished by order in council dated 6 April 1978 published in the gazette extraordinary of the same date.

“public purpose” means—

- (a) a purpose for which land may be taken under the *Acquisition of Land Act 1967*; or
- (b) a community purpose within the meaning of the *Land Act 1994*; or
- (c) 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 Morrington, incorporated by section 4(2), a lease of the whole of the land comprising the Shire of Morrington 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

*Local Government (Aboriginal Lands)
Act 1978*

- (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 1994* applies.

(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

*Local Government (Aboriginal Lands)
Act 1978*

demised land of an area to be specified but not exceeding 500 ha 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 regulation and the *Land Act 1994*, chapter 3, part 1 applies to the reservation and setting apart as if the land were unallocated State land and the reservation and setting apart were authorised by that part of that Act.

(3C) On the day the regulation commences—

- (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 regulation and may be dealt with under the *Land Act 1994*, chapter 3, part 1;
- (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 1994* 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 1994* that provide for registration of grants made pursuant to that Act and of instruments of lease evidencing

*Local Government (Aboriginal Lands)
Act 1978*

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's office at Brisbane as the Shire of Aurukun is declared to be a local government 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's office at Brisbane as the Shire of Mornington is declared to be a local government 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 the 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

*Local Government (Aboriginal Lands)
Act 1978*

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 local government areas 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 the *Local Government Act 1993*, section 113 (Dissolution of local government) 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.

*Local Government (Aboriginal Lands)
Act 1978*

(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 who administers the *Community Services (Aborigines) Act 1984*;
- (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.

(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.

*Local Government (Aboriginal Lands)
Act 1978*

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 local 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 who administers the *Community Services (Aborigines) Act 1984* 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 direct a Minister 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.

*Local Government (Aboriginal Lands)
Act 1978*

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;

*Local Government (Aboriginal Lands)
Act 1978*

- (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 and the Governor;
- (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 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 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 lastmentioned person is in the shire.

*Local Government (Aboriginal Lands)
Act 1978*

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

*Local Government (Aboriginal Lands)
Act 1978*

Power of ejection 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.

*Local Government (Aboriginal Lands)
Act 1978*

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 magistrate who for the time being is appointed as a local government (Aboriginal lands) appeals magistrate.

(2A) The Governor in Council may appoint such number of 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

*Local Government (Aboriginal Lands)
Act 1978*

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) Subject to the *Nature Conservation Act 1992*, sections 62 and 93, but despite the provisions of any other 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 *Mineral Resources Act 1989* 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, upon, over and out of the demised land for the purpose of searching for or working gold and minerals or mines of gold or

*Local Government (Aboriginal Lands)
Act 1978*

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) The *Aborigines Act 1971*, sections 29 and 30 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.

*Local Government (Aboriginal Lands)
Act 1978*

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.

(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.

*Local Government (Aboriginal Lands)
Act 1978*

(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 this Act or 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.

Indemnification of Aboriginal police officer for liability for tort

33A.(1) If—

- (a) an Aboriginal police officer incurs legal liability for committing a tort while acting, or purporting to act, in the execution of duty as an officer; and
- (b) the officer acted honestly and without gross negligence;

the State may indemnify the officer for the liability.

(2) If—

- (a) an Aboriginal police officer incurs legal liability for helping, directly or indirectly, a person suffering, or apparently suffering, from illness or injury in circumstances that the officer reasonably considers to be an emergency; and

*Local Government (Aboriginal Lands)
Act 1978*

(b) the officer acted honestly and without gross negligence; the State must indemnify the officer for the liability.

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 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.

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

*Local Government (Aboriginal Lands)
Act 1978*

- (b) the *Traffic Act 1949*; or
- (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.

PART 6—CONTROL OF POSSESSION OR CONSUMPTION OF ALCOHOL AT AURUKUN

Division 1—Preliminary

Objects of part

40.(1) The objects of this part include controlling alcohol being brought into the Shire of Aurukun, deterring illegal selling of alcohol in the shire, and minimising alcohol related disturbances in the shire.

(2) The objects are to be achieved particularly by—

- (a) providing a legal framework for the declaration of places to control the quantity or type of alcohol that may be possessed or consumed in the shire; and
- (b) establishing a decision-making body that is recognised under Aboriginal tradition and, as far as appropriate, operates under Aboriginal tradition; and
- (c) providing for community participation in the decision-making process; and
- (d) recognising an important advisory role for the decision-making body.

*Local Government (Aboriginal Lands)
Act 1978*

Application of part

41. This part applies to the Shire of Aurukun.

Definitions

42. In this part—

“**ACI**” means Aurukun Community Incorporated Pty. Ltd.
ACN 009 925 777.

“**alcohol**” has the same meaning as “liquor” in the *Liquor Act 1992*.²

“**approved form**” means a form approved by the chief executive.³

“**at**” a place includes in or on the place.

“**authorised officer**” means—

- (a) a police officer; or
- (b) an Aboriginal police officer acting under an authority under section 68.⁴

“**closing day for objections and submissions**” see section 60(3).

“**controlled place**” means a place that is declared a controlled place.⁵

² The *Liquor Act 1992*, section 4B provides as follows—

Meaning of “liquor”

4B.(1) “Liquor” is a spiritous or fermented fluid of an intoxicating nature intended for human consumption.

(2) “Liquor” also includes any other substance intended for human consumption in which the level of ethyl alcohol (ethanol) is more than 5 mL/L (0.5%) at 20°C.

(3) However, “liquor” does not include a fluid, that would otherwise be liquor, if it is used merely as a preservative or medium in which fruit is offered for sale to the public in sealed containers and with the contents visible.

³ The chief executive is the chief executive of the department—see *Acts Interpretation Act 1954*, s 33(11).

⁴ Section 68 (Police officer may authorise Aboriginal police officers to investigate)

⁵ The right to possess or consume liquor in a controlled place is limited under section 67(1).

*Local Government (Aboriginal Lands)
Act 1978*

“**conviction**” includes a finding of guilt, and the acceptance of a plea of guilty, by a court.

“**deal with**” includes sell, dispose of and destroy.

“**dry place**” means a place that is declared a dry place.⁶

“**enter**”, for a boat or aircraft, includes board.

“**entity**” includes—

- (a) a department; and
- (b) a division, branch or other part of a department.

“**law council**” means the Aurukun Alcohol Law Council.

“**member**” means a member of the law council.

“**obstruct**” includes hinder, resist and attempt to obstruct.

“**occupier**”, of a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.

“**offence**” means an offence against this part.

“**on**” a place or vehicle includes in the place or vehicle.

“**owner**”, of a seized thing, includes the person from whom the thing was seized unless the authorised officer concerned is aware of the actual owner.

“**person in control**”, of a vehicle, includes—

- (a) the driver of the vehicle; or
- (b) the person who reasonably appears to be the driver; or
- (c) the person who appears to be, claims to be or acts as if he or she is in control of a vehicle.

