

(Reprint No. 1)

**SOUTH AUSTRALIA**

**ABORIGINAL LANDS TRUST ACT, 1966**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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# ABORIGINAL LANDS TRUST ACT, 1966

being

Aboriginal Lands Trust Act, 1966, No. 87 of 1966 [Assented to 8 December 1966]<sup>1</sup>

as amended by

Aboriginal Lands Trust Act Amendment Act, 1968, No. 41 of 1968 [Assented to 19 December 1968]  
Aboriginal Lands Trust Act Amendment Act, 1973, No. 10 of 1973 [Assented to 6 September 1973]<sup>2</sup>  
Aboriginal Lands Trust Act Amendment Act, 1975, No. 100 of 1975 [Assented to 20 November 1975]  
Aboriginal Lands Trust Act Amendment Act, 1984, No. 65 of 1984 [Assented to 27 September 1984]  
Aboriginal Lands Trust Act Amendment Act, 1990, No. 6 of 1990 [Assented to 5 April 1990]

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.*

**An Act to establish an Aboriginal Lands Trust, to define the powers and functions thereof, for purposes incidental thereto and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

## PART I PRELIMINARY

### Short title

1. This Act may be cited as the *Aboriginal Lands Trust Act, 1966*.

### Commencement

2. This Act shall come into operation on a day to be fixed by the Governor by proclamation.

### Interpretation

3. In this Act, unless the context otherwise requires—

“chairman” means the chairman of the Trust:

“the lands” means the lands vested in the Trust in pursuance of this Act:

“member” means member of the Trust and includes the chairman:

\* \* \* \* \*

“Minister’s Representative” means the Minister’s Representative appointed pursuant to section 9a of this Act and includes a deputy, appointed under that section, while acting as the Minister’s Representative:

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<sup>1</sup>Came into operation 8 December 1966: *Gaz.* 8 December 1966, p. 2152.

<sup>2</sup>Came into operation 8 November 1973: *Gaz.* 8 November 1973, p. 2795.

“Secretary” means the Secretary to the Trust:

“Trust” means the Aboriginal Lands Trust constituted under this Act.

*Note: For definition of divisional penalties see Appendix 2.*

**Arrangement**

4. This Act is divided into Parts as follows:—

PART I—PRELIMINARY

PART II—THE ABORIGINAL LANDS TRUST

PART III—SECRETARY AND STAFF OF THE TRUST

PART IV—PROVISIONS WITH RESPECT TO ABORIGINAL LANDS

PART V—FINANCE

## PART II

## THE ABORIGINAL LANDS TRUST

**Constitution of Aboriginal Lands Trust**

5. (1) There shall be constituted a body to be known as the "Aboriginal Lands Trust".

(2) The Trust shall be a body corporate with perpetual succession and a common seal and, subject to this Act, shall have power in its corporate name to receive, accept, hold, acquire by means of agreement, or exchange, possess, and to dispose of property of every kind and be a party to any legal proceedings.

(3) Every court and every person acting judicially shall take judicial notice of the seal of the Trust and when the seal appears on any document shall presume that it was properly affixed thereto.

**Membership of Trust**

6. (1) The Trust shall consist of a chairman and at least two other members appointed by the Governor: Provided that the Governor may whenever he thinks it fit so to do appoint additional members upon the recommendation of Aboriginal councils established pursuant to regulations made under the *Community Welfare Act, 1972*, as amended, and of such Aboriginal communities as are recognized as such by the Minister and the members of which ordinarily reside on land owned by the Trust; but no such council or community may recommend more than one member for the Trust at any one time and thereafter shall only recommend a member to fill a vacancy caused by the vacation of office by or retirement of a person whom it has previously recommended. Each member of the Trust shall be an Aboriginal within the meaning of the *Community Welfare Act, 1972*, as amended.

(2) The chairman and other members of the Trust shall, subject to this Act, hold office for three years.

(3) Any member of the Trust may at the expiration of his term of office be re-appointed.

