

**APPROVALS AND RELATED REFORMS (NO. 3)  
(CROWN LAND) BILL 2009**

**EXPLANATORY MEMORANDUM**

The purpose of this Bill is to amend various Acts so as to provide efficiencies in the processes for giving notices, applying for approvals and doing various other things under those Acts which relate to the use and development of, or dealings with, Crown land and freehold land held in the name of the State.

There are four main areas of process improvements included in the Bill.

1. Authorisation to act in relation to Crown land or freehold land in the name of the State

Under section 29(5) of the *Land Administration Act 1997* all Crown land is held in the name of the State of Western Australia, and the Minister for Lands (being the body corporate continued under that Act) has the authority to deal with Crown land under, and in accordance with, that Act.

A number of other Acts require applications to be made, notices to be given or other things to be done, by the owner or occupier of land or others, if certain development or other actions occur on or in relation to land.

In the case of Crown land, this may require the Minister for Lands to sign the application for approval, to give the relevant notice or to do the thing, on behalf of the State as owner of the Crown land. Delegations are not able to be given under section 9 of the *Land Administration Act 1997* of the Minister for Lands' powers under these other Acts, as section 9 only allows powers under the *Land Administration Act 1997* to be delegated. Here, the powers are being exercised under the relevant other Act.

It is administratively efficient for the Minister for Lands to give an authorisation to public service officers, or other persons, for the exercise of those powers, rather than the Minister for Lands having to exercise them personally. Also it removes any doubt as to the extent they can be exercised by relevant departmental officers under the alter ego principle.

In some cases, it may even be administratively cumbersome to require a relevant departmental officer to do these things on behalf of the Minister for Lands, and it would be most efficient to allow another person (not necessarily being a public service officer) to be authorised to do them, without any undue risk to the State's assets or position. These are where:

- (i) the person already has effective control of the land, and is otherwise permitted to do the thing on the land from a land tenure perspective; or
- (ii) the action is only to initiate an application process that is otherwise considered and dealt with in accordance with the regulatory mechanism under the relevant Act, and the person would have to seek separate tenure arrangements from the Minister for Lands to do the thing on Crown land if the application is successful.

The amendments to the *Aboriginal Heritage Act 1972* (including applications for Ministerial consent under section 18) and the *Planning and Development Act 2005* (including applications for development approvals under the relevant planning scheme) fall within this category.

In other cases, the powers being exercised relate more strictly to the exercise of Ministerial functions and powers proper, so it is appropriate that the authorisation is limited to a public service officer of the department assisting the Minister for Lands in the administration of the *Land Administration Act 1997*.

The amendments to the *Mining Act 1978*, the *Petroleum Pipelines Act 1969*, the *Transfer of Land Act 1893*, and the *War Service Land Settlement Scheme Act 1954* fall within this category. The amendments to the *Environmental Protection Act 1986* also fall within this category for this reason. In addition, the nature of some of the matters covered under that Act are of such seriousness that it is also appropriate for the Minister for Lands to have notice of them or to do them on behalf of the State as the ultimate owner of the land.

If a person already has a right or obligation to give a notice, make an application or do some other thing under the relevant Act, that right or obligation is not affected by these amendments. In other words, that person can still make the application (or the like) and is not, by virtue of these amendments, required to obtain any separate authorisation or consent from the Minister for Lands (acting as owner of the relevant Crown land) if it was not required to do so before the amendments.

For example, some Acts allow a lessee of, or other interest holder in, Crown land to make an application (or the like) in their own right, and this would continue unaffected by these amendments.

2. Authorisation to act on behalf of the Minister of relevant mining or petroleum Act

The amendment to section 91(5) of the *Land Administration Act 1997* will improve efficiencies in agreement being reached for the simultaneous existence of a licence or profit a prendre that is granted under that Act, with a mining or petroleum right.

Approval will now be able to be given by a person authorised by the Minister of the relevant mining or petroleum Act in writing to do so, instead of the relevant Minister personally. This will expedite the issue of such licences, which are commonly used in site and other preparatory investigations and geotechnical studies for proposed development projects.

3. Disclosure of personal details of Crown land interest holders

The release of the name and contact details of holders of interests in Crown land, including pastoral and other lessees, will be authorised by these amendments. The amendment is needed to provide certainty that the release of this information, where there are good public policy reasons for doing so, does not breach privacy or other confidentiality principles or laws.