“**place**” includes premises and a place on waters or land, but does not include a vehicle.

“**possess**” alcohol includes—

- (a) have custody or control of the alcohol; and

⁶ A person must not possess or consume liquor on a dry place (s 67(2)).

*Local Government (Aboriginal Lands)
Act 1978*

(b) have an ability or right to obtain custody or control of the alcohol.

“premises” includes—

- (a) a building, wharf or other structure; and
- (b) part of a building, wharf or other structure; and
- (c) land or waters where a building, wharf or other structure is situated.

“private place” means—

- (a) a place occupied by a person, a group of persons, or an entity (other than the State or shire council); or
- (b) a place to which a person or group of persons have the authority to control access under Aboriginal tradition; or
- (c) any other place that is not a public place.

“prosecuting authority”, for a proceeding for an offence, means—

- (a) if the proceeding is brought by an authorised officer—the commissioner of the police service; or
- (b) if the proceeding is brought by the law council—the law council; or
- (c) if the proceeding is brought by someone else—the person bringing the proceeding.

“public place” means—

- (a) a road; or
- (b) a place occupied by, or under the control of, the shire council; or
- (c) a place occupied by the State, or under the control of, the State.

Examples of paragraph (b)—

The barge landing area and airport at Aurukun.

Examples of paragraph (c)—

The hospital and school at Aurukun.

“reasonably believes” means believes on grounds that are reasonable in all the circumstances.

*Local Government (Aboriginal Lands)
Act 1978*

“**reasonably suspects**” means suspects on grounds that are reasonable in all the circumstances.

“**recognised traditional group**” means a group of Aboriginal people that is declared a recognised traditional group.

“**secretary**” means the secretary to the law council.

“**shire**” means the Shire of Aurukun.

“**shire council**” means the council of the shire.

“**vehicle**” includes a boat and an aircraft.

Division 2—Aurukun Alcohol Law Council

Establishment of law council

43. A body called the Aurukun Alcohol Law Council is established.

Functions and powers

44.(1) The functions of the law council are to—

- (a) declare controlled places and dry places under this part; and
- (b) decide applications for permits; and
- (c) consult with, and report to, the Aurukun community, and groups within the Aurukun community, about the performance of its functions; and
- (d) advise the State Government and the shire council on the operation and effectiveness of this part; and
- (e) provide advice generally on the administration and enforcement of this part; and
- (f) carry out other functions given to it under this part.

Example of consulting with the Aurukun community—

Calling public meetings.

*Local Government (Aboriginal Lands)
Act 1978*

(2) The law council has power to do all things necessary or convenient to be done for, or in connection with, performing its functions.

Law council is body corporate etc.

45. The law council—

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name.

Recognised traditional groups

46. The Minister may, by gazette notice, declare a group of Aboriginal people recognised under Aboriginal tradition to be a recognised traditional group.

Composition of law council

47. The members of the law council are the elders of the recognised traditional groups currently nominated to represent the groups on the law council.

Nominees of recognised traditional groups

48.(1) Each recognised traditional group is to nominate at least 1 elder from the group to represent it on the law council.

(2) A recognised traditional group may, at any time, nominate other elders from the group to represent it on the law council, or withdraw a nomination previously made by the group.

Traditional groups to tell Minister of nominations etc.

49.(1) A recognised traditional group must tell the Minister about each nomination, and withdrawal of nomination, made by it.

*Local Government (Aboriginal Lands)
Act 1978*

(2) However, the nomination or withdrawal of nomination does not take effect until it is notified by the Minister under section 50 or, if a later time is stated in the notification, the later time.

Notification by Minister

50.(1) The Minister must, by gazette notice, notify details of all nominations and withdrawals of nominations of which the Minister is told.

(2) The gazette notice must include—

- (a) the names of the elders nominated or withdrawn; and
- (b) the recognised traditional group to be represented by the nominated person.

(3) The Minister may also, from time to time by gazette notice, notify the names of the persons who are elders of the recognised traditional groups they currently represent.

Meetings of law council

51.(1) The law council may only make decisions about how it will carry out its functions or exercise its powers at a meeting of the law council at which the secretary is present.

(2) Meetings of the law council are to be held at the times and places it decides.

(3) The secretary may at any time call a meeting, and must call a meeting if asked by a majority of members.

(4) A meeting must not be attended by more than 1 member of each recognised traditional group.

(5) A regulation may make provision about the number of members who must be present at meetings to make decisions.

Chairperson

52. At each meeting of the law council, the members present must choose a member present to preside.

*Local Government (Aboriginal Lands)
Act 1978*

Conduct of meetings

53. The law council may conduct its business (including its meetings) in the way it considers appropriate, including, for example, by following Aboriginal tradition.

Arriving at decisions

54.(1) The law council may arrive at decisions in the way it considers appropriate, including, for example, by following Aboriginal tradition.

(2) However, a question is decided only if a majority of the members present are in agreement.

Secretary

55.(1) There is a secretary to the law council.

(2) The secretary is the police officer in charge of the police station at Aurukun or the officer's nominee.

(3) The secretary is not a member of the law council.

(4) The secretary must attend every meeting of the law council and may advise it on any issue coming before it.

(5) The secretary must ensure minutes of the law council's meetings are kept.

(6) The shire council must keep the minutes open for inspection.

(7) In this section—

“open for inspection” has the same meaning as in the *Local Government Act 1993*.

Reporting requirements

56.(1) The law council must report on its activities to the shire council and ACI at least every 6 months.

(2) As soon as practicable after giving a report to the shire council and ACI, the law council must publish a notice in a newspaper circulating

*Local Government (Aboriginal Lands)
Act 1978*

generally within the shire advising that copies of the report are available from the offices of the shire council and ACI.

Administrative support

57.(1) The shire council must—

- (a) provide administrative support to the law council; and
- (b) keep separate accounting records of the cost of providing the support.

Examples of administrative support—

1. Taking minutes.
2. Arranging meetings in consultation with the secretary.
3. Ensuring notification requirements are met.
4. Preparing permits granted by the law council.
5. Preparation and distribution of the law council's six-monthly reports.

(2) The cost of providing the administrative support must be borne equally by the shire council and ACI.

(3) Amounts received by the shire council for permit fees, and amounts received from the disposal of alcohol and other things seized under this part, must be used to offset the cost of providing the administrative support to the law council.

Division 3—Controlled and dry places

Declarations

58.(1) The law council may, on its own initiative or on written application by the shire council or a nominee of a department, declare a public place to be a controlled place or dry place or revoke or amend a declaration of a place as a controlled or dry place.