(4) Whenever a vacancy occurs in the office of a member of the Trust whether by expiration of his term of office or otherwise the Governor may, subject to subsection (1) of this section, appoint a person to fill the vacancy: Provided that the person appointed to fill a vacancy caused otherwise than by the expiration of the term of office of a member shall hold office only for the unexpired portion of the term of office of the member in whose place he is appointed: Provided further that any retiring member whose term of office expires by effluxion of time shall hold office until his successor is appointed.

(5) A member of the Trust shall not, as such, be subject to the *Public Service Act, 1967-1972*, but this subsection does not affect the rights, duties and obligations under that Act of any such member who is otherwise an officer in the public service of the State.

**Casual vacancies**

7. (1) The seat of a member shall become vacant on—

(a) his death, lunacy or his being convicted of an indictable offence;

(b) his resignation by notice in writing posted or delivered to the Minister or his absence from three consecutive meetings of the Trust without leave of the Trust;

(c) his ceasing to reside in the State;

(d) his becoming bankrupt or making an assignment of his property for the benefit of his creditors or compounding with his creditors for less than one hundred cents in the dollar;

(e) his removal from the Trust by the Governor pursuant to this section.

(2) The Governor may remove any member from office for neglect of duty, incapacity to perform his duties, dishonourable conduct or other cause deemed sufficient by the Governor.

#### **Remuneration of Trust**

8. Each member of the Trust shall be paid out of the funds of the Trust such remuneration for his services and such travelling and other allowances, if any, as the Governor approves.

#### **Validity of acts of Trust**

9. (1) An act or proceeding of the Trust shall not be invalid or illegal by reason only of the fact that at the time of the act or proceeding there was a vacancy in the office of any member or that any person who had been appointed as an additional member by the Governor before the commencement of the *Aboriginal Lands Trust Act Amendment Act, 1975*, was not properly qualified for appointment when he was so appointed.

(2) All acts and proceedings of the Trust shall notwithstanding the subsequent discovery of any defect in the appointment of any member or that any member was disqualified or disentitled to act or that any person who had been appointed as an additional member by the Governor before the commencement of the *Aboriginal Lands Trust Act Amendment Act, 1975*, was not properly qualified for appointment when he was so appointed be as valid as if such member had been duly appointed and was qualified and entitled to act and had acted as a member and as if the Trust had been properly and fully constituted.

#### **Minister's Representative**

9a. (1) The Minister shall by notice in writing appoint a person to be the Minister's Representative for the purposes of this Act and the Minister may by a like notice appoint another person as deputy of the Minister's Representative.

(2) A deputy appointed under subsection (1) of this section may, in the absence, incapacity or inability of the Minister's Representative, act as the Minister's Representative.

(3) An act done or purported to have been done as Minister's Representative by a deputy appointed under subsection (1) of this section shall not be called in question on the ground that the occasion for the doing of the act had not arisen or had ceased.

#### **Meetings and quorum**

10. (1) At any meeting of the Trust the chairman if present shall preside and in the absence of the chairman the members present at any meeting of the Trust shall elect one of their number to preside at that meeting.

(2) The person presiding at any meeting of the Trust shall have both a deliberative and a casting vote.

(3) No meeting of the Trust shall be held in the absence of the Minister's Representative.

**Quorum of Trust**

11. One half of the members of the Trust if the number be even plus one, and if the number be uneven the number nearest to but more than half the total number of members, shall constitute a quorum of the Trust.

**Trust not to represent Crown**

12. The Trust shall not be a department of the Government of the State or represent or except as expressly authorized by the Governor with the consent of the Trust be an agent or servant of the Crown.

**Annual reports**

13. (1) The Trust shall, on or before the first day of October in every year, report to the Governor on the working of this Act during the preceding financial year and shall in any such report set out a summary of the receipts and expenditure during the said period and any other particulars which the Trust may from time to time consider fit to be included in the report.

(2) All such reports shall be laid before Parliament.

PART III

SECRETARY AND STAFF OF THE TRUST

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**Staff of Trust**

15. (1) The Trust may, with the approval of the Minister, appoint a Secretary, Manager and such other officers and employees as are required for the purposes of the exercise and performance of the powers and functions of the Trust.

(2) The terms and conditions of employment, including remuneration, of the Secretary, Manager and any other officer or servant of the Trust shall be from time to time determined by the Trust and approved of by the Minister.

