

Fact sheet 2:

Extended summary of Proposed Amendments to the *Aboriginal Affairs Planning Authority Act 1972*

SECTION

BACKGROUND

PROPOSED CHANGES

<p>Long title</p>	<p>The long title of the <i>Aboriginal Affairs Planning Authority Act 1972</i> provides for the establishment of statutory bodies concerned with Aboriginal affairs for the purpose of consultation and other services, and for the economic, social and cultural advancement of Western Australian Aboriginal people.</p> <p>Divestment of the Aboriginal Lands Trust estate (ALT estate) will foster economic, social and cultural opportunities for Aboriginal people in Western Australia.</p>	<p>Provide for divestment of land held by or under the control of the Aboriginal Lands Trust or the Aboriginal Affairs Planning Authority to Aboriginal people cognisant of the requirements of the <i>Commonwealth Native Title Act 1993</i>.</p>
<p>Section 4 – Terms used</p>	<p>The new divestment legislative framework requires the removal of certain definitions and the insertion of new definitions.</p>	<p>Remove the definitions of “Aboriginal” and “person of Aboriginal descent”.</p> <p>Include new definitions for “Aboriginal body corporate”, “Aboriginal entity”, “Aboriginal Lands Trust estate”, “Aboriginal person”, “Aboriginal stakeholder”, “divestment”, “divestee”, “Native Title Act”, “public utility services”, “registered native title body corporate”, “registered native title claimant” and “road”.</p>
<p>Section 13 – Functions of the Authority</p>	<p>It is proposed that the functions of the Authority will include divestment of the ALT estate to the direct control of Aboriginal people or Aboriginal entities to facilitate their economic, social and cultural aspirations.</p>	<p>Provide for divestment of the ALT estate as a function of the Aboriginal Affairs Planning Authority.</p>
<p>Section 14 – Powers of Authority</p>	<p>It is proposed that the Aboriginal Affairs Planning Authority could exercise any and all powers, rights and privileges to enable it to carry out its functions in relation to divestment.</p>	<p>Provide that the Aboriginal Affairs Planning Authority can do all things necessary or convenient for the administration, management and divestment of land it holds, or has control over, within the ALT estate.</p>

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Section 20 – Aboriginal Lands Trust	Once the ALT estate has been fully divested, there is no need for the Aboriginal Lands Trust to undertake its duties and functions.	Provide for the cessation of the Aboriginal Lands Trust after the ALT estate has been divested; and for the transfer of any continuing contractual obligations to the Minister for Aboriginal Affairs prior to cessation of the Aboriginal Lands Trust.
Section 23 – Functions of the Aboriginal Lands Trust	It is proposed that the Aboriginal Lands Trust will have expanded functions that include divestment of land within the ALT estate and functions that support a clear and certain divestment process that is consistent with the Aboriginal Empowerment Strategy – Western Australia 2021-2029 .	<p>Provide for divestment as a function of the Aboriginal Lands Trust.</p> <p>Provide for the Aboriginal Lands Trust to consult with newly defined Aboriginal stakeholders when determining the use, management and/or divestment of land for which the Aboriginal Lands Trust holds or is responsible.</p> <p>Provide that the Aboriginal Lands Trust is required to have regard to, but is not bound to give effect to the recommendation of Aboriginal stakeholders when determining the use, management and/or divestment of land for which the Aboriginal Lands Trust holds or is responsible.</p> <p>Provide that, if no recommendation from an Aboriginal stakeholder is received within a prescribed time period of the request of the Aboriginal Lands Trust, the Aboriginal Lands Trust may proceed with the action required for the use, management and/or divestment of the land.</p>
Section 24 – Transfers from the Authority to Aboriginal Lands Trust	It is proposed that there are no new Part III reserved lands and that any existing Part III reserved lands that have been divested will not be subject to a proclamation placing control and management with the Aboriginal Lands Trust.	Provide that the Governor’s power to proclaim any land to which Part III applies to be under the control and management of the Aboriginal Lands Trust to expressly exclude any Part III reserved lands that have been proclaimed to be reserved for the economic, social and/or cultural benefit of Aboriginal people.

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BACKGROUND

Section 25 –
New lands may
be reserved

Subsection 25(1) provides for the Governor's power to make proclamations that relate to Crown land under the operation of the *Aboriginal Affairs Planning Authority Act 1972*. The balance of section 25 sets out a process that includes a recommendation from the Minister for Aboriginal Affairs, a referral and a report from the Authority and subsequent parliamentary process that are required before the Governor exercises the power under subsection 25(1). This process represents a significant administrative barrier to divestment.

PROPOSED CHANGES

Provide that there will be no further proclamations bringing land within the operation of Part III of the *Aboriginal Affairs Planning Authority Act 1972*.

Provide for the Governor's power to declare by proclamation land, that was Part III reserved lands, to be reserved for the economic, social and/or cultural benefit of Aboriginal people (divested Part III reserved lands).

Provide for the exercise of the power to alter the boundaries of reserve lands, without requiring a parliamentary process, if it is to facilitate divestment of a portion of Part III reserved lands.