(2) The law council may, on written or personal application by the occupier of the place, or a person or group of persons with authority to control access to the place under Aboriginal tradition, declare the private

*Local Government (Aboriginal Lands)
Act 1978*

place to be a controlled place or dry place, or revoke or amend a declaration of the place as a controlled or dry place.

(3) The law council must consider an application made to it under this section as soon as reasonably practicable.

(4) A declaration may be for a limited time specified in it and may state conditions to which it is subject.

(5) The law council may also, on its own initiative, revoke a declaration made under subsection (2) if it is satisfied it is necessary to revoke the declaration because the occupier of the place, or a person or group with authority to control access to the place under Aboriginal tradition, has acted in a way that is contrary to the effect of, or hinders the enforcement of, the declaration.

(6) The law council must ensure that a person or group of persons who wish to make a written application under subsection (2) are given help to make the application.

(7) The law council may invite applications about particular private places.

Directions about controlled places

59.(1) If the law council declares a place to be a controlled place, it must include in the declaration directions about the possession or consumption of alcohol on the controlled place.

(2) Without limiting subsection (1), directions may be made about—

- (a) the type of alcohol that may be possessed or consumed on the controlled place; or
- (b) the quantity of alcohol that a person may possess or consume on the controlled place; or
- (c) the quantity of alcohol that may be carried in a vehicle on the controlled place; or
- (d) the quantities or type of alcohol that may be possessed on the controlled place over a particular period.

*Local Government (Aboriginal Lands)
Act 1978*

Notice of proposal

60.(1) Before deciding whether to declare a place to be a controlled place or dry place, the law council must cause written notice of the proposal to be displayed—

- (a) in at least 1 prominent place in the township of Aurukun; and
- (b) if it considers it practicable, at the place.

(2) The notice must be displayed for 14 days immediately before the last day for making written submissions about the proposal.

(3) The notice must—

- (a) state the type of declaration to be considered; and
- (b) sufficiently identify the place; and
- (c) for a proposal to declare a place a controlled place—state the directions proposed to be given about the place; and
- (d) state the right of a person to object or make a supporting submission; and
- (e) state the day on or before which a written objection or supporting submission (the “**closing day for objections and submissions**”) must be made, or written notice that a person wishes to object or make a supporting submission in person to the law council, must be made; and
- (f) if the proposed declaration is for a limited time—state that fact and the period proposed.

(4) In addition to causing written notice of the proposal to be displayed as required by this section, the law council may consult with the Aurukun community in any way it considers appropriate.

(5) This section applies to the amendment or revocation of a declaration of a place as a controlled place or dry place (including the directions about the place if it is a controlled place) in the same way as it applies to the making of the declaration.

*Local Government (Aboriginal Lands)
Act 1978*

Objections and supporting submissions

61.(1) A person whose interests are affected by a proposed declaration of a public place may object to or support the public place being declared a controlled or dry place.

(2) A proposed declaration of a private place as a controlled or dry place may be objected to or supported by—

- (a) a person or group of persons with the authority to control access to the place or a neighbouring place under Aboriginal tradition; or
- (b) the occupier of, or a person or group who use, the place or a neighbouring place.

(3) The objection or supporting submission may be made—

- (a) by written notice filed at the shire council's public office on or before the closing day for objections and submissions; or
- (b) if the objector or supporter files a written notice at the public office, on or before that day, that he or she wishes to appear before the law council to make a submission—personally to the law council.

(4) The law council must consider all objections and supporting submissions made on or before the closing day for objections and submissions.

(5) If the law council gives a person who has filed a written notice under subsection (3)(b) a reasonable opportunity to appear before it and put the objection or supporting submission but the person fails to appear, the person loses the right to have the objection or supporting submission considered by the law council.

(6) No fee is payable by an objector or supporter.

(7) This section applies to the amendment or revocation of a place as a controlled place or dry place (including any directions about the place if it is a controlled place) in the same way as it applies to the making of the declaration.

*Local Government (Aboriginal Lands)
Act 1978*

Notice about declarations

62.(1) The law council must cause written notice of the declaration of a place as a controlled place or dry place to be displayed—

- (a) in at least 1 prominent place in the township of Aurukun; and
- (b) if it considers it practicable, at the place.

(2) The notice must—

- (a) state the type of declaration; and
- (b) sufficiently identify the place; and
- (c) state that the declaration takes effect on the day on which the declaration is displayed; and
- (d) if the declaration is for a limited time—state that fact and the period of the declaration; and
- (e) for the declaration of a place as a controlled place—state the directions made about the possession or consumption of alcohol on the place; and
- (f) set out the provisions of section 67.7

(3) This section applies to the amendment or revocation of a place as a controlled or dry place (including any directions about the place if it is a controlled place) in the same way as it applies to the making of the declaration.

Division 4—Permits

Application for permit

63.(1) If directions about a controlled place authorise the possession or consumption of alcohol on the place under a permit, application for a permit may be made to the law council.

(2) Only an adult may apply for a permit.

⁷ Section 67 (Possession or consumption of alcohol on controlled or dry place)

*Local Government (Aboriginal Lands)
Act 1978*

(3) An application—

- (a) must be in writing and identify the applicant; and
- (b) may be made for a group of adults; and
- (c) if made for a group—must identify the group; and
- (d) must identify the quantity and type of alcohol to be covered by the permit; and
- (e) must state the proposed period of the permit; and
- (f) may state conditions suggested by the applicant to which the permit is proposed to be subject.

Consideration of application for permit

64.(1) The law council must consider an application made to it for a permit as soon as reasonably practicable.

(2) The law council may grant or refuse the application.

(3) If the law council grants the application, the application granted may differ from the application sought in relation to the following particulars—

- (a) the quantity and type of alcohol to be covered by the permit;
- (b) if relevant, how and when the alcohol is to be transported;
- (c) the period of the permit;
- (d) the conditions to which the permit is to be subject.

(4) The permit may be made subject to conditions to be stated in the permit.

(5) However, a permit must not be inconsistent with this part.

(6) The law council may amend a permit (including any of the conditions to which it is subject) or revoke a permit.

Issue of permit

65.(1) If an application for a permit is granted, the secretary must ensure

*Local Government (Aboriginal Lands)
Act 1978*

the applicant is issued with a permit in accordance with the law council's decision.

(2) A permit must—

- (a) identify the person or group, and the quantity and type of alcohol, covered by the permit; and
- (b) if relevant, state how and when the alcohol is to be transported; and
- (c) state the period of the permit; and
- (d) state the conditions to which the permit is subject.

Permit fees

66.(1) The law council may charge a fee for issuing a permit and decide its amount.

(2) The amount of the fee must not be more than \$5.

(3) The fee must be paid to the shire council before the permit is issued.

Possession or consumption of alcohol on controlled or dry place

67.(1) A person must not possess or consume alcohol on a controlled place other than in accordance with the directions, or a permit (including its conditions), in force for the place.

Maximum penalty—250 penalty units.