(3) The office of Secretary and Manager may be held by the one person.

(4) The *Public Service Act, 1967-1972*, shall not apply to or in relation to the Secretary, Manager or other officers or servants of the Trust.

(5) The Minister may make arrangements with the Trust for the use by the Trust of the services of any officers of any Department of the Government of the State under the control of the Minister, on such terms as may be agreed upon between the Minister and the Trust.

(6) Nothing in this section contained shall affect the status or continuity in employment of any officer or servant appointed by the Trust pursuant to section 15 of this Act as in force before the commencement of the *Aboriginal Lands Trust Act Amendment Act, 1973*, and this section shall apply and have effect to and in relation to such officers and servants as if it had been in operation at the time at which they were so appointed.



## PART IV

## PROVISIONS WITH RESPECT TO ABORIGINAL LANDS

**Power to transfer lands to Trust**

16. (1) Notwithstanding anything in the *Community Welfare Act, 1972*, as amended, or any other Act or in any regulation contained, the Governor may by proclamation transfer any Crown lands or any lands for the time being reserved for Aborigines to the Trust for an estate in fee simple or for such lesser estate or interest as is vested in the Crown: Provided that no such proclamation shall be made in respect of any land that is an Aboriginal reserve or part of any Aboriginal reserve within the meaning of the *Community Welfare Act, 1972*, as amended, and in respect of which an Aboriginal Council has been established and is in existence pursuant to regulations made under the *Community Welfare Act, 1972*, as amended, without the consent of that council:

\* \* \* \* \*

Provided further that no such proclamation shall be made in respect of any Crown lands (not being lands at the time of the passing of this Act reserved for Aborigines) except upon the recommendation of the Minister of Lands or the Minister of Irrigation as the case may require and the recommendation of both Houses of Parliament by resolution passed during the same or different sessions of the same Parliament.

(2) Upon the making of any such proclamation such lands shall be vested for an estate in fee simple or, as the case may be, for such lesser estate or interest, as is vested in the Crown free of all encumbrances in the Trust except and reserved unto Her Majesty, Her heirs and successors, all gold, silver, copper, tin and other metals, ore, minerals and other substances containing metal and all gems and precious stones, coal and mineral oil in and upon any such lands and the Governor may issue such land grants or other instruments as may be required under any Act or law to give effect to the transfer effected by the proclamation and that land grant or other instrument shall form part of the records of title to land kept under the *Real Property Act, 1886-1967*.

(3) Notwithstanding the provisions of the *Real Property Act, 1886-1963*, the Registrar-General shall make such entries in the Register Book and do such other acts and things under that Act as are necessary to give effect to the transfer.

(4) The Treasurer shall from time to time pay to the Trust such amounts as may be appropriated by Parliament for the purpose up to but not exceeding the amount of royalties paid to the Crown or a Minister of the Crown in any financial year in respect of any lease or licence, subject to this section, granted or issued under the *Mining Act, 1971*, or the *Petroleum Act, 1940-1967*, in respect of any lands vested in the Trust.

(5) The Trust may—

- (a) with the consent of the Minister, sell, lease, mortgage or otherwise deal with land vested in it pursuant to this Act; or
- (b) develop such land subject to compliance with the provisions of any Act or law relating thereto,

as it thinks fit: Provided that neither the Trust nor any lessee or assign of the Trust shall depasture any stock on any lands situate within the pastoral area of the State as defined in the *Pastoral Act, 1936-1960*, and vested in the Trust without the approval of, and upon such conditions (including the number of stock to be depastured on any such land) as may be specified by the Pastoral Board. The Minister shall not withhold his consent unless he is satisfied that the sale, lease, mortgage or dealing fails to preserve to the Aboriginal people of South Australia the benefits and value of the land in question:

Provided that no land vested in the Trust may be sold unless both Houses of Parliament during the same or different sessions of any Parliament have by resolution authorized such sale.

