

EXPLANATORY MEMORANDUM

Wittenoom Closure Bill 2018

In its prime, between the late 1940s and early 1960s, Wittenoom was one of the largest and most vibrant towns in the Pilbara. However, following the closure of Wittenoom Gorge blue asbestos mine in 1966 and increasing evidence of the risks posed by asbestos, the Government of Western Australia began phasing the town out in 1978. The presence of airborne asbestos fibres in Wittenoom presents a serious risk to the health and safety of all residents in, and visitors to, Wittenoom. The Wittenoom Closure Bill (Bill) will facilitate the closure of the former Wittenoom townsite.

The State Government has long been managing the health and safety risks associated with Wittenoom by degazetting the Wittenoom townsite, removing it from maps and signs, and informing visitors to the area of the hazards of Wittenoom. The State has been buying back the land in Wittenoom in order to bring the whole area under State management.

Despite extensive negotiations and offers of compensation, there still remain five people who own a total of 17 lots in Wittenoom. Three people reside in Wittenoom. The State may only demolish the remaining buildings, close the townsite and commence managing the risks posed by the area once all of the freehold land in Wittenoom has been reverted in the State.

The Bill provides for the compulsory acquisition of the 17 remaining freehold lots in Wittenoom and fixes the compensation payable in respect of them. The usual regime for compulsory acquisition of land by the State is contained in the *Land Administration Act 1997* (LAA). The Bill provides for the use of the compulsory acquisition provisions in the LAA by allowing the Wittenoom land to be taken as if for a public work.

The Bill modifies the usual LAA taking provisions for the sake of efficiency. As the purpose of the taking is ultimately to ensure the health and safety of the public, including the current residents of Wittenoom, an abridged taking process is warranted. The compensation provided for is generous.

Part 1 – Preliminary

Clause 1 Short Title

Provides that the name of this bill when enacted is the *Wittenoom Closure Act 2018* (the Act).

Clause 2 Commencement

Provides that:

1. Part 1 comes into operation on the day on which the Act receives Royal Assent; and
2. The rest of the Act comes into operation on the day after the day on which the Act receives Royal Assent.

Clause 3 Terms Used

This clause sets out the definitions of terms which are used in the Bill. In most cases the definition will be the same as that used in the LAA.

"Wittenoom land" is defined to mean the lots set out in Schedule 1. These are the lots in Wittenoom which remain in private freehold ownership and which are to be compulsorily acquired pursuant to the provisions of this Bill.

Clause 4 Purpose of Act

The purpose of the Act is to facilitate the closure of the former townsite of Wittenoom by enabling the remaining freehold lots in Wittenoom to be compulsorily acquired under Part 9 of the LAA. The provisions of Part 9 of the LAA is the usual way by which the State compulsorily acquires land.

Once the land has reverted to Crown land, the State will be able to manage all of the land in Wittenoom, including demolishing improvements and managing the risks posed by the area.

Clause 5 Act Binds Crown

This Act binds the Crown.

Part 2 – Compulsory acquisition of Wittenoom land

Clause 6 Wittenoom land may be taken under LA Act Pt. 9

LAA Part 9 only authorises the compulsory acquisition of land in certain circumstances, primarily where the acquisition is for a public work as defined in the *Public Works Act 1902*. The taking of land for health, safety or environmental reasons is not a public work. Clause 6(1) allows for the Wittenoom land to be taken as if for a public work so that the taking provisions of Part 9 LAA may apply.

It is not proposed to take native title rights and interests, or mining, petroleum and geothermal energy rights, so the taking of these rights and interests is not authorised by the Bill.

Clause 7 Application of LA Act Pt. 9

The Minister for Lands is to be the acquiring authority. This means that the Minister for Lands is the person with the statutory authorisation to undertake, construct or provide a public work under section 161 of the LAA.

The taking is to be done as expeditiously as possible because of the public benefit of closing Wittenoom. Clause 7 disapplies or modifies the application of some of the usual taking processes required under the LAA. The LAA is otherwise to apply with any necessary changes.

In usual circumstances, compulsory acquisitions are commenced with the issue and service of a Notice of Intention to Take (NOITT). There will be no requirement for a NOITT in respect of the taking of Wittenoom land. This is primarily for efficiency since the Bill is itself notice that the land will be taken. No objections will be permitted because of the overriding public policy reasons for the land being taken. Accordingly, sections 170, 171, 175, 177(1)(b) of the LAA which relate to the service of NOITTs and objections to NOITTs are excluded from having any application to the taking of Wittenoom land.