(2) A person must not possess or consume alcohol on a dry place.

Maximum penalty—250 penalty units.

(3) A police officer may arrest a person without a warrant if the officer reasonably believes that—

- (a) the person is committing, or has just committed, an offence against this section; and
- (b) proceedings by way of complaint and summons against the person for the offence would be ineffective.

Division 5—Authorisation of Aboriginal police officers

Police officer may authorise Aboriginal police officers to investigate

68.(1) A police officer may authorise an Aboriginal police officer to investigate contraventions of section 67.⁸

(2) The authority must be in writing.

Division 6—Authorised officer's entry to places and vehicles

Entry to places

69.(1) An authorised officer may enter a place only if—

- (a) its occupier consents to the entry; or
- (b) the entry is authorised by a warrant.

(2) However, an authorised officer may, without the occupier's consent or a warrant, enter—

- (a) a public place; or
- (b) a place covered by a declaration or permit, if a condition of the declaration or permit requires that the place be open to inspection and the entry is made when the place is required to be open to inspection; or
- (c) the land around premises to ask its occupier for consent to enter the premises.

Consent to entry

70.(1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another officer entering the place.

(2) Before asking for the consent, the officer must tell the occupier—

⁸ Section 67 (Possession or consumption of alcohol on controlled or dry place)

*Local Government (Aboriginal Lands)
Act 1978*

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) that the occupier gives an authorised officer consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the officer must immediately give a copy to the occupier.

(6) Subsection (7) applies to a court if—

- (a) an issue arises, in a proceeding in or before the court, whether the occupier of a place consented to an authorised officer entering the place under this part; and
- (b) an acknowledgment under this section is not produced in evidence for the entry; and
- (c) it is not proved that the occupier consented to the entry.

(7) The court may presume that the occupier did not consent.

Warrants to enter

71.(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the officer

*Local Government (Aboriginal Lands)
Act 1978*

gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that a stated authorised officer may, with necessary and reasonable help and force, enter the place and exercise the officer’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 7 days after the warrant’s issue, the warrant ends.

Warrants—applications made other than in person

72.(1) An authorised officer may apply for a warrant by phone, fax, radio or another form of communication if the officer considers it necessary.

(2) Before applying for the warrant, the officer must prepare an application stating the grounds on which the warrant is sought.

(3) The officer may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the officer if it is reasonably practicable to fax a copy.

(5) If it is not reasonably practicable to fax a copy to the officer—

- (a) the magistrate must—
 - (i) tell the officer what the terms of the warrant are; and

*Local Government (Aboriginal Lands)
Act 1978*

- (ii) tell the officer the date and time the warrant was issued; and
- (b) the officer must complete a form of warrant (“**warrant form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the terms of the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the officer, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The officer must, at the first reasonable opportunity, send the magistrate—

- (a) the sworn application; and
- (b) if the officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Subsection (10) applies to a court if—

- (a) an issue arises, in a proceeding in or before the court, whether a power exercised by an authorised officer was not authorised by a warrant issued under this section; and
- (b) the warrant is not produced in evidence.

(10) The court must presume that the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

General powers after entering places

73.(1) This section applies to an authorised officer who enters a place.

(2) For monitoring or enforcing compliance with this part, the officer may—

- (a) search any part of the place; or

*Local Government (Aboriginal Lands)
Act 1978*

- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) take a thing, or a sample of or from a thing, at the place for analysis; or
- (d) copy a document at the place; or
- (e) take into or onto the place any persons, equipment and materials the officer reasonably requires for exercising a power under this part; or
- (f) require the occupier of the place, or a person at the place, to give the officer reasonable help to exercise the officer's powers under paragraphs (a) to (e).

(3) A person must comply with a requirement under subsection (2)(f), unless the person has a reasonable excuse for not complying.

Maximum penalty—60 penalty units.

(4) If the requirement is to be complied with by the person giving information, or producing a document (other than a document required to be issued to or kept by the person under this part), it is a reasonable excuse for the person to fail to comply with the requirement, if complying with the requirement might tend to incriminate the person.

(5) This section applies to an authorised officer who enters a place to get the occupier's consent only if the consent is given or the entry is otherwise authorised.

Entry and search of vehicles etc.

74.(1) This section applies to an authorised officer who reasonably suspects—

- (a) a vehicle is being, or has just been, used to commit an offence; or
- (b) a vehicle, or a thing in a vehicle, may provide evidence of an offence that is being, or has just been, committed.

(2) The officer may—

- (a) enter the vehicle, using necessary and reasonable help and force; or

*Local Government (Aboriginal Lands)
Act 1978*

- (b) search any part of the vehicle; or
- (c) inspect, measure, test, photograph or film any part of the vehicle or anything in the vehicle; or
- (d) take samples of anything in the vehicle; or
- (e) copy a document in the vehicle; or
- (f) take into the vehicle the persons, equipment and materials the officer reasonably requires for exercising a power under this section; or
- (g) require the person in control of the vehicle to give the officer reasonable help to exercise the powers mentioned in paragraphs (a) to (f).

(3) A person must comply with a requirement under subsection (2)(g), unless the person has a reasonable excuse for not complying.

Maximum penalty—60 penalty units.

(4) Before entering an unattended vehicle, an authorised officer must take reasonable steps to advise its owner, or the person in control of it, of the intention to enter.

Powers to enable vehicle to be entered

75.(1) This section applies if an authorised officer intends to enter a vehicle.

(2) If the vehicle is moving or about to move, the officer may require the person in control of the vehicle to stop or not to move it.

(3) The requirement may be given by a sign or hand signal.

(4) A person must comply with a requirement under subsection (2), unless the person has a reasonable excuse for not complying.

Maximum penalty—40 penalty units.

(5) It is a reasonable excuse for the person not to comply with a requirement if—

- (a) the person believes that to immediately comply with the requirement would endanger the person or another person; and

*Local Government (Aboriginal Lands)
Act 1978*

- (b) the person complies with the requirement at the first reasonable opportunity.

Division 7—Power to seize evidence

Power to seize evidence etc.

76.(1) An authorised officer who enters a place with the occupier’s consent may seize a thing at the place if—

- (a) the officer reasonably believes the thing is evidence of an offence; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier’s consent.

(2) An authorised officer who enters a place with a warrant may seize the evidence for which the warrant was issued.

(3) An authorised officer may also seize anything else at a place (including alcohol or a vehicle) or on a vehicle (including alcohol) if the officer reasonably believes—

- (a) the thing is evidence of an offence; and
- (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.

(4) Also, an authorised officer may seize a thing (including alcohol or a vehicle) if the officer reasonably believes it has just been used in committing an offence.

Powers supporting seizure

77.(1) Having seized a thing, an authorised officer may—

- (a) move the thing from the place or vehicle where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

*Local Government (Aboriginal Lands)
Act 1978*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

(2) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an authorised officer's approval.

