

South Australia

Pitjantjatjara Land Rights Act 1981

An Act to provide for the vesting of title to certain lands in the people known as Anangu Pitjantjatjara; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 4 Interpretation

Part 2—Anangu Pitjantjatjara

Division 1—Constitution of Anangu Pitjantjatjara as body corporate

- 5 Constitution of Anangu Pitjantjatjara as body corporate

Division 2—Powers and functions of Anangu Pitjantjatjara

- 6 Powers and functions of Anangu Pitjantjatjara
- 7 Requirement of consultation

Division 3—General meetings of Anangu Pitjantjatjara

- 8 Annual general meetings and special general meetings

Division 4—The Executive Board of Anangu Pitjantjatjara

- 9 Constitution of the Executive Board of Anangu Pitjantjatjara
- 9A Offences relating to election of Executive Board
- 10 Procedure of the Executive Board
- 11 Functions of the Executive Board
- 12 Evidentiary provision
- 13 Accounts and audit

Division 5—The approved constitution

- 14 The approved constitution of Anangu Pitjantjatjara

Part 3—The lands

Division 1—Vesting of the lands in Anangu Pitjantjatjara

- 15 The Governor may grant certain land, in fee simple, to Anangu Pitjantjatjara
- 16 Special provisions in relation to the land grant
- 17 Inalienability of land vested in Anangu Pitjantjatjara in pursuance of this Part

Division 2—Entry to the lands

- 18 Rights of Pitjantjatjaras with respect to lands
- 19 Unauthorised entry on the lands

Division 3—Mining operations on the lands

- 20 Mining operations on the lands
- 21 Interaction of this Act and Mining and Petroleum Acts
- 22 Royalty
- 23 Offence in relation to obtaining permission to carry out mining operations
- 24 Certain payments or other consideration to Anangu Pitjantjatjara must represent fair compensation

Division 4—The Mintabie precious stones field

- 25 Special provisions relating to the Mintabie precious stones field
- 26 The Mintabie Consultative Committee
- 27 Exclusion of certain persons from the field
- 28 Annual licences and incidental rights for Mintabie residents
- 29 Interaction of this Division and the Mining Act

Division 5—Right of the Crown to continue in occupation of certain parts of the lands

- 30 Right of the Crown to continue its occupation of certain land

Division 6—Construction of roads by the Commissioner of Highways

- 31 Consent of Anangu Pitjantjatjara required for road works
- 32 Proposals to carry out road works and arbitration of disputes
- 33 Road reserves
- 34 Consent not required for maintenance or repair of roads referred to in Schedule 2

Part 4—Disputes

- 35 Tribal assessor
- 36 Disputes
- 37 Order compelling compliance with direction of the tribal assessor

Part 5—Miscellaneous

- 38 Summary offences
- 39 Power of court to order compensation in certain cases
- 40 Exemption of lands from land tax
- 41 Financial provision
- 42 Non-application of Outback Areas Community Development Trust Act
- 42A Interaction between this Act and certain other Acts and laws
- 42B Depasturing of stock
- 43 Regulations

Schedule 1

Schedule 2

Schedule 3—Rules of election under section 9

Part 1—Preliminary

1 Interpretation

Part 2—General rules relating to an election

2 Elections
 3 Returning officer
 4 Election timetable
 5 Distribution of information
 6 Eligibility and nominations
 7 Uncontested elections
 8 Voting
 9 Counting of votes

Part 3—Declaration of results

15 Provisional declarations
 16 Recounts
 17 Declaration of results and certificate

Part 4—Disputed Returns

18 Constitution of Court
 19 The clerk of the Court
 20 Jurisdiction of the Court
 21 Procedure upon petition
 22 Powers of the Court
 23 Illegal practices
 24 Effect of decision
 25 Participation of Anangu Pitjantjatjara in proceedings
 26 Right of appearance
 27 Case stated
 28 Costs
 29 Rules of the Court

Part 5—Miscellaneous

30 Amendment of Schedule

Legislative history

The Parliament of South Australia enacts as follows:**Part 1—Preliminary****1—Short title**

This Act may be cited as the *Pitjantjatjara Land Rights Act 1981*.

4—Interpretation

In this Act, unless the contrary intention appears—

Anangu Pitjantjatjara means the body corporate constituted under that name by this Act;

the constitution means the constitution of Anangu Pitjantjatjara for the time being in force under this Act;

Electoral Commissioner means the person for the time being holding, or acting in, the office of the Electoral Commissioner under the *Electoral Act 1985*;

the Executive Board means—

- (a) the Executive Board of Anangu Pitjantjatjara constituted under this Act; or
- (b) during a period prior to the constitution of that Board—the Pitjantjatjara Council;

the lands means the lands described in Schedule 1 to this Act;

mining operations means operations authorised by or under the *Mining Act 1971* or the *Petroleum Act 1940*;

mining tenement means a right, permit, claim, lease or licence under the *Mining Act 1971* or the *Petroleum Act 1940*;

Mintabie resident means a person who—

- (a) is entitled to enter and remain on the Mintabie precious stones field under Division 4 of Part 3; and
- (b) resides or proposes to reside on the field;

petrol includes any volatile liquid containing hydrocarbons;

Pitjantjatjara means a person who is—

- (a) a member of the Pitjantjatjara, Yungkutatjara or Ngaanattjara people; and
- (b) a traditional owner of the lands, or a part of them;

road works means the construction, re-construction or repair of a road, or of related works;

traditional owner in relation to the lands means an Aboriginal person who has, in accordance with Aboriginal tradition, social, economic and spiritual affiliations with, and responsibilities for, the lands or any part of them.

Part 2—Anangu Pitjantjatjara

Division 1—Constitution of Anangu Pitjantjatjara as body corporate

5—Constitution of Anangu Pitjantjatjara as body corporate

- (1) There shall be a body corporate entitled "Anangu Pitjantjatjara".
- (2) All Pitjantjatjaras are members of Anangu Pitjantjatjara.
- (3) Anangu Pitjantjatjara shall have a common seal.
- (4) In any legal proceedings, an apparently genuine document purporting to bear the common seal of Anangu Pitjantjatjara and the signatures of five members of the Executive Board attesting the affixation of the seal, shall be presumed, in the absence of proof to the contrary, to have been duly executed by Anangu Pitjantjatjara.