(6) Notwithstanding the provisions of subsection (5) of this section, the Trust shall not sell, lease nor in any way alienate any portion of the North-West Reserve (as defined in the proclamation of His Excellency the Governor dated the thirteenth day of February, 1964 as land reserved for Aborigines) from use by Aborigines within the meaning of the *Community Welfare Act, 1972*, as amended, nor shall the Trust encumber any portion of the said Reserve unless both Houses of Parliament during the same or different sessions of any Parliament have by resolution authorized such alienation or encumbering.

(7) No lease or licence granted by the Trust under subsection (5) of this section shall be assigned nor shall any lessee or licensee sublet or part with the possession of the land the subject thereof without the consent in writing of the Minister first had and obtained. A lease or licence shall be forfeit upon any breach of this provision.

(8) Subject to subsection (9) of this section, the *Mining Act, 1971-1972*, and the *Petroleum Act, 1940-1971*, shall, on and after the commencement of the *Aboriginal Lands Trust Act Amendment Act, 1973*, not confer any right of entry, prospecting, exploration or mining in respect of land vested in the Trust.

(9) The Governor may declare by proclamation that on and after the commencement of the *Aboriginal Lands Trust Act Amendment Act, 1973*, the rights of entry, prospecting, exploration or mining conferred by the *Mining Act, 1971-1972*, and the *Petroleum Act, 1940-1971*, shall be exercisable, subject to such conditions and modifications (if any) as may be specified in the proclamation in relation to land vested in the Trust or any part of that land and those conditions and modifications shall apply and have effect accordingly and the Governor may, by subsequent proclamation, vary or revoke any such proclamation.

#### **Application of the Public Intoxication Act, 1984, to the lands**

**16a.** (1) The *Public Intoxication Act, 1984*, applies to the lands with the following qualifications and modifications—

- (a) a reference in that Act to a public place shall be construed as a reference to a part of the lands declared under this section to be a public place;
- (b) a reference in that Act to an authorized officer shall be construed as a reference to an authorized officer—
  - (i) appointed with the concurrence of the Trust;
  - and
  - (ii) exercising his powers within a part of the lands approved by the Trust in relation to that authorized officer;
- (c) a member of the police force or an authorized officer appointed with the concurrence of the Commissioner of Police may, in addition to his powers under that Act, but subject to any limitation prescribed under this section, exercise any of the following powers on any part of the lands declared by proclamation under subsection (2) to be a part of the lands in relation to which those powers are exercisable:
  - (i) the power, on reasonable suspicion that alcohol or a drug is in any premises or vehicle, to enter and search those premises or that vehicle, using such force as is necessary for the purpose;

- (ii) the power to stop any vehicle for the purpose of carrying out a search under subparagraph (i);
  - (iii) the power to confiscate and dispose of alcohol or a drug.
- (2) The Governor may, by proclamation made on the recommendation of the Trust—
- (a) declare any part of the lands to be a public place for the purposes of the *Public Intoxication Act, 1984*;
  - (b) declare that the powers referred to in subsection (1)(c) are exercisable in relation to a specified part of the lands;
  - (c) impose limitations on the exercise of the power referred to in subsection (1)(c) in a specified part of the lands;
- or
- (d) vary or revoke any proclamation previously made under this subsection.
- (3) The Trust shall not recommend the making of a proclamation under subsection (2) unless—
- (a) a proposal for making the proclamation has been initiated from within the Aboriginal communities that would be affected by the proclamation;
- and
- (b) the Trust is satisfied that those communities are in general agreement that the proclamation should be made.

#### **Assets of Trust**

17. All moneys held by the Trust including the proceeds of any sale or lease or other dealing with any land vested in the Trust shall, subject to payment thereof of the costs of administration of this Act, be held by the Trust and used by it for the development and improvement of lands the property of the Trust and the acquisition and development of further lands for the purposes of the Trust and for the purposes of section 18.

#### **Power to grant assistance**

18. Subject to the approval of the Minister the Trust may grant technical or other assistance or advance moneys to Aboriginals within the meaning of the *Community Welfare Act, 1972*, as amended, or to recognized Aboriginal groups for such purposes and upon such conditions as the Trust thinks fit: Provided that no assistance shall be granted and no moneys shall be advanced under this section to any member of the Trust or, except with the consent of the Minister, to any relative of a member of the Trust.