Maximum penalty—60 penalty units.

(3) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

(4) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

(5) The person must comply with the requirement, unless the person has a reasonable excuse for not complying.

Maximum penalty—60 penalty units.

(6) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

Receipt for seized things

78.(1) As soon as practicable after an authorised officer seizes a thing (including alcohol or a vehicle), the officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

*Local Government (Aboriginal Lands)
Act 1978*

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section (given the thing's nature, condition and value).

Forfeiture of seized things

79.(1) A seized thing is forfeited to the shire council if the authorised officer who seized the thing—

- (a) cannot find its owner, after making reasonable inquiries; or
- (b) cannot return it to its owner, after making reasonable efforts; or
- (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence.

(2) Subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

(3) If the officer decides to forfeit a thing under subsection (1)(c), the officer must tell the owner of the decision by written notice.

(4) Subsection (3) does not apply if—

- (a) the officer cannot find its owner, after making reasonable inquiries; or
- (b) it is impracticable or would be unreasonable to give the notice.

(5) The notice must state—

- (a) the reasons for the decision; and
- (b) that the owner may appeal against the decision within 28 days; and
- (c) how the owner may appeal.

(6) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.

*Local Government (Aboriginal Lands)
Act 1978*

Example—

No inquiries or efforts would be required to return beer cans that were open. Similarly, notice would not be required for them.

Return of seized things

80.(1) If a seized thing has not been forfeited, the authorised officer must return it to its owner at the end of—

- (a) 6 months; or
- (b) if a proceeding for an offence involving it is started within the 6 months—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), unless the thing has been forfeited, the authorised officer must immediately return a thing seized as evidence to its owner if the officer stops being satisfied its continued retention as evidence is necessary.

Access to seized things

81.(1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Division 8—General powers

Power to require name and address

82.(1) This section applies if—

- (a) an authorised officer finds a person committing an offence; or
- (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has just committed an offence.

(2) The officer may require the person to state the person's name and residential address.

*Local Government (Aboriginal Lands)
Act 1978*

(3) When making the requirement, the officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

(4) The officer may require the person to give evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) A person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person's name and address by an authorised officer who suspected the person had committed an offence; and
- (b) the person is not proved to have committed the offence.

(7) An authorised officer who is an Aboriginal police officer may ask a police officer to help with the enforcement of this section.

Steps police officer may take for failure to give name and address

83. A police officer may take the following steps if a person fails to comply with a requirement made by the officer or another authorised officer under section 82(2) or (4)⁹—

- (a) the police officer may ask the person whether the person has a reasonable excuse for not complying with the requirement and, if the person gives an excuse, ask for details or further details of the excuse;
- (b) if the person does not answer the question or gives an excuse that the police officer reasonably believes is not a reasonable excuse, the officer may—
 - (i) tell the person that the officer is considering the arrest of the person for failing to comply with the requirement; and

⁹ Section 82 (Power to require name and address)

*Local Government (Aboriginal Lands)
Act 1978*

- (ii) require the person to state the person's name and residential address (or, if the person has no residential address, an address at which the person can most likely be contacted) and, if the officer reasonably suspects that the stated name or address is false, require the person to give evidence of the correctness of the stated name or address;
- (c) the police officer may arrest the person without a warrant if the officer reasonably believes—
 - (i) the person has not complied with a requirement of the officer under paragraph (b)(ii); and
 - (ii) proceedings by way of complaint and summons against the person for an offence would be ineffective.

Power to require production of permits

84.(1) An authorised officer may require a person to produce for inspection a permit issued to the person.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying.

Maximum penalty—50 penalty units.

Division 9—Other enforcement matters

False or misleading statements

85.(1) A person must not—

- (a) state anything to an authorised officer or the law council that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised officer or the law council anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—60 penalty units.

(2) It is enough for a complaint against a person for an offence against

*Local Government (Aboriginal Lands)
Act 1978*

subsection (1) to state that the statement made was false or misleading to the person's knowledge.

False, misleading or incomplete documents

86.(1) A person must not give an authorised officer or the law council a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—60 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised officer or law council, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false, misleading or incomplete to the person's knowledge.

Obstructing authorised officers

87.(1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse for the obstruction.

Maximum penalty—60 penalty units.

(2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person.

(3) In warning a person under subsection (2), an authorised officer must warn the person that—

- (a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and
- (b) the authorised officer considers the person's conduct is an obstruction.

*Local Government (Aboriginal Lands)
Act 1978*

(4) If, after an authorised officer who is an Aboriginal police officer has warned the person, the person continues with the conduct or repeats the conduct, the officer may ask a police officer to assist with the enforcement of this section.

Steps a police officer may take for obstruction

88. A police officer may take the following steps if a person has obstructed the police officer or another authorised officer—

- (a) the officer may ask the person whether the person has a reasonable excuse for the conduct and, if the person gives an excuse, ask for details or further details of the excuse;
- (b) if the person does not answer the question or gives an excuse the officer reasonably believes is not a reasonable excuse—the officer may—
 - (i) tell the person that the officer is considering arresting the person for obstruction; and
 - (ii) require the person to stop, or not repeat, the conduct;
- (c) the officer may arrest the person without a warrant if the officer reasonably believes—
 - (i) the person has not complied with a requirement under paragraph (b)(ii); and
 - (ii) proceedings by way of complaint and summons against the person for an offence against section 87¹⁰ would be ineffective.

Impersonating authorised officers

89. A person must not pretend to be an authorised officer.
Maximum penalty—60 penalty units.

¹⁰ Section 87 (Obstructing authorised officers)

*Local Government (Aboriginal Lands)
Act 1978*

Forfeiture on conviction

90.(1) On the conviction of a person for an offence, the court may order the forfeiture to the shire council of—

- (a) anything (including alcohol or a vehicle) used to commit the offence; or
- (b) anything else the subject of the offence.

(2) The court may make the order—

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized—whether or not the thing has been returned to its owner.

(3) The court may make any order to enforce the forfeiture that it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Dealing with forfeited things etc.

91. On the forfeiture of a thing to the shire council, the thing becomes the shire council's property and may be dealt with by the shire council under the *Local Government Act 1993*.

Authorised officer to give notice of damage

92.(1) This section applies if—

- (a) an authorised officer damages something when exercising or purporting to exercise a power; or
- (b) a person (the **“other person”**) acting under the direction of an authorised officer damages something.

(2) The officer must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If the officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's or other person's control, the officer may state it in the notice.

*Local Government (Aboriginal Lands)
Act 1978*

(4) If, for any reason, it is impracticable to comply with subsection (2), the officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the officer reasonably believes is trivial.

(6) In this section—

“owner” of a thing includes the person in possession or control of it.