Division 2—Powers and functions of Anangu Pitjantjatjara

6—Powers and functions of Anangu Pitjantjatjara

- (1) The functions of Anangu Pitjantjatjara are as follows:
 - (a) to ascertain the wishes and opinions of traditional owners in relation to the management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions; and
 - (b) to protect the interests of traditional owners in relation to the management, use and control of the lands; and
 - (c) to negotiate with persons desiring to use, occupy or gain access to any part of the lands; and
 - (d) to administer land vested in Anangu Pitjantjatjara.
- (2) Anangu Pitjantjatjara has the following powers:
 - (a) the power to sue and be sued; and
 - (b) the power—
 - (i) to grant a lease or licence, for any period it thinks fit, in respect of any part of the lands (being a part of the lands vested in Anangu Pitjantjatjara) to a Pitjantjatjara or an organisation comprised of Pitjantjatjaras;
 - (ii) to grant a lease or licence, for a period not exceeding fifty years, in respect of any part of the lands (being a part of the lands vested in Anangu Pitjantjatjara) to an agency or instrumentality of the Crown;
 - (iii) to grant a lease or licence, for a period not exceeding five years, in respect of any part of the lands (being a part of the lands vested in Anangu Pitjantjatjara) to any other person or body of persons; and
 - (c) the power to acquire by agreement, hold, deal in, or dispose of, land outside the lands; and
 - (d) the power to enter into contracts; and
 - (e) the power to appoint and dismiss staff; and
 - (f) the power to receive and disburse moneys; and
 - (g) the power to obtain advice from persons who are expert in matters with which Anangu Pitjantjatjara is concerned; and
 - (h) the power to establish offices; and
 - (i) the power to make a constitution relating to—
 - (i) the conduct of meetings of Anangu Pitjantjatjara; and
 - (ii) the procedures to be followed in resolving disputes; and
 - (iii) any other matter that may be necessary or expedient in relation to the conduct or administration of the affairs of Anangu Pitjantjatjara; and

- (j) the power to take such other steps as may be necessary or expedient for, or incidental to, the performance of its functions.

7—Requirement of consultation

Anangu Pitjantjatjara shall, before carrying out or authorising or permitting the carrying out of any proposal relating to the administration, development or use of any portion of the lands, have regard to the interests of, and consult with, traditional owners having a particular interest in that portion of the lands, or otherwise affected by the proposal, and shall not carry out the proposal, or authorise or permit it to be carried out, unless satisfied that those traditional owners—

- (a) understand the nature and purpose of the proposal; and
- (b) have had the opportunity to express their views to Anangu Pitjantjatjara; and
- (c) consent to the proposal.

Division 3—General meetings of Anangu Pitjantjatjara

8—Annual general meetings and special general meetings

- (1) There shall be an annual general meeting of Anangu Pitjantjatjara once in every calendar year.
- (2) The first annual general meeting of Anangu Pitjantjatjara shall be held not more than three months after the commencement of this Act.
- (3) An annual general meeting of Anangu Pitjantjatjara shall be held not more than fifteen months after the last preceding annual general meeting.
- (4) A special general meeting of Anangu Pitjantjatjara shall be held if not less than ten members of Anangu Pitjantjatjara make a request to the Executive Board for the holding of such a meeting.

Division 4—The Executive Board of Anangu Pitjantjatjara

9—Constitution of the Executive Board of Anangu Pitjantjatjara

- (1) There shall be an Executive Board of Anangu Pitjantjatjara.
- (2) The Executive Board consists of—
 - (a) the Chairperson; and
 - (b) 10 other members,elected in accordance with this section.
- (4) A member of the Executive Board holds office, subject to the provisions of the constitution relating to casual vacancies, until the next election of members and is, subject to the constitution, eligible for re-election.
- (5) Where a casual vacancy occurs in the office of a member of the Executive Board, the Executive Board may appoint a suitable Pitjantjatjara to fill the vacancy, and the person so appointed shall, subject to the provisions of the constitution relating to casual vacancies, hold office for the balance of the term of the person's predecessor.

- (6) An election of members of the Executive Board—
- (a) must be conducted within 3 months after the first anniversary of the previous election; and
 - (b) must be conducted by the Electoral Commissioner—
 - (i) in accordance with the rules set out in Schedule 3; and
 - (ii) to the extent that the rules set out in Schedule 3 fail to deal with a matter that, in the opinion of the Electoral Commissioner, is necessary for the proper conduct of the election—in accordance with rules determined by the Electoral Commissioner in relation to that matter.
- (7) The validity of any election or return may be disputed in accordance with Schedule 3 and not otherwise.

9A—Offences relating to election of Executive Board

- (1) A person who—
- (a) exercises violence or intimidation, or offers or gives a bribe, with a view to—
 - (i) inducing a person to submit or withdraw candidature for an election under section 9; or
 - (ii) influencing the vote of a person at such an election; or
 - (iii) otherwise interfering with the due course of an election; or
 - (b) receives a bribe offered in contravention of paragraph (a),
- is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for seven years.
- (2) A person who—
- (a) dishonestly exercises, or attempts to exercise, a vote at an election under section 9 to which that person is not entitled; or
 - (b) dishonestly influences or attempts to influence the result of such an election; or
 - (c) hinders or interferes with the free exercise or performance, by another person, of a right in respect of such an election,
- is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for one year.
- (3) A person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) must not act as an assistant to a person voting at the election.
Maximum penalty: \$5 000 or imprisonment for one year.
- (4) A scrutineer must not act as an assistant to a person voting at an election.
Maximum penalty: \$5 000 or imprisonment for one year.

- (5) A person must not, by clandestine or dishonest means, attempt to discover how another person has voted.
Maximum penalty: \$1 250 or imprisonment for 3 months.
- (6) A person who acquires knowledge of the vote of another person in the exercise of powers or functions under this Act must not divulge that knowledge.
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (7) To avoid doubt, no declaration of public policy or promise of public action constitutes bribery or dishonest influence.
- (8) In this clause—
bribe includes any pecuniary sum or material advantage including food, drink or entertainment.

10—Procedure of the Executive Board

- (1) The Executive Board shall meet for the transaction of business at least once in every two months.
- (2) Five members of the Executive Board shall constitute a quorum of the Executive Board.
- (3) The Chairman shall preside at any meeting of the Executive Board at which he is present and, in the absence of the Chairman, the members present shall elect one of their number to preside at that meeting.
- (4) A decision agreed to by a majority of the members present at a meeting of the Executive Board (being a majority comprising not fewer than four members of the Executive Board) shall be a decision of the Executive Board.
- (5) No act or proceeding of the Executive Board is invalid by reason only of a vacancy in the office of a member of the Executive Board.

11—Functions of the Executive Board

- (1) The Executive Board shall carry out the resolutions of Anangu Pitjantjatjara.
- (2) The Executive Board shall act in conformity with the resolutions of Anangu Pitjantjatjara and no act of the Executive Board, done otherwise than in accordance with a resolution of Anangu Pitjantjatjara, is binding on Anangu Pitjantjatjara.

12—Evidentiary provision

An apparently genuine document purporting—

- (a) to be under the common seal of Anangu Pitjantjatjara; and
- (b) to be signed by five or more members of the Executive Board; and
- (c) to certify that a specified act of the Executive Board has been done in conformity with a resolution of Anangu Pitjantjatjara and the provisions of this Act,

shall be conclusive proof that that act is valid and binding upon Anangu Pitjantjatjara.