The contact details held under the authority of the *Land Administration Act 1997* are often the most recent and up to date source. The effective and efficient provision of government, public utility and essential services will be enhanced if the department holding this information is able to give it to the relevant public authority or other person.

In addition, it may also assist Crown land interest holders to exercise, in a more timely manner, rights they may have under other Acts. In particular, as the Director General of Mines will be able to provide contact details to mining tenement holders and applicants, Crown land interest holders will be notified more quickly by those tenement holders or applicants of their rights (including a right to claim compensation) under the *Mining Act 1978*.

#### 4. Improve power to grant petroleum pipeline easements

Currently easements for petroleum pipelines over unallocated Crown land are granted under the *Petroleum Pipelines Act 1969* by the Governor in Executive Council, and over managed Crown land by the relevant body that has the care control and management of the relevant land (**management body**).

The amendment to section 16 of the *Petroleum Pipelines Act 1969* will allow the Minister for Lands, or an authorised departmental officer, to grant petroleum pipeline easements over any Crown land, instead of the Governor and any management body.

The substitution of the Minister for Lands for the Governor:

- (i) will make the grant of such easements much more administratively efficient;
- (ii) is consistent with a similar substitution that was made in 1998 when the *Land Administration Act 1997* came into force (and the *Land Act 1933* was repealed), in respect of all dealings in Crown land under that Act; and
- (iii) is consistent with the Minister for Lands having the power and experience in granting similar easements under Part 8 of the *Land Administration Act 1997* over Crown land.

In addition, the ability of the Minister for Lands to grant petroleum pipeline easements over any Crown land will mean that only one such easement, on one set of terms and conditions, needs to be granted to a pipeline operator over the whole length of the pipeline that is on Crown land, rather than a number of easements being granted by various management bodies over the different parts of Crown land managed by each of them (and possibly on different terms and conditions).

Set out below is an explanation of the contents of the Bill, on a clause by clause basis.

**Clause 1** states the short title of the Act.

**Clause 2** provides that the Act is to come into operation on a day fixed by proclamation, and different provisions of the Bill can come into operation at different times.

- Clause 3** provides that Part 2 amends the *Aboriginal Affairs Planning Authority Act 1972*.
- Clause 4** deletes sections 21A(2), (3) and (8) of the *Aboriginal Affairs Planning Authority Act 1972*. The amendment removes an exception to the Aboriginal Land Trust’s ability to delegate consultation powers to Trust members and departmental officers. It also removes a definition which is referred to in the deleted sections.
- Clause 5** amends section 30 of the *Aboriginal Affairs Planning Authority Act 1972*, to change the reference to the year of the *Mining Act* from 1904 to 1978.
- Clause 6** provides that Part 3 amends the *Aboriginal Heritage Act 1972*.
- Clause 7** inserts new section 66 in the *Aboriginal Heritage Act 1972*. If under sections 18(2) or 24 of that Act, the owner of Crown land or freehold land in the name of the State may, or is required to, give a notice, it may be given by the Minister for Lands or by a person authorised by him in writing to do so.
- Despite any authorisation, the Minister for Lands may still perform a function through an officer or agent.
- It also confirms that any other person who has a right to give a notice under the Act, by virtue of being an “owner” for the purposes of those provisions, may also give the notice in their own right, in the same way it could do before these amendments.
- Clause 8** inserts new subsections 67(2) to (5) inclusive in the *Aboriginal Heritage Act 1972*. These provisions give legal protection to persons acting under an authorisation given under section 66 for anything done, or not done, in good faith, in the performance or purported performance of a function to which the authority applies.
- The protection applies even if the thing could have been done whether or not the Act had been enacted.
- However, the State is not relieved of any liability that it might have for the person’s actions.
- Clause 9** provides that Part 4 amends the *Environmental Protection Act 1986*.
- Clause 10** inserts new section 121A in the *Environmental Protection Act 1986*. If under that Act, the owner or occupier of Crown land or freehold land in the name of the State may, or is required to, give any notice, make any application or representation, give comments or do various other things, it may be given, made or done by the Minister for Lands or by a public service officer of the department responsible for administering the *Land Administration Act 1997* authorised by him in writing to do so.