Provide for the exercise of the power to alter the boundaries of reserve lands, without requiring a parliamentary process, if it is to excise roads or public utility services or allow tenure to be granted to support existing or future roads or public utility services.

Provide for the exercise of the power to declare that land shall cease to be reserved for persons of Aboriginal descent, without requiring a parliamentary process, if it is to effect divestment.

Provide for the exercise of the power to declare land that was Part III reserved lands, to be reserved for the economic, social and/or cultural benefit of Aboriginal people without requiring a parliamentary process.

Provide that any existing consents to mine under the *Mining Act 1978* and any existing permits to enter Part III reserved lands survive a proclamation in respect of divested Part III reserved lands.

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Section 26 – Application of Part and establishment of Part III reserved lands	It is proposed that the application of Part III is extended to divested Part III reserved lands. Noting that it is not the intention to bring any land, other than existing Part III reserved lands, under the operation of Part III.	Provide for the application of Part III to extend to any divested Part III reserved lands.
Section 27 – Vesting and effect of reserves	<p>It is proposed that any divested Part III reserved lands are vested in an Aboriginal person or entity (divestee) by a determination of the Minister for Aboriginal Affairs on the following basis:</p> <ul style="list-style-type: none"> (a) on the recommendation of the Aboriginal Lands Trust under section 23 (b) with the consent of the divestee (c) with a divestment agreement approved by the Minister for Aboriginal Affairs (d) the Minister for Aboriginal Affairs will have the power to cancel a vesting if the divestee: <ul style="list-style-type: none"> (i) agrees that its vesting should be cancelled (ii) does not comply with its divestment agreement, or (iii) is deregistered, cancelled or wound up (e) any vesting cancelled will automatically vest in the Aboriginal Affairs Planning Authority but this will not preclude a subsequent vesting in a divestee. 	<p>Provide for the power of the Minister for Aboriginal Affairs to make a determination vesting divested Part III reserved lands in a divestee.</p> <p>Provide that the Minister’s power to make a determination will only be exercised on the recommendation of the Aboriginal Lands Trust and with the consent of the divestee and the vesting takes effect on the date specified in the determination.</p> <p>Provide for a divestment agreement, subject to the Minister’s approval, as a requirement for all divested Part III reserved lands.</p> <p>Provide that the Minister’s determination does not change the reserve purpose.</p> <p>Provide that the lands cease to be vested in a divestee that is an Aboriginal body corporate if it is deregistered under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth).</p> <p>Provide that the land ceases to be vested in the divestee where the divestee is an Incorporated Association and is wound up or cancelled under the <i>Associations Incorporation Act 2015</i>.</p>

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		<p>Provide for the power of the Minister for Aboriginal Affairs to cancel a vesting when a divestee agrees that its vesting should be cancelled, does not comply with its divestment agreement; or is deregistered, cancelled or wound up.</p> <p>Where the Minister has cancelled a vesting, the land automatically vests in the Aboriginal Affairs Planning Authority and, where there is no determination by the Minister, the Part III reserved lands continue to vest in the Aboriginal Affairs Planning Authority.</p>
<p>Section 30 – Right of control in reserved lands</p>	<p>Under section 30 any grant of interest in Part III reserved lands is subject to the consent of the Aboriginal Affairs Planning Authority.</p> <p>It is proposed that the divestee can, in certain situations, grant a lease or licence over divested Part III reserved lands without the procedural constraint of obtaining the consent of the Aboriginal Affairs Planning Authority.</p> <p>It is proposed that section 30 is amended to remove the Aboriginal Affairs Planning Authority’s power of veto over a lease or licence granted by a divestee over divested Part III reserved lands in circumstances and subject to any conditions as may be prescribed by regulation.</p>	<p>Remove the requirement of the Aboriginal Affairs Planning Authority to provide consent to a grant of a lease or licence over divested Part III reserved lands if the granting of the lease or licence by the divestee is in accordance with any condition prescribed by a regulation.</p>

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Section 33A – Power to grant leases over Part III land	It is proposed that the divestee should have the power to grant leases and licences over divested Part III reserved lands subject to the requirements of section 30.	Limit the Aboriginal Affairs Planning Authority’s power to grant leases to Part III reserved lands that continue to be vested in the Authority. Provide for the power of a divestee of divested Part III reserved lands to grant any lease or licence over the divested reserved land subject to section 30.
Section 51(2)(b) – Regulations	It is proposed that the Governor’s power to make regulations in relation to the management and use of Part III reserved lands in subsection 51(2)(b) and regulate entry in subsection 51(2)(c) should not extend to Part III reserved lands that have been divested.	Provide for the Governor’s power to make regulations in relation to Part III reserved lands to exclude divested reserve lands the subject of a Minister for Aboriginal Affairs’ declaration.
Regulation 8	It is proposed that the power to grant permits under regulation 8 be extended to a divestee of divested Part III reserved lands.	Provide for a divestee of divested Part III reserved lands to have the power to grant and deal with permits to enter Part III reserved lands, without requiring consultation with the Aboriginal Lands Trust.