13—Accounts and audit

- (1) The Executive Board shall cause proper accounts to be kept of the financial affairs of Anangu Pitjantjatjara.
- (2) The Executive Board—
 - (a) shall cause the accounts of Anangu Pitjantjatjara for each financial year to be audited by an auditor registered under the *Companies Act 1962*; and
 - (b) shall, within twenty-eight days after completion of the audit, lodge copies of the audited accounts with the Corporate Affairs Commission.

Division 5—The approved constitution

14—The approved constitution of Anangu Pitjantjatjara

- (1) Subject to this Act the proceedings of Anangu Pitjantjatjara and the administration of its affairs shall be governed by a constitution determined upon by Anangu Pitjantjatjara and approved by the Corporate Affairs Commission.
- (2) The constitution must be submitted to the Corporate Affairs Commission for its approval within twelve months after the commencement of this Act.
- (3) Anangu Pitjantjatjara may at any time propose an alteration to its approved constitution and, upon approval of the proposed alteration by the Minister, the alteration shall come into effect.
- (5) The constitution must specify the address of an office within thirty kilometres of the General Post Office at Adelaide at which legal process, notices and other documents may be served upon Anangu Pitjantjatjara or the Executive Board.

Part 3—The lands

Division 1—Vesting of the lands in Anangu Pitjantjatjara

15—The Governor may grant certain land, in fee simple, to Anangu Pitjantjatjara

- (1) The Governor may issue a land grant, in fee simple, of the whole or any part of the lands to Anangu Pitjantjatjara.
- (2) The Governor shall not exercise his powers under subsection (1) in relation to land (not being land comprised in Granite Downs Station) unless all persons with a legal or equitable estate or interest in the land have surrendered, or agreed to surrender, their respective interests.
- (3) Where the Governor exercises his powers under subsection (1) to grant land comprised in Granite Downs Station to Anangu Pitjantjatjara, the following provisions shall apply:
 - (a) any pastoral lease then in force in relation to that land shall, subject to its terms and the provisions of the *Pastoral Act 1936*, continue in force as if Anangu Pitjantjatjara had leased the land to the Crown and the Crown had sub-leased it to the lessee; and

- (b) upon surrender or expiration of the lease, the lease shall not be renewed, and the land shall not be re-let by the Crown; and
 - (c) the lessee shall be entitled to compensation from the Crown for diminution in the value of the lease resulting from the operation of paragraph (b) (but compensation to which the lessee is entitled under this paragraph shall be calculated as if the land were unimproved); and
 - (d) the lessee shall, upon surrender or expiration of the lease, be entitled to compensation from Anangu Pitjantjatjara for the improvements upon the land determined as if the land had remained pastoral lands and had been re-let under the *Pastoral Act 1936*, to Anangu Pitjantjatjara on the date of the surrender or expiry of the lease.
- (4) The compensation payable under subsection (3)(c) or (d) shall be determined by agreement, or in default of agreement, by the Land and Valuation Court.

16—Special provisions in relation to the land grant

- (1) A land grant issued under this Division shall be expressed in the English language and in the Pitjantjatjara language, but the interpretation of the land grant shall be governed by those portions of the land grant that are expressed in the English language.
- (2) If, in the opinion of the Surveyor-General, a land grant issued under this Division erroneously or imperfectly defines the land to which it was intended to apply, the Surveyor-General may submit to the Minister of Lands a proposal to amend the land grant for the purpose of correcting the error, or defining the land with greater precision.
- (3) If, in the opinion of the Minister of Lands, the proposal of the Surveyor-General should be carried into effect, he may direct the Registrar-General to amend the land grant in accordance with the proposal.

17—Inalienability of land vested in Anangu Pitjantjatjara in pursuance of this Part

Subject to this Act, where land has vested in Anangu Pitjantjatjara in pursuance of this Part, no estate or interest in the land—

- (a) may be alienated from Anangu Pitjantjatjara; or
- (b) may be compulsorily acquired, resumed or forfeited under the law of this State.

Division 2—Entry to the lands

18—Rights of Pitjantjatjaras with respect to lands

All Pitjantjatjaras have unrestricted rights of access to the lands.

19—Unauthorised entry on the lands

- (1) A person (not being a Pitjantjatjara) who enters the lands without the permission of Anangu Pitjantjatjara is guilty of an offence and liable to a penalty not exceeding the maximum prescribed by subsection (2).

- (2) The maximum penalty for an offence against subsection (1) is—
- (a) where the offence was committed intentionally—a fine of two thousand dollars plus five hundred dollars for each day during which the convicted person remained on the land after the unlawful entry; or
 - (b) in any other case—a fine of two hundred dollars.
- (3) An application for permission to enter the lands—
- (a) may be made by an applicant on the applicant's own behalf, or on behalf of a group of persons; and
 - (b) must, unless the Executive Board otherwise allows—
 - (i) be in writing and lodged with the Executive Board; and
 - (ii) set out—
 - (A) the purpose for which entry to the lands is sought; and
 - (B) the period for which entry to the land is sought; and
 - (C) the time and place at which the applicant, or the group on whose behalf the application is made, seeks to enter the lands.
- (4) The applicant shall, at the request of Anangu Pitjantjatjara, furnish such further information as it may reasonably require to determine the application.
- (5) Upon an application under this section, Anangu Pitjantjatjara may, by instrument in writing—
- (a) grant permission to enter the lands unconditionally; or
 - (b) grant permission to enter the lands subject to such conditions as it thinks fit; or
 - (c) refuse permission to enter the lands.
- (5a) Where a group of persons is permitted to enter the lands, each member of the group is bound by the conditions (if any) subject to which the permission was granted.
- (5b) A person who contravenes or fails to comply with a condition on which the person, or a group of which the person is a member, was granted permission to enter the lands is guilty of an offence and liable to a penalty not exceeding the maximum prescribed by subsection (5c).
- (5c) The maximum penalty for an offence against subsection (5b) is a fine of \$2 000 plus \$500 for each day (if any) during which the convicted person was on the lands, or a particular part of the lands, in contravention of the condition.
- (6) Anangu Pitjantjatjara may, upon such conditions as it thinks fit, delegate any of its powers under subsection (5) to any group of Pitjantjatjaras.
- (7) A delegation under subsection (6) is revocable at will and does not derogate from the power of Anangu Pitjantjatjara to act itself in any matter.
- (8) This section does not apply to—
- (a) a police officer acting in the course of carrying out his official duties; or

