

# RESERVES (RESERVE 43131) BILL 2003

## EXPLANATORY MEMORANDUM

The *Reserves (Reserve 43131) Bill 2003* (**Bill**) relates to the management of the land that is currently Crown land comprised in Reserve 43131, situated in the Swan Valley.

In summary, it provides for:

- (a) a change of management of the Reserve; and
- (b) the management powers that will apply to the land in the Reserve in the future, and how those powers may be exercised and given effect to.

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

Clause 1: This clause sets out the short title and citation.

Clause 2: This clause sets out the commencement.

The provisions of the Act are to come into operation on the day on which the Act receives Royal Assent.

Clause 3: This clause sets out the definitions applicable in the Bill.

Terms defined are:

*administrator* – the person as defined in clause 7(1);

*Authority* – the Aboriginal Affairs Planning Authority constituted under the *Aboriginal Affairs Planning Authority Act 1972*;

*LAA* – the *Land Administration Act 1997*;

*LAA Minister* – the corporate Minister for Lands established under the LAA;

*management order no. I262262* – the registered management order under the LAA that placed the care control and management of the reserve with the Swan Valley Nyungah Community Aboriginal Corporation;

*police officer* – a member of the Police Force of Western Australia, appointed under Part I of the *Police Act 1892*;

*the reserve* – the reserve of Crown land in the Swan Valley known as Reserve number 43131, which is for the purpose of the use and benefit of Aboriginal inhabitants.

Clause 4: Sub-clause (1) revokes the current management order, under which the Swan Valley Nyungah Community Aboriginal Corporation is the management body.

The revocation under sub-clause (1) is to have effect as if it were a revocation under section 50(2) of the LAA, so that the consequential provisions in the LAA, relating to the revocation of management orders under that section 50(2) of the LAA, will apply.

Clause 5: This clause places the care control and management of the reserve with the Authority, and sets out how it may be dealt with as a result.

Sub-clause (1) places the care control and management of the reserve with the Authority. It is for the same purpose as the existing purpose of the reserve. This provision mirrors the first part of s.46(1) of the LAA.

Sub-clause (2) confirms that the effect of the placing under sub-clause (1) is as the same as if it were done under s.46(1) of the LAA, so that the consequential provisions in the LAA, relating to management orders, will apply.

Under sub-clause (3), the LAA Minister can by order specify conditions about the care control and management of the reserve. This provision mirrors the second part of s.46(1) of the LAA. The order is to have effect as if it were an order under s.3(1) of the LAA, so the various provisions in the LAA relating to the registration and other effects of orders under that Act apply.

Sub-clause (4) provides that a reference to “management order” in the LAA in relation to the reserve, while it is placed with the Authority, is a reference to the effect of sub-clauses (1) and (3). In effect, the provisions of the LAA relating to management orders apply to the effect of the placing of the reserve with the Authority under sub-clause (1) and any order made by the LAA Minister under sub-clause (3).

Sub-clause (5) provides that nothing in the Bill prevents:

- (a) a revocation of the effect of appointing the Authority as the management body, under section 50 of the LAA; or
- (b) the taking of any other action under the LAA or any other written law relevant to the reserve or the care, control and management of the reserve,

and no further Act is required in this regard.

In other words, the reserve and the effect of the provisions of the Bill as a management order, can be dealt with under the LAA in the same way as any other reserve and management order created in the normal way under that Act, can be dealt with.

Clause 6: This clause provides that the Registrar of Titles is to take whatever measures are necessary to record on the Register kept under the *Transfer of Land Act 1893*, the revocation of the management order in favour of the Swan Valley Nyungah Community Aboriginal Corporation and the appointment of the Authority as the management body of the reserve.

This ensures the public register kept under that Act will be consistent with the effect of the Bill.

Clause 7: This clause gives additional powers in relation to the care control and management of the land comprised in the reserve.

In particular:

- (1) the “administrator” is defined to mean a person engaged by the Authority or an officer of the Authority, as provided for in sub-clause (2);
- (2) the Authority may engage a person or nominate one of its officers, to perform the Authority’s functions in relation to the reserve;
- (3) the administrator may:
  - (a) direct a person not to enter the reserve for a specified period or until the direction is revoked; or to leave the reserve;
  - (b) with such assistants as the administrator thinks necessary, prevent a person from entering the reserve; or remove a person from the reserve, if the person has been given one of the directions described in paragraph (a) and has not complied with it.

Sub-clause (4) provides a direction under sub-clause (3)(a) or (b) may be oral or written, but it must be given to the relevant person before action may be taken to prevent that person from entering, or to remove him or her from, the reserve.

The LAA Minister, in an order under section s.46(1) of the LAA, may place the care, control and management of the reserve with a person other than the Authority. Under sub-clause (5) the LAA Minister, in that order, may authorise that person to exercise any of the powers set out in sub-clause (3). The effect of this is that various clauses of the Bill will apply, in the same way as they apply to the administrator, to the extent of that person’s authority (as expressed in the order) to exercise those powers.

If there is no administrator or other management body of the reserve, or the land is no longer a reserve under the LAA, the LAA Minister may exercise the powers set out in sub-clause (3) (sub-clause (6)).

Under sub-clause (7), a police officer may prevent a person from entering the reserve, or remove a person from the reserve, if the person doesn’t comply with a direction given under clause 7(3).

The powers that may be exercised under clause 7 are additional to any other powers the person exercising them may have under any other law (sub-clause

(8)). This would include exercise of the powers by the administrator and a police officer.

A person exercising a power to prevent a person from entering, or to remove a person from, the reserve (under clause 7(3)(c) or (7)) may use such reasonable force as is necessary (sub-clause (9)).

The powers that may be exercised under clause 7 can be exercised in respect of a person even if that person has a right or interest in the land in the reserve, and whether or not it is a reserve at the time the power is exercised (sub-clause (10)).

Clause 8: This clause provides that the rules of natural justice do not apply in relation to a direction under clause 7(3)(a) or (b) (to not enter the reserve; or to leave the reserve).

Clause 9: Under sub-clause (1), a discretion under clause 7(3) is absolute. The person entitled to exercise that discretion does not need to give reasons for his or her direction.

Under sub-clause (2), a person is not entitled to expect that a discretion will be exercised in a particular way.

Clause 10: This clause provides that a person who gives a direction (under clause 7(3)(a) or (b)) is not required to give reasons for the exercise of his or her discretion (as to whether or not a person is directed not to enter the reserve; or to leave the reserve). However, if the person thinks it would be in the public interest to disclose any or all of the reasons, he or she may do so.

Clause 11: This clause gives immunity from judicial review in respect of any decision made or anything else done or purporting to be made or done under clause 7 (relating to the exercise of the discretion to direct a person not to enter the reserve; or to leave the reserve).

Clause 12: This clause provides protection from liability to persons acting in good faith in performing a function or purporting to perform a function under the Bill. It is intended to cover, among others, the Authority, the administrator, a person referred to in clause 7(5) (such as a future management body of the reserve), the LAA Minister, police officers and any person giving assistance under clause 7(3)(c).

Sub-clause (2) also relieves the Crown from liability that it might otherwise have had for another person having done anything referred to in sub-clause (1).

The protection from liability applies if that thing could have been done, even if the Bill had not been enacted (sub-clause (3)).

Sub-clause (4) provides that a reference to the doing of anything in clause 12 includes a reference to the omission to do anything.