Compensation

93.(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under any of the following divisions, including, for example, in complying with a requirement made of the person—

- division 6 (Authorised officer’s entry to places and vehicles)
- division 7 (Power to seize evidence)
- division 9 (Other enforcement matters).

(2) Compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence brought against the person claiming compensation.

(3) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Division 10—Review of decisions

Who may apply for review

94.(1) A person whose interests are affected by a decision of the law council may apply for the decision to be reviewed.

*Local Government (Aboriginal Lands)
Act 1978*

(2) The person has a right to receive a statement of the reasons for the decision.

(3) In this section—

“**decision**” does not include a decision—

- (a) to invite applications about declaring a particular private place to be a controlled or dry place; or
- (b) to publish a notice about a proposal to declare a place to be a controlled or dry place.

Applying for review

95.(1) A person may apply for the review of a decision only within 28 days after notice of the decision was given to the person or the person became aware of the decision.

(2) However, if—

- (a) either—
 - (i) the person was given notice of the decision, but the notice did not state the reasons for the decision; or
 - (ii) the person was not given notice of the decision, but became aware of the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1);

the person may apply within 28 days after the person is given the statement of the reasons.

(3) Also, the law council may extend the period for applying, whether or not the period has ended.

(4) The application must be written and state in detail the grounds on which the applicant wants the decision to be reviewed.

Stay of operation of decision

96.(1) If a person applies under this division for a decision to be reviewed, the person may immediately apply to a Magistrates Court for a

*Local Government (Aboriginal Lands)
Act 1978*

stay of the decision.

(2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.

(3) A stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(4) The period of a stay must not extend past the time when the law council reviews the decision and any later period the court allows the person to appeal against the decision.

(5) An application made for the review of a decision of the law council affects the decision, or the carrying out of the decision, only if the decision is stayed.

Decision on reconsideration

97.(1) After considering the applicant's representations, the law council may confirm or amend the decision appealed against or substitute a new decision.

(2) The law council must immediately give the applicant written notice of the decision.

(3) If the decision is not the decision sought by the applicant, the notice must state—

- (a) the reasons for the decision; and
- (b) that the applicant may appeal against the decision to a Magistrates Court within 28 days.

Division 11—Appeals

How to start appeal

98.(1) A person may appeal against—

*Local Government (Aboriginal Lands)
Act 1978*

- (a) a decision under section 79¹¹ to forfeit a thing; or
- (b) a decision under section 97.¹²

(2) A person may only appeal within 28 days after notice of the decision was given to the person.

(3) However, if—

- (a) the notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (2);

the person may apply within 28 days after the person is given a statement of the reasons.

(4) Also, the court may extend the period for appealing, whether or not the period has ended.

Stay of operation of decisions

99.(1) The Magistrates Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on the conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) The period of a stay under this section must not extend past the time when the court decides the appeal.

(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

¹¹ Section 79 (Forfeiture of seized things)

¹² Section 97 deals with the law council's decision after review.

Powers of Magistrates Court on appeal

100.(1) In deciding an appeal, the Magistrates Court—

- (a) has the same powers as the law council; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or chambers.

(2) An appeal is by way of rehearing.

(3) The court may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the law council with the directions the court considers appropriate.

Effect of Magistrates Court's decision on appeal

101. If the Magistrates Court substitutes another decision, the substituted decision is, for this part (other than division 10 or this division), taken to be the law council's decision.

Appeals

102. An appeal to the District Court from a decision of a Magistrates Court may be made only on a question of law.

Division 12—Miscellaneous

Evidence of alcohol by label

103.(1) This section applies in a proceeding for an offence if it is relevant to prove that a substance was alcohol.

(2) The substance is proved to have been alcohol if—

- (a) there is evidence that the container containing the substance had a

*Local Government (Aboriginal Lands)
Act 1978*

- label indicating the substance was alcohol; and
- (b) an authorised person gives evidence that the authorised person believes the container contained alcohol; and
 - (c) written notice under section 104(4) has not been received from the defendant by the prosecuting authority; and
 - (d) the court considers the belief mentioned in paragraph (b) is reasonable; and
 - (e) there is no evidence to the contrary.

Evidence of alcohol—notice of challenge required

104.(1) This section applies if a summons is served on a person for, or a person is charged with, an offence to which section 103¹³ applies.

(2) At the time of serving the summons on the person or charging the person, a notice in the approved form must be served on the person.

(3) The notice may be served on the person in the same way as a summons may be served under the *Justices Act 1886*, section 56.¹⁴

(4) The notice must inform the person that, if the person intends challenging that a substance claimed in the charge to be alcohol was alcohol, the person must give the prosecuting authority written notice of the intention at least 14 days before the day fixed for the hearing.

(5) If the person is served with a summons and a statement is made in a deposition under the *Justices Act 1886*, section 56(3)(b) that the notice was served as permitted by subsection (3), the statement is evidence that the person was served with the notice as permitted by the subsection.

(6) The *Justices Act 1886*, section 56(5) applies to the deposition.

(7) If the person is charged with the offence and a statement is made in a deposition under the *Justices Act 1886*, section 56(7) that the notice was served as permitted by subsection (3), the statement is evidence that the person was served with the notice as permitted by the subsection.

¹³ Section 103 (Evidence of alcohol by label)

¹⁴ *Justices Act 1886*, section 56 deals with service of summonses.

*Local Government (Aboriginal Lands)
Act 1978*

(8) The *Justices Act 1886*, section 56(8) applies to the deposition.

Application forms

105. Application forms for this part are to be available free of charge during ordinary business hours at the shire council's public office.

Filing of applications

106.(1) An application for this part may be filed during ordinary business hours at the shire council's public office.

(2) No fee is payable for an application to have a place declared to be a controlled or dry place under this part or to have a declaration amended or revoked.

Law council's common seal

107.(1) The law council's common seal is to be kept by the secretary and may be used only as authorised by the law council.

(2) Judicial notice must be taken of the imprint of the law council's common seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

Certain provisions of Liquor Act do not apply to shire

108. The *Liquor Act 1992*, part 6, division 4 does not apply to places in the shire.¹⁵

Division 13—Expiry of part

¹⁵ The *Liquor Act 1992*, part 6, division 4 deals with the consumption of liquor in certain public places.