- (b) any other officer appointed pursuant to statute acting in the course of carrying out his official duties; or
 - (ba) the Electoral Commissioner acting in relation to an election being conducted, or to be conducted, under section 9, or a person assisting the Electoral Commissioner in relation to such an election; or
 - (c) a person acting upon the written authority of the Minister of Aboriginal Affairs, who enters the lands for the purpose of carrying out functions that have been assigned to a Minister or instrumentality of the Crown or a department of government; or
 - (d) a member of the Parliament of the State or the Commonwealth, a person who is genuinely a candidate for election as a member of the Parliament of the State or the Commonwealth, or a person who is accompanying and genuinely assisting any such member or candidate; or
 - (e) entry upon the lands in case of emergency; or
 - (f) entry upon the lands in pursuance of Division 3, Division 4 or Division 6 of this Part.
- (9) Where a person proposes to enter the lands in pursuance of subsection (8)(b), (ba), (c) or (d) reasonable notice of the time, place and purpose of the proposed entry must be given to Anangu Pitjantjatjara.
- (9a) A person who, being entitled to enter upon part only of the lands in pursuance of Division 3, Division 4 or Division 6 of this Part, enters upon some other part of the lands without the permission of Anangu Pitjantjatjara acts in contravention of subsection (1).
- (10) If Anangu Pitjantjatjara, by notice in writing to the Minister of Aboriginal Affairs, objects to an authorised person entering or remaining upon the lands, the Minister shall revoke or modify the authorisation in order to give effect to the objection unless he is satisfied that there are sufficient reasons why the authorisation should continue notwithstanding the objection.
- (11) Where a pastoral lease remains in force in relation to any part of the lands, the holder of the lease, any member of his family, any employee or member of an employee's family, and any other person authorised in writing by the lessee, may, without the permission of Anangu Pitjantjatjara, enter land comprised in the lease.
- (12) Where an authorisation is granted by a lessee under subsection (11), notice in writing of the authorisation shall be given by the lessee to Anangu Pitjantjatjara within one month after the authorisation was granted.

Division 3—Mining operations on the lands

20—Mining operations on the lands

- (1) Notwithstanding the provisions of any other Act, a person who, without permission under this section—
- (a) carries out mining operations upon the lands; or
 - (b) enters the lands for the purpose of carrying out mining operations,

shall be guilty of an offence and liable to a penalty not exceeding the maximum prescribed by subsection (2).

- (2) The maximum penalty for an offence against subsection (1) is a fine of ten thousand dollars plus one thousand dollars for each day during which the convicted person—
 - (a) carried out unlawful mining operations on the lands; or
 - (b) remained on the lands after the unlawful entry.
- (2a) A person who, having permission to carry out mining operations upon part only of the lands, carries out mining operations on some other part of the lands without the permission of Anangu Pitjantjatjara acts in contravention of subsection (1)(a).
- (3) An application for permission to carry out mining operations upon the lands—
 - (a) may be made only by a person who has applied for a mining tenement in respect of the lands or a part of the lands and has been notified by the Minister of Mines and Energy that he approves the making of an application under this section; and
 - (b) must be in writing and lodged with the Executive Board; and
 - (c) must contain, or be accompanied by, all information submitted by the applicant to the Minister of Mines and Energy in support of his application for a mining tenement.
- (4) The applicant shall, at the request of Anangu Pitjantjatjara, furnish in writing such further information as it may reasonably require to determine the application.
- (5) The applicant shall, as soon as practicable after making his application, or furnishing information under subsection (4), send to the Minister of Mines and Energy a copy of the application or of the document by which the information was furnished.
- (6) Upon an application under this section, Anangu Pitjantjatjara may—
 - (a) grant its permission unconditionally; or
 - (b) grant its permission subject to such conditions (which must be consistent with the provisions of this Act) as it thinks fit; or
 - (c) refuse its permission.
- (7) Anangu Pitjantjatjara shall, upon deciding an application under this section, notify the applicant, in writing, of its decision and the applicant shall, within seven days after receiving that notification, furnish the Minister of Mines and Energy with a copy of the notification.
- (7a) The reasonable costs and expenses incurred by Anangu Pitjantjatjara in dealing with an application under this section may be recovered from the applicant as a debt.
- (7b) Any payment made in satisfaction of a liability arising under subsection (7a) shall, if the application is subsequently determined in favour of the applicant but on condition that compensation be paid to Anangu Pitjantjatjara, be regarded as a payment made on account of that compensation.
- (8) Where—
 - (a) Anangu Pitjantjatjara refuses its permission under this section or grants its permission but subject to conditions that are unacceptable to the applicant; or

- (b) the applicant has not, at the expiration of one hundred and twenty days from the date of the application, received notice of a decision by Anangu Pitjantjatjara upon the application,
- the applicant may request the Minister of Mines and Energy to refer the application to an arbitrator.
- (9) If the Minister of Mines and Energy receives a request under subsection (8), the application shall be referred to an arbitrator appointed by the Minister of Mines and Energy.
- (10) At least twenty-one days before an arbitrator is appointed under subsection (9), the Minister of Mines and Energy must inform Anangu Pitjantjatjara of whom he proposes to appoint and he must consider any representations of Anangu Pitjantjatjara in relation to the proposed appointment.
- (11) The arbitrator must be a judge of the High Court, the Federal Court of Australia, or the Supreme Court of a State or Territory of Australia.
- (12) The arbitrator—
- (a) shall have the powers of a commission of inquiry under the *Royal Commissions Act*; and
 - (b) may state a case for the opinion of the Supreme Court on a question of law.
- (13) A case stated under subsection (12) shall be heard and determined by the Full Court.
- (14) After hearing such evidence and submissions as—
- (a) Anangu Pitjantjatjara; and
 - (b) the applicant; and
 - (c) the Minister of Mines and Energy; and
 - (d) the Minister of Aboriginal Affairs,
- may desire to make to him, and such other evidence and submissions as he thinks fit to receive, the arbitrator may—
- (e) affirm, vary or reverse the decision of Anangu Pitjantjatjara; or
 - (f) where no decision has been made by Anangu Pitjantjatjara upon the application—determine the application as the arbitrator thinks fit.
- (14a) The arbitrator may, if the arbitrator thinks fit, award against the applicant and in favour of Anangu Pitjantjatjara an amount that represents, in the arbitrator's opinion, the reasonable costs and expenses incurred by Anangu Pitjantjatjara in relation to the arbitration.
- (14b) An amount awarded under subsection (14a) may be recovered by Anangu Pitjantjatjara as a debt.
- (15) In arriving at his determination, the arbitrator shall have regard to—
- (a) the effect of the grant of the mining tenement upon—
 - (i) the preservation and protection of Pitjantjatjara ways-of-life, culture and tradition;