## PART V

## FINANCE

**Banking and finance**

19. (1) For the purposes of this Act the Trust shall open and maintain an account or accounts at a bank trading in Adelaide and with the approval of the Minister may arrange with that bank for overdrafts or advances.

(2) The Minister may from time to time out of moneys provided by Parliament for the purpose pay to the Trust by way of grant or by way of loan or both such sums as he thinks proper.

(3) There shall be paid into the bank account of the Trust all such sums as the Treasurer and the Minister pay to the Trust and all other money received by the Trust from any source.

**Audit**

20. The Auditor-General shall, without fee, audit the accounts of the Trust annually. For the purposes of any such audit the *Audit Act, 1921-1957*, as amended, shall apply as if the Trust were a department of the Public Service.

PART VI  
MISCELLANEOUS

**Regulations**

21. (1) The Governor may, on the recommendation of an Aboriginal community, make regulations—

- (a) regulating, restricting or prohibiting the consumption, possession, sale or supply of alcoholic liquor on a specified part of the lands;
- (b) prohibiting the inhalation or consumption of any regulated substance on a specified part of the lands;
- (c) prohibiting the possession, sale or supply of any regulated substance on a specified part of the lands for the purpose of inhalation or consumption;
- (d) providing for the confiscation, in circumstances in which a contravention of a regulation under paragraph (a), (b) or (c) is reasonably suspected, of alcoholic liquor or any regulated substance to which the suspected contravention relates;
- (e) providing for the treatment or rehabilitation (or both) of any person affected by the misuse of alcoholic liquor or any regulated substance;
- (f) prescribing fines (not exceeding a division 7 fine) for contravention of, or non-compliance with, a regulation.

(2) A regulation under subsection (1) may not be varied or revoked except on the recommendation of the Aboriginal community on whose recommendation the regulation was made.

(3) A member of the police force may seize and impound any vehicle reasonably suspected of having been used in connection with the supply of alcoholic liquor to any person on the lands in contravention of a regulation.

(4) If a vehicle is seized pursuant to subsection (3), the matter must be referred at the next available opportunity to a magistrate.

(5) A magistrate may make an order for the forfeiture of a vehicle seized pursuant to subsection (3) if the magistrate is satisfied—

- (a) that the vehicle has been used in connection with the supply of alcoholic liquor to a person on the lands in contravention of a regulation;
- (b) that any person who so used the vehicle has, on at least one previous occasion, been found guilty of the offence of supplying alcoholic liquor to a person on the lands in contravention of a regulation;

and

- (c) that in the circumstances of the case it is appropriate that the vehicle be confiscated.

(6) A court by which a person is found to have been unlawfully in possession of alcoholic liquor or a regulated substance for his or her own use in contravention of a regulation may, subject to the regulations, order that person to undergo treatment or participate in a prescribed rehabilitation programme.

(7) Subject to subsection (8), a person who contravenes or fails to comply with a regulation is guilty of a summary offence and liable to a penalty as follows:

- (a) if the regulation specifies a penalty—the penalty so specified;

or

(b) if no penalty is specified—a division 7 fine.

(8) A person who contravenes—

(a) a regulation regulating, restricting or prohibiting the sale or supply of alcoholic liquor on the lands;

or

(b) a regulation prohibiting the sale or supply of a regulated substance on the lands for the purpose of inhalation or consumption,

is guilty of a summary offence and liable to a division 7 fine or division 7 imprisonment.

(9) In this section—

“Aboriginal community” means an Aboriginal community—

(a) that is recognized as such by the Minister;

and

(b) the members of which ordinarily reside on land owned by the Trust:

“member of the police force” includes a special constable authorized by a member of the police force to seize a vehicle under this section:

“regulated substance” means—

(a) petrol;

or

(b) any other substance declared by the regulations to be a regulated substance for the purposes of this section.

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**APPENDIX 1**

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 44.

Section 3: definition of "the lands" inserted by 65, 1984, s. 2  
Section 16a: inserted by 65, 1984, s. 3

Part VI comprising s. 21 and heading inserted by 6, 1990, s. 2

## APPENDIX 2

## Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

*Note: This appendix is provided for convenience of reference only.*