Section 176 of the LAA will not apply as there is no need for a clause allowing the proprietor to take small remainders of land. The intention is that the entire lot will be taken so that after the takings there will not be any land in Wittenoom left in fee simple ownership.

The taking contemplated by the Bill will be going ahead in order to achieve the State's objective of closing Wittenoom. Section 181 LAA provides for compensation if the taking order is amended or annulled. As the taking of Wittenoom land will be going ahead, section 181 of the LAA will not apply to the Wittenoom takings.

Section 186(3)(b) requires notice to be given about the procedures and compensation available on early entry onto freehold land. As the usual procedures and compensation do not apply, this section will also not be applicable.

Sections 189, 190 and 191 are all about offering back the land if and when it is no longer required for the public work. The extent of the contamination and consequent management of Wittenoom in order to protect the health and safety of the public is such that the land can never be offered back.

Compensation will be assessed and paid in accordance with Part 3 of the Bill rather than Part 10 of the LAA. Therefore:

1. Section 168(1)(b) of the LAA about obtaining written consent of the person of the taking of the interest with compensation to be provided under Part 10; and
2. Section 168(2) of the LAA requiring proprietors to be advised of procedures under Part 9 and 10 for taking and compensation

will not apply to the taking of Wittenoom land.

Sections 169(1), 177(5) and 179(b) of the LAA are modified to reflect the fact that compensation Part 10 of the LAA does not apply but compensation for the taking of Wittenoom land will be assessed and paid in accordance with Part 3 of the Bill.

Clause 8 Notice of intention in relation to Wittenoom Land

This clause provides that a NOITT is deemed to be registered in relation to the Wittenoom land. The Minister may then make a taking order for Wittenoom land under section 177 of the LAA and enter the land to inspect or survey the land under sections 184(1) and (2) of the LAA.

Clause 9 Taking orders in relation to Wittenoom land

This clause allows for a taking order to be made under section 177 of the LAA, without there having been a NOITT, by deeming the taking order to be consistent with a NOITT registered against the land the subject of the taking order.

Clause 10 Disclosure under Contaminated Sites Act 2003 s. 68 not required

Section 68(1) of the *Contaminated Sites Act 2003* requires a fee simple owner of a site that has been classified as "contaminated – remediation required" to disclose that to any purchaser of that land. This clause provides that the owners of Wittenoom Land do not need to disclose the contamination if the State enters into an agreement to purchase the land under section 168(1) of the LAA. The requirement for disclosure is unnecessary in this instance as the State is acquiring the land, and is already aware of the contamination.

Part 3 – Compensation

Clause 11 No compensation except as provided in this Part

This clause provides that the compensation provisions of Part 10 of the LAA do not apply to takings under the Bill. Instead, compensation for the taking of Wittenoom land is solely governed by Part 3 of the Bill.

Clause 12 Compensation for fee simple in Wittenoom land

This clause sets out the compensation payable by the State to the landowners whose land is taken pursuant to the Bill. The amount of compensation has been set as follows:

1. \$325,000 for a lot on which the fee simple owner resides. Additionally, that owner will receive \$50,000 for solatium and moving expenses.
2. \$65,000 for a lot which is improved, but is not the fee simple owner's primary residence.
3. \$30,000 for vacant land.

The 17 remaining lots are owned by 5 owners, of which 3 live there, so some of the fee simple owners will receive compensation in respect of more than one lot. Officers of the Department of Planning, Lands and Heritage have determined which lots are occupied, which are improved and which are vacant by site inspections and their ongoing negotiations with the current and former residents of Wittenoom. The amounts payable as compensation are generous.

Clause 13 Apportionment of rates and taxes

This clause is modelled on section 242 of the LAA. It provides for the apportionment of rates and taxes between the State and the former owner.

Clause 14 Payment of Compensation

This clause obliges the Minister for Lands to pay compensation following the taking of Wittenoom land. Payment of compensation is conditional upon the former fee simple owner vacating that land and giving possession to the Minister. The exception to this is the payment of the \$50,000 for solatium and moving expenses which will be paid prior to the vacation of the premises to enable the owner to move.