

Aboriginal Housing Legislation Amendment Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Aboriginal Housing Legislation Amendment
Bill 2009**

A Bill for

An Act to amend —

- **the *Housing Act 1980*; and**
- **the *Aboriginal Affairs Planning Authority Act 1972*,**
and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary matters

1. Short title

This is the *Aboriginal Housing Legislation Amendment Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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Part 2 — *Housing Act 1980* amended

3. Act amended

This Part amends the *Housing Act 1980*.

4. Section 4 amended

In section 4:

(a) after paragraph (b) insert:

(ca) the letting and leasing of houses, the provision of services relating to the letting and leasing of houses and the entry into arrangements for the provision of such services;

(b) in paragraph (d) after “encouragement of” insert:

and participation in

5. Section 5 amended

In section 5(1) insert in alphabetical order:

Crown land has the meaning given in the *Land Administration Act 1997* section 3(1);

6. Section 12A replaced

Delete section 12A and insert:

12A. Joint ventures

(1) To further the objects of this Act or the *Government Employees’ Housing Act 1964*, subject to subsection (3), the Authority may enter into a joint venture arrangement.

s. 7

- 1 (2) Without limiting the powers that the Authority may
2 exercise under either of those Acts for the purposes of
3 participating in and giving effect to a joint venture
4 arrangement relating to a project, the Authority may —
5 (a) seek and maintain appropriate representation on
6 a board or other body having responsibility for
7 carrying out, managing or controlling the
8 project; and
9 (b) subject to any contract relating to the project —
10 (i) receive contributions or other moneys
11 relating to the project; and
12 (ii) disburse or distribute, or arrange for the
13 disbursement or distribution of, those
14 contributions or other moneys.
15 (3) The Authority can only enter into a joint venture
16 arrangement —
17 (a) with the approval of the Minister; and
18 (b) on terms and conditions approved by the
19 Treasurer.
20

21 **7. Section 13 replaced**

22 Delete section 13 and insert:
23

24 **13. Delegation: powers and duties generally**

- 25 (1) The Authority may delegate under this section to an
26 officer of the Authority —
27 (a) any power or duty of the Authority under this
28 Act, except a power or duty referred to in
29 section 62K(1); or
30 (b) any power or duty of the Authority under the
31 *Government Employees' Housing Act 1964*.

- 1 (2) The delegation must be in writing executed by the
2 Authority.
- 3 (3) An officer to whom a power or duty is delegated under
4 this section cannot delegate that power or duty.
- 5 (4) An officer exercising or performing a power or duty
6 that has been delegated to the officer under this section
7 is taken to do so in accordance with the terms of the
8 delegation unless the contrary is shown.
- 9 (5) This section does not limit the ability of the Authority
10 to perform a function through an officer of the
11 Authority or an agent.
12

13 **8. Section 22 amended**

14 In section 22(1):

15 (a) delete “has power —” and insert:

16

17 has these powers —

18

19 (b) in paragraph (a) delete “any area in which land held by
20 the Authority is situated, and with the consent of the
21 Minister,” and insert:

22

23 any land except Crown land not held by the
24 Authority and

25

26 (c) in paragraph (b) delete “with the consent of the
27 Minister,”;

28 (d) in paragraph (b) delete “held by the Authority”;

29 (e) in paragraph (d) delete “with the consent of the
30 Minister,”;

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1 (f) after paragraph (h) insert:

2

3 (ia) to arrange, effect or take out insurance in
4 connection with a matter referred to in
5 paragraphs (a) to (h);

6

7 **9. Part VIIA inserted**

8 After section 61 insert:

9

10 **Part VIIA — Housing on Aboriginal land**

11 **Division 1 — Preliminary matters**

12 **62A. Terms used**

13 In this Part —

14 *AAPA* means The Aboriginal Affairs Planning
15 Authority continued in existence under the AAPA Act
16 section 8(1);

17 *AAPA Act* means the *Aboriginal Affairs Planning*
18 *Authority Act 1972*;

19 *Aboriginal entity* means any of these entities —

20 (a) AAPA;

21 (b) ALT;

22 (c) a corporation registered under the *Corporations*
23 (*Aboriginal and Torres Strait Islander*)
24 *Act 2006* (Commonwealth);

25 (d) an incorporated association under the
26 *Associations Incorporation Act 1987* the
27 membership of which is wholly or principally
28 composed of persons of Aboriginal descent as
29 defined in the AAPA Act section 4;

- 1 (e) an entity prescribed by the regulations for this
2 definition;

3 ***Aboriginal land*** means —

- 4 (a) Crown land; or
5 (b) freehold land that is owned by AAPA, ALT or
6 the State,

7 over which an Aboriginal entity has power to grant a
8 lease;

9 ***ALT*** means the Aboriginal Lands Trust established by
10 the AAPA Act section 20(1);

11 ***housing management agreement*** means an agreement
12 entered into under section 62B(1);

13 ***lease*** includes a sublease;

14 ***nominated house***, in relation to a housing management
15 agreement, has the meaning given in section 62D(2);

16 ***nominated lot***, in relation to a housing management
17 agreement, has the meaning given in section 62D(1);

18 ***residential tenancy agreement*** has the meaning given
19 in the *Residential Tenancies Act 1987* section 3.