Despite any authorisation, the Minister for Lands may still perform a function through an officer or agent.

It also confirms that any other person who has a right or obligation to give a notice, make any application or representation, give comments or do various other things, under the Act, by virtue of being an “owner” or “occupier” for the purposes of the relevant provision(s), may also give the notice, make the application or representation, give the comments or do the various other things in their own right, in the same way it could do before these amendments.

**Clause 11** amends section 121 of the *Environmental Protection Act 1986*, to include legal protection for persons acting under an authorisation given under section 121A for anything done, or not done, in good faith, in the performance or purported performance of a function to which the authority applies.

**Clause 12** provides that Part 5 amends the *Land Administration Act 1997*.

**Clause 13** amends section 91(5) of the *Land Administration Act 1997*, which allowed the simultaneous existence of a licence or profit a prendre that is granted under that Act, with a mining or petroleum right, provided there was an agreement reached between the Ministers responsible for the administration of that Act and the relevant mining or petroleum Act.

The amendment allows approval to be given by a person authorised by the Minister responsible for the administration of the relevant mining or petroleum Act in writing to do so, instead of agreement having to be reached by the Ministers.

This will allow authorised officers of the department responsible for the administration of the relevant mining or petroleum Act to deal directly with a departmental officer delegate of the Minister for Lands.

**Clause 14** amends section 259 of the *Land Administration Act 1997*, to expand the legal protection under that section to include persons acting under an authorisation given under section 91(5) for anything done, or not done, in good faith, in the exercise or performance or purported exercise or performance of a function under the Act.

**Clause 15** inserts new section 275A in the *Land Administration Act 1997*.

The chief executive officer of the department responsible for the administration of the Act may disclose the name and contact details of a Crown land interest holder, who is a lessee (including a pastoral lessee), licensee or other person having an interest in Crown land. The contact details include the postal address, telephone and facsimile numbers, and email address.

In the case of pastoral lessees, this includes such information provided to the Pastoral Lands Board in the most recent annual return.

The information may be disclosed to:

- (i) a public authority, for use in the performance of the public authority's functions;
- (ii) the Director General of Mines, for provision to mining tenement holders or applicants or others, who are required to give notice to a Crown land interest holder under the *Mining Act 1978*;
- (iii) a person, in the circumstances and on the conditions, prescribed in the regulations.

A public authority is defined to mean a State department or instrumentality, a local government, a service provider of water, drainage, gas, electricity or emergency services, or a prescribed agency of the Commonwealth.

The types of Commonwealth agencies that are likely to be prescribed include biosecurity and other security agencies. Consideration is being given as to whether, and if so on what conditions, such information may be provided to tourists and other persons travelling in remote pastoral areas.

The authority to disclose this information operates despite any law relating to confidentiality or secrecy.

Legal protection is provided to those persons who disclose this information in good faith in accordance with the provision.

- Clause 16** provides that Part 6 amends the *Mining Act 1978*.
- Clause 17** inserts a new definition of "LAA Minister" in section 8(1) of the *Mining Act 1978*, as being the Minister responsible for the administration of the *Land Administration Act 1997*, consistent with the way in which various other Ministers are referred to in the Act.
- Clause 18** makes consequential amendments to sections 25(2)(b) and 25(3)(b) of the *Mining Act 1978*, by including reference to the newly defined term of "LAA Minister".
- Clause 19** inserts new section 160AA in the *Mining Act 1978*. Various functions that the LAA Minister may perform under the Act, as listed in the table to the section, may be performed by a public service officer of the department responsible for administering the *Land Administration Act 1997* authorised by the LAA Minister in writing to do so.  
  
Despite any authorisation, the LAA Minister may still perform a function through an officer or agent.
- Clause 20** amends section 160A of the *Mining Act 1978*, to extend the legal protection in that section to include any person acting under an authorisation given under section 160AA in the exercise or purported

exercise of a power or in the discharge or purported discharge of a duty under the Act.