- (ii) the interests, proposals, opinions and wishes of the Pitjantjatjara people in relation to the management, use and control of the lands;
 - (iii) the growth and development of Pitjantjatjara social, cultural and economic structures;
 - (iv) freedom of access by Pitjantjatjaras to the lands and their freedom to carry out on the lands rites, ceremonies and other activities in accordance with Pitjantjatjara traditions; and
- (b) the suitability of the applicant to carry out the proposed mining operations and his capacity, in carrying out those operations, to minimise disturbance to the Pitjantjatjara people and the lands; and
 - (c) the preservation of the natural environment; and
 - (d) the economic and other significance of the operations to the State and Australia.
- (16) The arbitrator shall hear and determine the arbitration as expeditiously as possible.
- (17) A determination under this section is binding upon Anangu Pitjantjatjara, the applicant and the Crown.
- (18) The *Arbitration Act 1891* does not apply to an arbitration under this section.
- (19) This section does not apply in relation to prospecting or mining for precious stones on the Mintabie precious stones field.
- (20) Where a person applies under this section for permission to prospect and mine for precious stones, and the proposed mining operations are to be carried out within a prescribed area, no compensation, or other consideration, shall be paid or given to Anangu Pitjantjatjara under or in respect of a permission granted under this section.
- (21) No regulation prescribing an area for the purposes of subsection (20) shall be made unless—
- (a) the area to be prescribed has been delineated or otherwise identified by plan, photograph or other document; and
 - (b) the plan, photograph or other document has been deposited in the General Registry Office by the Minister of Mines and Energy with the consent of Anangu Pitjantjatjara,
- and any such regulation may be made by reference to a plan, photograph or other document so deposited.

21—Interaction of this Act and Mining and Petroleum Acts

- (1) Where prospecting or mining is permitted upon the lands in pursuance of this Division, the person in whose favour the permission was granted and his agents, contractors and employees may, subject to the conditions (if any) upon which the permission was granted, and to the provisions of the *Mining Act 1971* or the *Petroleum Act 1940*, as the case may require (but without requiring any further permission or authority to enter the lands under the provisions of either of those Acts), enter the lands for the purpose of prospecting or mining.

- (2) A mining tenement shall not be granted in respect of the lands or a part of the lands except to a person who has permission to carry out mining operations on the lands under this Division, but this Act does not prevent the taking of any step under the *Mining Act* or the *Petroleum Act* antecedent to the grant of a mining tenement.
- (3) Before a mining tenement is granted in pursuance of the *Mining Act* or the *Petroleum Act* in relation to the lands or a part of the lands, the Minister administering the relevant Act shall afford Anangu Pitjantjatjara a reasonable opportunity to make submissions relating to the conditions subject to which the tenement should be granted.
- (4) If a person—
- (a) makes a payment or gives other consideration in contravention of section 23; or
 - (b) in relation to—
 - (i) obtaining the permission of Anangu Pitjantjatjara for the carrying out of mining operations on the lands; or
 - (ii) the carrying out or proposed carrying out of mining operations on the lands,makes a payment, or gives some other consideration, to Anangu Pitjantjatjara (not being a payment or consideration otherwise permitted or provided for in this Act) otherwise than in conformity with—
 - (iii) conditions imposed by Anangu Pitjantjatjara under this Division in granting its permission for the carrying out of the mining operations; or
 - (iv) conditions determined or approved by an arbitrator under this Division; or
 - (v) an agreement of which the Minister of Mines and Energy has been notified under this Division,

then—

- (c) the amount of the payment, or the value of the consideration, is recoverable as a debt due to the Crown; and
- (d) —
 - (i) no mining tenement in respect of the lands will be granted to the person and the person is precluded from applying for another mining tenement in respect of the lands for the period of three years; and
 - (ii) if a mining tenement in respect of the lands is held by the person, that tenement is cancelled.

22—Royalty

- (1) Royalty paid in respect of minerals recovered from the lands shall be paid into a separate fund maintained by the Minister of Mines and Energy.
- (2) Subject to subsection (3), the royalty shall be applied as follows:
- (a) one-third shall be paid to Anangu Pitjantjatjara; and

- (b) one-third shall be paid to the Minister of Aboriginal Affairs to be applied towards the health, welfare and advancement of the Aboriginal inhabitants of the State generally; and
 - (c) one-third shall be paid into the General Revenue of the State.
- (3) If the income of the fund maintained under subsection (1) exceeds in any financial year the prescribed limit, the excess shall be paid in full into the General Revenue of the State.
 - (4) No moneys shall be paid out of the fund maintained under subsection (1) unless a regulation is in force prescribing a limit for the purposes of subsection (3).
 - (5) In this section—

royalty means royalty payable under the *Mining Act 1971* or the *Petroleum Act 1940*.

23—Offence in relation to obtaining permission to carry out mining operations

- (1) A person who, without the consent of the Minister of Mines and Energy, gives, offers, or agrees to give a payment or other consideration to another person (not being a payment or consideration otherwise permitted or provided for in this Act) in connection with obtaining the permission of Anangu Pitjantjatjara to carry out mining operations upon the lands shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.
- (2) Where a body corporate commits an offence against subsection (1), each director of the body corporate shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

24—Certain payments or other consideration to Anangu Pitjantjatjara must represent fair compensation

- (1) This section applies to payments made, or to be made, or consideration given, or to be given, to Anangu Pitjantjatjara (not being a payment of royalty under section 22) in respect of the carrying out or proposed carrying out of mining operations on the lands.
- (2) A payment or consideration to which this section applies must be reasonably proportioned to the disturbance to the lands, the Pitjantjatjara people, and their ways-of-life, that has resulted or is likely to result from the grant of the relevant mining tenement.
- (3) A person who makes or gives, or agrees to make or give, a payment or consideration to which this section applies shall, within fourteen days of the date of making or giving the payment or consideration, or entering into the agreement, notify the Minister of Mines and Energy of the amount or value of the payment or consideration, or of the terms of the agreement.

Penalty: Two thousand dollars.

Division 4—The Mintabie precious stones field

25—Special provisions relating to the Mintabie precious stones field

- (1) A person is not entitled to enter or remain upon the Mintabie precious stones field unless—
 - (a) he has permission under this Act to be upon that field; or
 - (b) he is a member of a class of persons who are, under subsection (2), entitled to enter and remain on the field without permission under this Act.
- (2) Subject to this section, persons of the following classes are entitled to enter and remain on the Mintabie precious stones field without permission under this Act—
 - (a) persons who hold precious stones prospecting permits;
 - (b) persons carrying on a lawful business at an established place of business upon the field;
 - (c) the lawful or *de facto* spouse, or parent or child, of a person who is entitled to be on the field under paragraph (a) or (b);
 - (d) persons whose purpose in entering, or being on, the field is to transact lawful business with persons referred to in paragraph (a), (b) or (c), being business that cannot reasonably be transacted from a place outside the lands.
- (3) A person who is entitled under subsection (2) to enter and remain on the field is entitled, without permission under this Act, to use roads that provide access to the field for the purpose of entering and leaving the field.
- (4) Where a person carries on, or proposes to carry on, a business of a kind referred to in subsection (2)(b), and the business is not such that a licence, permit or other authorisation is required under the law of the State in respect of that business, he shall notify the designated officer in writing of the nature of the business and of the place at which it is being or is to be carried on.
Penalty: Five hundred dollars.
- (5) Subject to subsection (6), a person who proposes to enter the field under subsection (2)(d) shall, before doing so, give notice, in the prescribed form, to the designated officer.
Penalty: Five hundred dollars.
- (6) A person is not required to give notice under subsection (5) where he has been invited to the field by a person referred to in subsection (2)(a), (b) or (c) and that person has given the prescribed notice to the designated officer.
- (7) The designated officer shall maintain a list of notices given under this section.
- (8) The list shall be open for inspection by any member of the public.
- (9) In this section—
the designated officer means the person to whom the Minister of Mines and Energy assigns the functions of designated officer under this section.