20 **Division 2 — Housing management agreements**

21 **62B. Authority may enter into housing management**
22 **agreement**

- 23 (1) The Authority may enter into a housing management
24 agreement in respect of Aboriginal land with an
25 Aboriginal entity.
- 26 (2) The purpose of a housing management agreement is to
27 enable the Authority to control and manage, on behalf
28 of the Aboriginal entity, the letting and leasing of
29 housing on the Aboriginal land.

1 (3) This Part does not require the Authority to enter into a
2 housing management agreement with an Aboriginal
3 entity.

4 **62C. Wishes of Aboriginal inhabitants to be ascertained**

5 The Authority cannot —

- 6 (a) enter into a housing management agreement; or
7 (b) list under section 62D a lot or house as a lot or
8 house in relation to which a housing
9 management agreement applies,

10 unless the Authority is satisfied that doing so would
11 accord with the wishes of the Aboriginal inhabitants of
12 the Aboriginal land to the extent those wishes can be
13 ascertained and are practicable.

14 **62D. Lots and houses to which housing management**
15 **agreement applies**

16 (1) A housing management agreement applies in relation
17 to a lot (a *nominated lot*) that is listed in the housing
18 management agreement for the period specified for the
19 lot in the housing management agreement.

20 (2) A housing management agreement applies in relation
21 to a house (a *nominated house*) that —
22 (a) is on a nominated lot; and
23 (b) is listed in the housing management agreement,
24 for the period specified for the house in the housing
25 management agreement.

26 (3) A housing management agreement must provide for
27 these matters —
28 (a) a lot to be added to, or removed from, the list
29 referred to in subsection (1);

- 1 (b) a house to be added to, or removed from, the
2 list referred to in subsection (2)(b);
3 (c) a period referred to in subsection (1) or (2) to
4 be varied.

5 **62E. Rent for nominated lots and nominated houses**

- 6 (1) In this section —
7 *rent* has the meaning given in the *Residential*
8 *Tenancies Act 1987* section 3.
9 (2) Rent for the let or lease of a nominated lot or
10 nominated house is payable to the Authority.
11 (3) The amount of rent payable is the amount determined
12 by the Authority and approved by the Minister.
13 (4) A determination under subsection (3) may provide for
14 all or any of these matters —
15 (a) the payment of different rents in respect of
16 different nominated lots or nominated houses or
17 different classes of nominated lots or
18 nominated houses;
19 (b) the payment of different rents by tenants of
20 different classes;
21 (c) the allowance of rebates in the circumstances
22 and subject to the conditions specified in the
23 determination.

24 **62F. Other terms of housing management agreement**

- 25 A housing management agreement must provide for
26 these matters —
27 (a) the Authority to determine, subject to this Part
28 and the *Residential Tenancies Act 1987* as
29 applied by section 62G(1), the terms of a
30 residential tenancy agreement in respect of a
31 nominated lot or nominated house;

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- 1 (b) the Authority to decide, having regard to the
2 wishes of the Aboriginal inhabitants of the
3 Aboriginal land to the extent those wishes can
4 be ascertained and are practicable, to whom a
5 nominated lot or nominated house can be let or
6 leased;
- 7 (c) the Authority to execute, on behalf of the
8 Aboriginal entity as lessor, a residential tenancy
9 agreement in respect of a nominated lot or
10 nominated house;
- 11 (d) the period for which the housing management
12 agreement has effect;
- 13 (e) the early termination of the housing
14 management agreement, but only if the parties
15 to the agreement agree to the early termination;
- 16 (f) the variation of the housing management
17 agreement, but only if the parties to the
18 agreement agree to the variation;
- 19 (g) the effect of early termination or variation of
20 the housing management agreement on a
21 residential tenancy agreement executed by the
22 Authority under the housing management
23 agreement;
- 24 (h) any other matters prescribed by the regulations
25 for this section.

26 **62G. Application of *Residential Tenancies Act 1987***

- 27 (1) Subject to this Part and the housing management
28 agreement, the *Residential Tenancies Act 1987* applies
29 in relation to the let or lease of a nominated lot or
30 nominated house as if —
 - 31 (a) the nominated lot or nominated house were
32 residential premises as defined in section 3 of
33 that Act; and

- 1 (b) the Authority were the owner, as defined in
2 section 3 of that Act, of those premises.
- 3 (2) However, the Authority is not to be treated as the
4 owner of a nominated lot or nominated house for any
5 other purpose.
- 6 **62H. No interest in land created, property acquired or**
7 **compensation payable**
- 8 (1) A housing management agreement does not create any
9 interest in Aboriginal land in favour of the Authority.
- 10 (2) A housing management agreement is not an acquisition
11 of property.
- 12 (3) Compensation is not payable under any written law to
13 an Aboriginal entity or other person because —
- 14 (a) an Aboriginal entity enters into a housing
15 management agreement; or
- 16 (b) the Authority does anything that it is required
17 or permitted to do under a housing management
18 agreement.
- 19 **62I. No fees or charges payable in respect of housing**
20 **management agreement**
- 21 A party to a housing management agreement cannot
22 require the payment of a fee or charge for —
- 23 (a) entering into the housing management
24 agreement; or
- 25 (b) doing anything that the party is required or
26 permitted to do under the housing management
27 agreement.