- Clause 21** provides that Part 7 amends the *Petroleum Pipelines Act 1969*.
- Clause 22** amends the definition of “the Minister for Lands” in section 4(1) of the *Petroleum Pipelines Act 1969*, to define it by reference to the body corporate of that name as defined in the *Land Administration Act 1997*.
- Clause 23** amends section 16 of the *Petroleum Pipelines Act 1969* so that a pipeline easement may be granted under that provision:
- (i) over any Crown land, and not only unalienated Crown land;
  - (ii) by the Minister for Lands or a public service officer of the department responsible for administering the *Land Administration Act 1997* authorised by the Minister for Lands in writing to do so, instead of the Governor; and
  - (iii) on such terms as the person granting the easement thinks fit, instead of the Governor.

An easement may be granted under this provision over any Crown land, even though the land may be managed by a public authority which could grant an easement under section 17 of the *Petroleum Pipelines Act 1969*.

- Clause 24** provides that Part 8 amends the *Planning and Development Act 2005*.
- Clause 25** inserts new section 267A in the *Planning and Development Act 2005*. If the owner of Crown land or freehold land in the name of the State is required to give its approval or signature for any purposes under the Act, it may be given by the Minister for Lands or by a person authorised by him in writing to do so.

Despite any authorisation, the Minister for Lands may still perform a function through an officer or agent.

It also confirms that any other person who has a right or obligation to give its approval or signature for any purposes under the Act, by virtue of being an “owner” for the purposes of the Act, may also give its approval or signature in their own right, in the same way it could do before these amendments.

- Clause 26** deletes sections 267(1) and (2) of the *Planning and Development Act 2005* and inserts a new section 267(1) giving legal protection to:
- (i) a person who has done anything, in good faith, in the performance or purported performance of a function under the Act; and

- (ii) a person acting under an authorisation given under sections 152(5)(c) or 267A(1) for anything done, or not done, in good faith, in the performance or purported performance of a function to which the authority applies.

Section 267(4) is amended to include a local government as not being relieved of any liability that it might have for another person's actions, in addition to the State and the Western Australian Planning Commission not being so relieved.

- Clause 27** provides that Part 9 amends the *Transfer of Land Act 1893*.
- Clause 28** amends the definition of "the Minister for Lands" in section 4(1) of the *Transfer of Land Act 1893*, to define it by reference to the body corporate of that name as defined in the *Land Administration Act 1997*.
- Clause 29** inserts new section 17 in the *Transfer of Land Act 1893*. Various functions that the Minister for Lands may perform under the Act, as listed in the table to the section, may be performed by a public service officer of the department responsible for administering the *Land Administration Act 1997* authorised by the Minister for Lands in writing to do so.  
  
Despite any authorisation, the Minister for Lands may still perform a function through an officer or agent.
- Clause 30** consequentially amends section 81D(1)(a) of the *Transfer of Land Act 1893*, to remove reference in that section to an existing individual authorisation by the Minister for Lands, as it is now contained in the table to new section 17.
- Clause 31** clarifies that it is the Minister for Lands (and not the Minister responsible for the administration of the *Transfer of Land Act 1893*) who is empowered to order that Crown land may be included in a certificate of title if it was omitted by an error in the survey of the Crown land.
- Clause 32** amends section 198 of the *Transfer of Land Act 1893*, to extend the legal protection in that section to include any person acting under an authorisation given under section 17 for anything done, or not done, in good faith, in the exercise or supposed exercise of the powers of the Act.
- Clause 33** provides that Part 10 amends the *War Service Land Settlement Scheme Act 1954*.
- Clause 34** deletes section 6(4a) of the *War Service Land Settlement Scheme Act 1954*. This provision allowed powers under the Act to be delegated to officers of a bank as defined in section 5 of the *Banking Act 1959 (Clth)*, which is no longer appropriate.



**Clause 35** inserts new sections 11 and 12 in the *War Service Land Settlement Scheme Act 1954*.

Under new section 11, the Minister responsible for the administration of the Act may delegate his powers or duties under the Act to a public service officer of the department assisting in the administration of the Act.

The delegation must be in writing, and cannot be sub-delegated.

A person acting under a delegation is taken to have acted in accordance with the terms of the delegation, unless the contrary is shown.

Despite any delegation, the Minister may still perform a function through an officer or agent.

New section 12 provides legal protection to any person for anything done, or not done, in good faith, in the performance or purported performance of a function under the Act.

The protection applies even if the thing could have been done whether or not the Act had been enacted.

However, the State and the Minister responsible for the administration of the Act are not relieved of any liability that it might have for the person's actions.