26—The Mintabie Consultative Committee

- (1) There shall be a committee entitled the "Mintabie Consultative Committee".
- (2) The Committee shall at the request of the Minister of Mines and Energy, and may of its own motion, tender advice to the Minister of Mines and Energy on matters related to the administration of the Mintabie precious stones field.
- (3) The Committee shall consist of the following members:
 - (a) two Pitjantjatjaras nominated by Anangu Pitjantjatjara and appointed by the Governor; and
 - (b) a member of the Police Force nominated by the Commissioner of Police and appointed by the Governor; and
 - (c) a person nominated by the Minister of Mines and Energy and appointed by the Governor; and
 - (d) a person nominated by the Mintabie Progress Association and appointed by the Governor.
- (4) The Governor shall appoint one of the members nominated by Anangu Pitjantjatjara to be chairman of the Committee.
- (5) The members of the Committee shall hold office at the pleasure of the Governor.
- (6) The Pitjantjatjara members of the Committee are entitled to be accompanied at meetings of the Committee by advisers and interpreters.
- (7) A member of the Committee may appoint a person to act as his deputy, and a person so appointed may, in the absence of that member, act in his place at a meeting of the Committee.
- (8) Subject to this section and the regulations, the procedures for convening meetings of the Committee and transacting its business shall be as determined by the Committee.
- (9) A decision carried by a majority of the votes cast by the members present at a meeting of the Committee shall be a decision of the Committee.
- (10) Each member present at a meeting of the Committee shall have one vote on any matter arising for decision at that meeting and, in the event of an equality of votes, the chairman shall have a second, or casting, vote.

27—Exclusion of certain persons from the field

- (1) A court of summary jurisdiction may upon the application of the Committee or of Anangu Pitjantjatjara, make an order prohibiting a person from entering or remaining on the Mintabie precious stones field.
- (2) An order shall not be made against a person under subsection (1) unless the person against whom the order is sought—
 - (a) has, after the commencement of this Act, been convicted of—
 - (i) an offence involving violence or a breach of the peace; or
 - (ii) an offence of a sexual nature; or
 - (iii) an offence involving the unlawful sale of a motor vehicle; or
 - (iv) larceny; or

- (v) an offence involving the unlawful sale of liquor; or
 - (vi) an offence involving wilful interference with an Aboriginal sacred site; or
- (b) has acted in a manner prejudicial to—
- (i) the welfare of an Aboriginal individual or group; or
 - (ii) the welfare of those who are lawfully on the field in pursuance of this Division.
- (3) A person in respect of whom an order is in force under subsection (1) who enters or remains on the field in contravention of the order shall be guilty of an offence and liable to a penalty not exceeding ten thousand dollars or imprisonment for two years.
- (4) A court of summary jurisdiction may, upon the application of a person against whom an order has been made under this section, revoke the order, but it shall not do so unless it has first allowed the Committee and Anangu Pitjantjatjara a reasonable opportunity to be heard upon the matter.

28—Annual licences and incidental rights for Mintabie residents

- (1) The defined area shall be deemed to have been leased by Anangu Pitjantjatjara to the Crown for a term of twenty-one years commencing on the date of commencement of this Act.
- (2) The Minister of Lands may, upon the application of a Mintabie resident, issue or renew an annual licence entitling him, subject to the terms and conditions of the licence, to occupy land within the defined area, but no such licence shall operate after the expiration of the period referred to in subsection (1).
- (3) The annual rental payable under a licence issued under subsection (2) shall be twenty dollars or such other amount as may be determined by the Minister of Lands, and in determining any such annual rental he shall have regard to, and generally follow, the rates of rental fixed by the Crown in respect of annual licences issued in comparable situations.
- (4) Once in each year, the Minister of Lands shall pay to Anangu Pitjantjatjara all amounts collected during the preceding period of twelve months by way of annual rental under licences issued in pursuance of this section.
- (5) The Minister of Lands shall not issue a licence under this section to a person who is, by order of a court, prohibited from entering or remaining on the Mintabie precious stones field, and, if such an order is made against a licensee, the Minister shall revoke his licence.
- (6) A annual licence issued under this section is not transferable nor may any of the rights conferred by the licence be assigned.
- (7) The Minister of Lands shall, as soon as practicable after issuing a licence under this section, notify Anangu Pitjantjatjara of—
- (a) the name of the licensee; and
 - (b) the land to which the licence relates.

- (8) A Mintabie resident shall be entitled, without permission under this Act, to use and maintain the airfield adjacent to the defined area as an airfield, and to have such access to the lands as is reasonably necessary for the purpose.
- (9) A Mintabie resident shall be entitled, without permission under this Act—
- (a) to use and maintain the bore and water distribution system by which water is provided on the Mintabie precious stones field; and
 - (b) to drill a further bore or bores (either in addition to or in substitution for the present bore) on a site to be agreed with Anangu Pitjantjatjara (which agreement shall not be unreasonably or capriciously withheld) and to install and maintain such pumps, pipes and other equipment as may be necessary to connect it to the water distribution system, and to have such access to the lands as is necessary for those purposes.
- (10) In this section—
the defined area means section 1291 Out of Hundreds (Everard).
- (11) This section shall cease to operate in the event of the Mintabie precious stones field ceasing to be a precious stones field for the purposes of the *Mining Act 1971*.

29—Interaction of this Division and the Mining Act

- (1) Subject to subsection (2), this Division does not derogate from the provisions of the *Mining Act 1971*.
- (2) Notwithstanding the provisions of the *Mining Act 1971*, the consent of Anangu Pitjantjatjara is not required to the pegging out of a precious stones claim on the Mintabie precious stones field.

Division 5—Right of the Crown to continue in occupation of certain parts of the lands

30—Right of the Crown to continue its occupation of certain land

Where before the commencement of this Act the Crown occupied a part of the lands for purposes connected with the health, education, welfare or advancement of the Pitjantjatjara people, the Crown may continue to occupy that part of the lands, for a period of up to fifty years, for the same or similar purposes and without payment of rent or compensation to Anangu Pitjantjatjara.