*Local Government (Aboriginal Lands)
Act 1978*

Expiry of part

109. This part expires on 30 June 1999.

PART 7—MISCELLANEOUS

Regulation-making power

110. The Governor in Council may make regulations under this Act.

SCHEDULE 1

section 6(2)

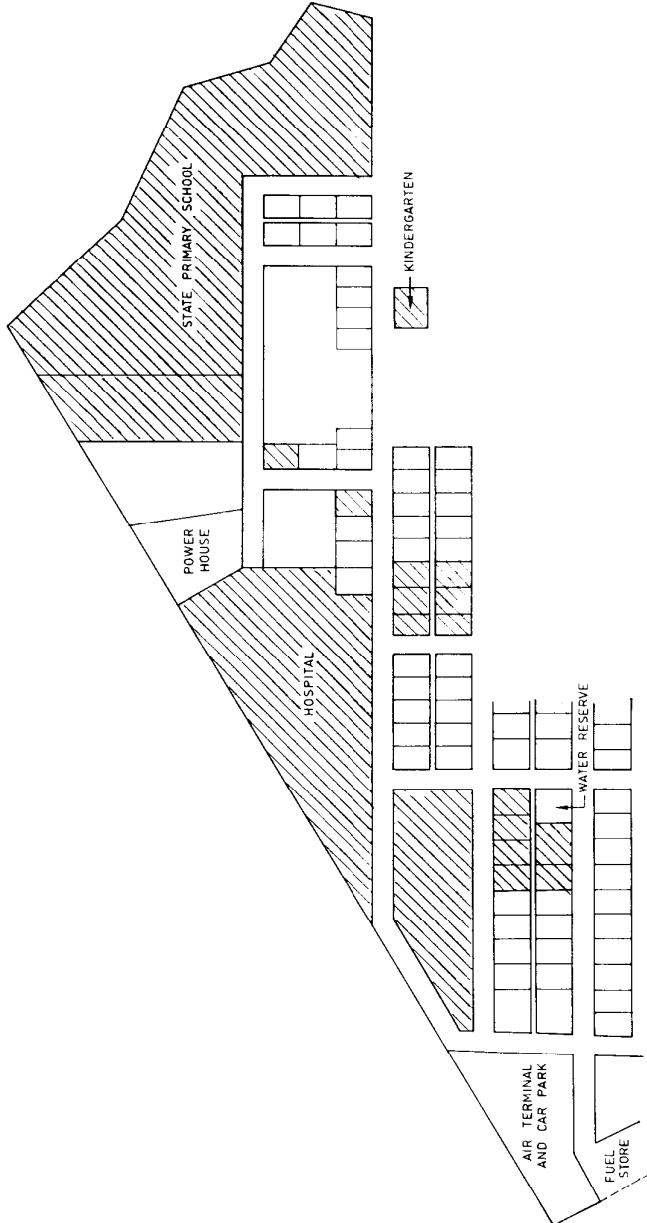
1. The term shall be 50 years commencing on the date of the grant.
2. The rent shall be \$1 per year, if demanded.
3. The area of the demised land shall be defined in the instrument of lease by reference to approximate distances and compass readings and by reference to a map deposited in the department in 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* 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.

SCHEDULE 1 (continued)

- 10.** Such other conditions and reservations as the Governor in Council thinks fit to provide for any matter not inconsistent with the conditions or reservations set out in this schedule or with the *Local Government (Aboriginal Lands) Act 1978*.

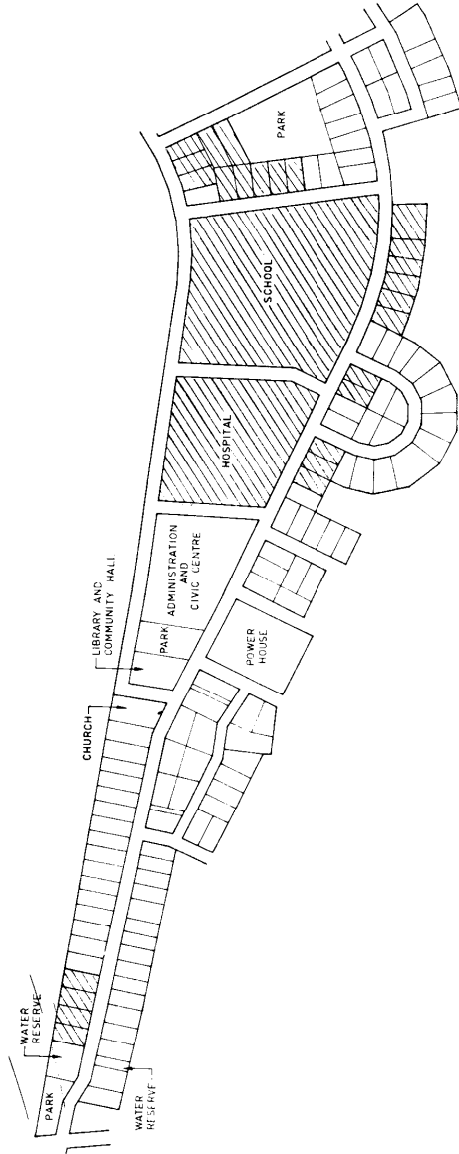
SCHEDULE 2

TOWNSHIP OF AURUKUN



SCHEDULE 3

TOWNSHIP OF MORNINGTON ISLAND



ENDNOTES

1 **Index to endnotes**

		Page
2	Date to which amendments incorporated	68
3	Key	69
4	Table of reprints	69
5	Tables in earlier reprints	69
6	List of legislation	70
7	List of annotations	71

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 4 June 1999. 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.

*Local Government (Aboriginal Lands)
Act 1978*

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the latest reprint.

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1, 2
Corrected minor errors	2
Obsolete and redundant provisions	1, 2
Renumbered provisions	1

6 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

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 ss 1–2, 159 sch 2 (this Act is amended, see amending legislation below)

date of assent 22 May 1992
ss 1–2 commenced on date of assent
remaining provisions commenced 19 December 1994 (1994 SL No. 472)
amending legislation—

Nature Conservation Amendment Act 1994 s 2 sch (amends 1992 No. 20 above)

date of assent 14 September 1994
commenced on date of assent

Local Government Act 1993 No. 70 ss 1–2, 804 sch

date of assent 7 December 1993
ss 1–2 commenced on date of assent
remaining provisions commenced 26 March 1994 (see s 2(5))

Local Government (Aboriginal Lands) Amendment Act 1995 No. 16

date of assent 11 April 1995
ss 1–2 commenced on date of assent
remaining provisions commenced 1 December 1995 (1995 SL No. 326)

Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch

date of assent 22 November 1995
commenced on date of assent

*Local Government (Aboriginal Lands)
Act 1978*

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Local Government Legislation Amendment Act (No. 3) 1997 No. 76 pts 1, 4

date of assent 1 December 1997

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

7 List of annotations

Arrangement of Act

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

Definitions

prov hdg sub 1995 No. 16 s 4(1)
s 3 amd 1993 No. 70 s 804 sch
 def “**Aboriginal council**” sub 1995 No. 58 s 4 sch 1
 def “**Aboriginal land**” ins 1991 No. 76 s 41
 def “**Aboriginal police officer**” ins 1995 No. 16 s 4(3)
 def “**Aborigine**” om 1993 No. 70 s 804 sch
 def “**liquor**” ins 1981 No. 106 s 3
 om 1995 No. 16 s 4(2)
 def “**Minister**” om 1993 No. 70 s 804 sch
 def “**public purpose**” ins 1995 No. 58 s 4 sch 1
 def “**public purposes**” om 1995 No. 58 s 4 sch 1