- 1 **62J. Authority may act through agent**
- 2 (1) The Authority may enter into an agreement (an *agency*
- 3 *agreement*) with a person or body under which the
- 4 person or body is authorised to exercise as the
- 5 Authority's agent all or any of the powers conferred on
- 6 the Authority under a housing management agreement.
- 7 (2) The powers conferred on the Authority's agent under
- 8 the agency agreement are exercisable by the
- 9 Authority's agent in accordance with this Act, the
- 10 housing management agreement and the agency
- 11 agreement.
- 12 (3) The agency agreement may provide for the payment of
- 13 a fee by the Authority to the Authority's agent or
- 14 another person for anything that the Authority's agent
- 15 is required or permitted to do under the agency
- 16 agreement.
- 17 **62K. Delegation: powers and duties in relation to housing**
- 18 **management agreement**
- 19 (1) The Authority may delegate under this section to an
- 20 officer of the Authority any power or duty of the
- 21 Authority under any of these provisions —
- 22 (a) another provision of this Division;
- 23 (b) a provision of a housing management
- 24 agreement;
- 25 (c) a provision of a residential tenancy agreement
- 26 in respect of a nominated lot or nominated
- 27 house;
- 28 (d) a provision of the *Residential Tenancies*
- 29 *Act 1987* as applied by section 62G(1).
- 30 (2) The delegation must be in writing executed by the
- 31 Authority.

- 1 (3) An officer to whom a power or duty is delegated under
2 this section cannot delegate that power or duty.
- 3 (4) An officer exercising or performing a power or duty
4 that has been delegated to the officer under this section
5 is taken to do so in accordance with the terms of the
6 delegation unless the contrary is shown.
- 7 (5) This section does not limit the ability of the Authority
8 to perform a function through an officer of the
9 Authority or an agent.

Division 3 — Miscellaneous matters

10
11 **62L. Approval of Minister for Indigenous Affairs, AAPA**
12 **or ALT not required**

- 13 (1) In this section —
14 *Minister for Indigenous Affairs* means the Minister to
15 whom the administration of the AAPA Act is
16 committed.
- 17 (2) Subsection (3) applies despite —
18 (a) the AAPA Act and any other written law; and
19 (b) the terms and conditions of the grant of any
20 interest, licence, right, title or estate under any
21 written law by —
22 (i) the Minister for Indigenous Affairs; or
23 (ii) AAPA; or
24 (iii) ALT.
- 25 (3) The prior approval or consent of the Minister for
26 Indigenous Affairs, AAPA or ALT is not required for a
27 person —
28 (a) to enter into —
29 (i) a housing management agreement; or

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- 1 (ii) a residential tenancy agreement in
2 respect of a nominated lot or nominated
3 house;
4 or
5 (b) to do anything the person is required or
6 permitted to do under an agreement referred to
7 in paragraph (a).

8 **62M. Application of *Land Administration Act 1997***

- 9 (1) In this section —
10 ***reserved Aboriginal land*** means Aboriginal land that is
11 Crown land reserved for the purpose of the use and
12 benefit of Aboriginal inhabitants (however that purpose
13 is described).
14 (2) This Part does not affect the application of the *Land*
15 *Administration Act 1997* in relation to Aboriginal land
16 that is Crown land.
17 (3) To avoid doubt, it is declared that the letting and
18 leasing of housing on reserved Aboriginal land is, and
19 always has been, consistent with the purpose for which
20 that land is reserved.
21

1 **Part 3 — *Aboriginal Affairs Planning Authority***
2 ***Act 1972* amended**

3 **10. Act amended**

4 This Part amends the *Aboriginal Affairs Planning Authority*
5 *Act 1972*.

6 **11. Section 33A inserted**

7 At the end of Part III insert:
8

9 **33A. Power to grant leases over Part III land**

- 10 (1) To avoid doubt, it is declared that the Authority has,
11 and has always had, power to grant a lease over land
12 whenever vested in the Authority under section 27.
- 13 (2) To avoid doubt, it is declared that the powers delegated
14 to the Trust by a proclamation whenever made under
15 section 24 in respect of land to which this Part applies
16 include, and have always included, power to grant a
17 lease over that land unless the proclamation expressly
18 excludes that power.
19