Division 6—Construction of roads by the Commissioner of Highways

31—Consent of Anangu Pitjantjatjara required for road works

- (1) The Commissioner of Highways may carry out road works upon the lands with the consent of Anangu Pitjantjatjara.
- (2) The consent of Anangu Pitjantjatjara may be given subject to such conditions as Anangu Pitjantjatjara thinks fit.
- (3) Anangu Pitjantjatjara shall not withhold its consent to the construction or re-construction of a road referred to in Schedule 2, but this subsection does not prejudice the right of Anangu Pitjantjatjara to negotiate conditions affecting the location of the road, the road works, or ancillary or associated works.

32—Proposals to carry out road works and arbitration of disputes

- (1) Where the Commissioner of Highways desires to carry out road works on the lands, he shall submit to Anangu Pitjantjatjara proposals containing—
 - (a) a plan describing the land on which the road works are to be carried out; and
 - (b) a description of all ancillary or associated works that are to be carried out and of the areas in which those ancillary or associated works are to be carried out; and
 - (c) a description of the access roads to be used for the purpose of the road works, or the ancillary or associated works; and
 - (d) a general description of the areas in which gravel or stone is to be quarried for the purpose of the road works; and
 - (e) such other information as Anangu Pitjantjatjara may reasonably require.
- (2) If the Commissioner and Anangu Pitjantjatjara are unable to agree on the proposals, or on some modified form of the proposals, the Commissioner may submit the differences to arbitration.
- (3) The arbitrator shall be the arbitrator appointed in pursuance of section 20.
- (4) The arbitrator is empowered to determine any matter in dispute and his determination shall be binding on the Commissioner and on Anangu Pitjantjatjara.
- (5) No compensation is payable to Anangu Pitjantjatjara in respect of loss or damage arising from road works where those road works are carried out in relation to the roads referred to in Schedule 2 and in accordance with conditions agreed by Anangu Pitjantjatjara and the Commissioner, or determined by the arbitrator.
- (6) For the purposes of this section, the document entitled "Proposal for the Establishment of a Road Construction Corridor and the Construction of the new Stuart Highway" executed by the Commissioner of Highways and the Pitjantjatjara Council Incorporated, deposited in the General Registry Office and numbered 2293 of 1980, shall be deemed to constitute proposals agreed upon by Anangu Pitjantjatjara and the Commissioner.

33—Road reserves

- (1) The area comprised within one hundred metres to each side of the centre line of the roads referred to in Schedule 2 (the centre line being ascertained by reference to the road as constructed) constitutes a road reserve.
- (2) The Commissioner of Highways is entitled to unrestricted use of a road reserve for purposes related to road works.
- (3) A member of the public shall be entitled to free and unrestricted access to any of the roads referred to in Schedule 2 and to land comprised in a road reserve.

34—Consent not required for maintenance or repair of roads referred to in Schedule 2

The provisions of sections 31 and 32 shall not apply to the maintenance or repair (being maintenance or repair not involving re-alignment) of a road referred to in Schedule 2 provided that materials used in the course of the maintenance or repair of the road are not taken from any part of the lands that lies outside the road reserve.

Part 4—Disputes

35—Tribal assessor

- (1) There shall be a tribal assessor.
- (2) The tribal assessor shall be appointed by the Minister of Aboriginal Affairs with the approval of Anangu Pitjantjatjara.
- (3) The terms and conditions upon which the tribal assessor holds office shall be determined by the Minister after considering the advice of the Public Service Board.

36—Disputes

- (1) Any Pitjantjatjara who is aggrieved by a decision or action of Anangu Pitjantjatjara, or any of its members, may appeal to the tribal assessor against that decision or action.
- (2) The tribal assessor—
 - (a) shall hear the appeal at some suitable place upon the lands; and
 - (b) shall conduct the hearing as expeditiously as possible and without undue formality.
- (3) The tribal assessor is not bound by the rules of evidence in proceedings under this section, but may inform himself in such manner as he thinks fit.
- (4) In proceedings under this section, the tribal assessor should observe, and where appropriate give effect to, the customs and traditions of the Pitjantjatjara people.
- (5) The tribal assessor may in proceedings under this section—
 - (a) give such directions as he considers just or expedient to resolve any matters in dispute; or
 - (b) refer the matter back to Anangu Pitjantjatjara to be further dealt with in accordance with his directions.

37—Order compelling compliance with direction of the tribal assessor

- (1) If a person refuses or fails to comply with a direction of the tribal assessor, any party to the proceedings before the assessor may apply to a local court of full jurisdiction for an order to compel that person to comply with the direction.
- (2) Upon an application under this section, the local court shall, unless satisfied that the direction of the tribal assessor is unjust or unreasonable, make an order requiring the person against whom the direction was made to comply with the direction.
- (3) Proceedings under this section shall be heard at some suitable place upon the lands, and shall be conducted as expeditiously as possible and without undue formality.

Part 5—Miscellaneous

38—Summary offences

Proceedings in respect of offences against this Act shall be disposed of summarily.

39—Power of court to order compensation in certain cases

Where a person is convicted of an offence against this Act or any other Act, and it appears to the court by which that person is convicted that Anangu Pitjantjatjara has suffered damage to its property as a result of the commission of the offence, the court may order the convicted person to pay such compensation to Anangu Pitjantjatjara as the court considers just.

40—Exemption of lands from land tax

No land tax is payable upon the lands.

41—Financial provision

The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

42—Non-application of Outback Areas Community Development Trust Act

- (1) The *Outback Areas Community Development Trust Act 1978* does not apply to the lands.
- (2) Notwithstanding subsection (1), the Outback Areas Community Development Trust may expend moneys for the benefit of residents of the Mintabie precious stones field.

42A—Interaction between this Act and certain other Acts and laws

- (1) For the purpose of determining whether a particular part of the lands is a public place within the meaning of some other Act or law, any restrictions upon access to the lands or that place arising under this Act shall be disregarded.
- (2) A reference in the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959* to a road extends to any road on the lands.

42B—Depasturing of stock

Any regulations relating to overstocking that apply to holders of pastoral leases under the *Pastoral Act 1936* apply in respect of the depasturing of stock upon the lands (other than at the Granite Downs Station) as if Anangu Pitjantjatjara were the holder of a pastoral lease in respect of the lands.

43—Regulations

- (1) The Governor may make regulations—
 - (a) regulating, restricting or prohibiting the depasturing of stock upon any specified part of the lands;
 - (b) regulating, restricting or prohibiting any activity on the lands that may have adverse environmental consequences;
 - (e) prescribing other matters contemplated by this Act, or necessary or expedient for the purposes of this Act.
- (2) A regulation shall not be made under subsection (1)(b) except upon the recommendation of Anangu Pitjantjatjara.