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; 1995 No. 58 s 4 sch 1

Grant to include improvements

s 7 amd 1978 No. 87 s 6

Shire of Aurukun

s 9 amd 1993 No. 70 s 804 sch; 1995 No. 58 s 4 sch 1

Shire of Mornington

s 10 amd 1995 No. 58 s 4 sch 1

Copies of maps to be held

s 11 amd R1 (see RA s 39)

*Local Government (Aboriginal Lands)
Act 1978*

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

Application of Local Government Act

s 14 amd 1995 No. 58 s 4 sch 1

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

Composition of committees

s 18 amd 1995 No. 58 s 4 sch 1

Functions of committees

s 21 amd 1995 No. 58 s 4 sch 1

Assistance to councils

s 22 amd 1995 No. 58 s 4 sch 1

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

Reason for exclusion—right of appeal

s 27 amd 1995 No. 58 s 4 sch 1

Preservation of Aborigines' hunting and gathering rights

s 29 amd 1991 No. 76 s 43; 1992 No. 20 s 159 sch 2 (as amd by 1994 No. 42
s 2 sch)

Mineral rights in shires

s 30 amd 1995 No. 16 s 5

Law and order in shires

s 33 amd 1995 No. 16 s 6

Indemnification of Aboriginal police officer for liability for tort

s 33A ins 1995 No. 16 s 7

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

*Local Government (Aboriginal Lands)
Act 1978*

amd 1990 No. 76 s 2; 1993 No. 70 s 804 sch
om 1995 No. 16 s 8

Prohibition orders upon liquor abuse

s 37 pres s 37 ins 1981 No. 106 s 4
om 1995 No. 16 s 9

Search for and seizure of liquor

s 38 ins 1981 No. 106 s 4
om 1995 No. 16 s 10

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; 1995 No. 16 s 11

**PART 6—CONTROL OF POSSESSION OR CONSUMPTION OF ALCOHOL
AT AURUKUN**

pt hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 1—Preliminary

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Objects of part

s 40 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Application of part

s 41 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Definitions

s 42 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 2—Aurukun Alcohol Law Council

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Establishment of law council

s 43 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Functions and powers

s 44 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Law council is body corporate etc.

s 45 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

*Local Government (Aboriginal Lands)
Act 1978*

Recognised traditional groups

s 46 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Composition of law council

s 47 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Nominees of recognised traditional groups

s 48 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Traditional groups to tell Minister of nominations etc.

s 49 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Notification by Minister

s 50 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Meetings of law council

s 51 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Chairperson

s 52 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Conduct of meetings

s 53 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Arriving at decisions

s 54 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Secretary

s 55 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Reporting requirements

s 56 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Administrative support

s 57 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 3—Controlled and dry places

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

*Local Government (Aboriginal Lands)
Act 1978*

Declarations

s 58 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Directions about controlled places

s 59 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Notice of proposal

s 60 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Objections and supporting submissions

s 61 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Notice about declarations

s 62 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 4—Permits

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Application for permit

s 63 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Consideration of application for permit

s 64 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Issue of permit

s 65 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Permit fees

s 66 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Possession or consumption of alcohol on controlled or dry place

s 67 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 5—Authorisation of Aboriginal police officers

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Police officer may authorise Aboriginal police officers to investigate

s 68 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

*Local Government (Aboriginal Lands)
Act 1978*

Division 6—Authorised officer’s entry to places and vehicles

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Entry to places

s 69 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Consent to entry

s 70 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Warrants to enter

s 71 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Warrants—applications made other than in person

s 72 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

General powers after entering places

s 73 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Entry and search of vehicles etc.

s 74 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Powers to enable vehicle to be entered

s 75 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 7—Power to seize evidence

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Power to seize evidence etc.

s 76 ins 1995 No. 16 s 12
amd 1995 No. 50 s 3 sch
exp 30 June 1999 (see s 109)

Powers supporting seizure

s 77 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Receipt for seized things

s 78 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Forfeiture of seized things

s 79 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

*Local Government (Aboriginal Lands)
Act 1978*

Return of seized things

s 80 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Access to seized things

s 81 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 8—General powers

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Power to require name and address

s 82 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Steps police officer may take for failure to give name and address

s 83 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Power to require production of permits

s 84 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 9—Other enforcement matters

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

False or misleading statements

s 85 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

False, misleading or incomplete documents

s 86 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Obstructing authorised officers

s 87 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Steps a police officer may take for obstruction

s 88 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Impersonating authorised officers

s 89 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Forfeiture on conviction

s 90 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

*Local Government (Aboriginal Lands)
Act 1978*

Dealing with forfeited things etc.

s 91 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Authorised officer to give notice of damage

s 92 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Compensation

s 93 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 10—Review of decisions

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Who may apply for review

s 94 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Applying for review

s 95 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Stay of operation of decision

s 96 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Decision on reconsideration

s 97 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 11—Appeals

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

How to start appeal

s 98 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Stay of operation of decisions

s 99 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Powers of Magistrates Court on appeal

s 100 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Effect of Magistrates Court's decision on appeal

s 101 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

*Local Government (Aboriginal Lands)
Act 1978*

Appeals

s 102 ins 1995 No. 16 s 12
amd 1999 No. 19 s 3 sch
exp 30 June 1999 (see s 109)

Division 12—Miscellaneous

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Evidence of alcohol by label

s 103 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Evidence of alcohol—notice of challenge required

s 104 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Application forms

s 105 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Filing of applications

s 106 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Law council's common seal

s 107 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Certain provisions of Liquor Act do not apply to shire

s 108 ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Division 13—Expiry of part

div hdg ins 1995 No. 16 s 12
exp 30 June 1999 (see s 109)

Expiry of part

s 109 ins 1995 No. 16 s 12
amd 1997 No. 76 s 14
exp 30 June 1999 (see s 109)

PART 7—MISCELLANEOUS

pt hdg ins 1995 No. 16 s 12

Regulation-making power

s 110 ins 1995 No. 16 s 12

PART 8—TRANSITIONAL PROVISIONS

pt hdg ins 1995 No. 16 s 12
exp 1 December 1997 (see s 112)

*Local Government (Aboriginal Lands)
Act 1978*

General licences

s 111 ins 1995 No. 16 s 12
AIA s 20A applies (see s 111(2))
exp 1 December 1997 (see s 112)

Expiry of part

s 112 ins 1995 No. 16 s 12
exp 1 December 1997 (see s 112)

SCHEDULE 1

(prev sch) renum 1978 No. 78 s 13(a)
amd 1995 No. 58 s 4 sch 1

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)