- (3) Anangu Pitjantjatjara may make by-laws—
 - (a) regulating, restricting or prohibiting the consumption, possession, sale or supply of alcoholic liquor on the lands;
 - (b) prohibiting the inhalation or consumption of any regulated substance on the lands and prohibiting the possession, sale or supply of any regulated substance on the lands for the purpose of inhalation or consumption;
 - (c) providing for the confiscation, in circumstances in which a contravention of a by-law under paragraph (a) or (b) is reasonably suspected, of alcoholic liquor or any regulated substance to which the suspected contravention relates;
 - (d) providing for the treatment or rehabilitation (or both) of any person affected by the misuse of alcoholic liquor or any regulated substance;
 - (e) prohibiting specified forms of gambling on the lands;
 - (f) providing for any other matter that is prescribed by the regulations as a matter in relation to which by-laws may be made.
- (4) The operation of a by-law is restricted to the lands.
- (5) Where Anangu Pitjantjatjara proposes to make, alter or repeal a by-law, it must give reasonable notice in writing of the proposal to the Minister.
- (6) A by-law made under this section—
 - (a) must be submitted to the Governor for confirmation; and
 - (b) is subject to disallowance by Parliament.
- (7) 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 by-law.
- (8) If a vehicle is seized pursuant to subsection (7), the matter must be referred at the next available opportunity to a magistrate conducting sittings of court on the lands.
- (9) An order for the forfeiture of the vehicle to the Crown may be made by a magistrate 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 by-law; and
 - (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 or by-law under this Act; and
 - (c) that in the circumstances of the case it is appropriate that the vehicle be confiscated.
- (10) 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 the by-laws may, subject to the by-laws, order that person to undergo treatment or participate in a rehabilitation programme prescribed by the by-laws.

- (11) Subject to subsection (12), a person who contravenes or fails to comply with a regulation or by-law is liable to a penalty as follows:
- (a) if the regulation or by-law specifies a penalty (which must not exceed \$2 000)—the penalty so specified; or
 - (b) if no penalty is specified—a fine of \$2 000.
- (12) A person who contravenes—
- (a) a by-law regulating, restricting or prohibiting the sale or supply of alcoholic liquor on the lands; or
 - (b) a by-law prohibiting the sale or supply of a regulated substance on the lands for the purpose of inhalation or consumption,
- is liable to a fine of \$2 000 or imprisonment for two years.
- (13) In this section—
- (a) a reference to a regulated substance is a reference to—
 - (i) petrol; or
 - (ii) any other substance declared by the regulations to be a regulated substance for the purposes of this Act; and
 - (b) a reference to a member of the police force extends to a special constable authorised by a member of the police force to seize a vehicle under this section.

Schedule 1

- (a) The North West Reserve, blocks 915, 948, 950, 953, 964, 1018, 1019, 1031, 1032 and 1217, Out of Hundreds.
- (b) Section 462, Out of Hundreds.
- (c) Pastoral blocks 1033, 1058, 1060 and 1074 and Section 1280, Out of Hundreds.
- (d) Pastoral blocks 863, 900, 907, 908 and 1165, Out of Hundreds.
- (e) Pastoral blocks 1034 and 1202, Out of Hundreds.
- (f) Pastoral blocks 1036, 1037, 1038 and 1077, Out of Hundreds.
- (g) The land in respect of which partial surrender No. 4603197 and partial surrender No. 4603198 were registered in the Register of Crown Leases.

Schedule 2

- 1 The Stuart Highway.
- 2 The Oodnadatta to Granite Downs Road.

Schedule 3—Rules of election under section 9

Part 1—Preliminary

1—Interpretation

In this Schedule—

Court means the Court of Disputed Returns constituted under this Schedule;

electoral official means the returning officer or an electoral official appointed by the returning officer under clause 3(2);

electorate—see clause 2(a);

relevant electoral official means an electoral official appointed to be responsible for a particular electorate in accordance with clause 3(2);

returning officer—see clause 3(1).

Part 2—General rules relating to an election

2—Elections

An election under section 9 will consist of—

- (a) an election of one member of the Executive Board from each of the following community groups (and each community group will constitute an *electorate* for the election):
 - (i) Pipalyatjara/Kalka;
 - (ii) Watarru;
 - (iii) Kanypi/Nyapari/Angatja;
 - (iv) Amata/Tjurma;
 - (v) Kaltjiti/Irintata/Watinuma;
 - (vi) Anilalya/Turkey Bore;
 - (vii) Pukatja/Yunyarinyi;
 - (viii) Mimili;
 - (ix) Iwantja;
 - (x) Amuruna/Railway Bore/Witjintitja/Walatina; and
- (b) an election of the Chairperson of the Executive Board.

3—Returning officer

- (1) The Electoral Commissioner will be the returning officer for the purposes of an election under section 9.
- (2) The returning officer must appoint a relevant electoral official in relation to each electorate, and may appoint one or more other electoral officials to assist in the conduct of an election.

- (3) Without limiting the generality of subclause (2), an electoral official—
- (a) may hand out nomination forms to members of the community; and
 - (b) may receive nomination forms up to the close of nominations; and
 - (c) may, if permissible under local custom, take a photograph of each candidate and write the name of the candidate on the back.

4—Election timetable

- (1) Subject to this Schedule, voting will be held in each electorate during the period from 9.30 am until 3 pm on a day determined by the returning officer (which must be the same day in each electorate).
- (2) A person may only vote during the times, and on the day, referred to in subclause (1).

5—Distribution of information

- (1) The returning officer will be responsible for publicity of an election in each electorate.
- (2) Publicity of an election under these rules must include—
- (a) the description of the election process; and
 - (b) the time and date when voting shall take place; and
 - (c) the location where—
 - (i) nominations will be called; and
 - (ii) voting will take place,in each electorate; and
 - (d) the eligibility of voters to one vote in each ballot at the election on the date and time advertised.

6—Eligibility and nominations

- (1) A Pitjantjatjara of or above the age of 18 years who is a member of a community constituting an electorate will be eligible—
- (a) to nominate for one (but not both) of the following offices—
 - (i) member of the Executive Board to be elected from the electorate; or
 - (ii) Chairperson of the Executive Board; and
 - (b) to vote in an election held in relation to the electorate.
- (2) Nominations will be called in each electorate at a time and location determined by the returning officer, and will close 7 days after the nominations are called.
- (3) A person wishing to nominate must nominate in writing and lodge their nomination with the relevant electoral official.
- (4) If, at the close of nominations, it appears that the same person has nominated for election to two or more offices, both or all the nominations are void.
- (5) If more than one person nominates in an election for a particular electorate, a photograph of each candidate will, if permissible under local custom, be taken and be used to assist voters during the voting process.

- (6) The relevant electoral official must cause all nomination forms and photographs of candidates (if any) to be sent to the returning officer in a manner determined by the returning officer (but so that the documents reach the returning officer within 7 days after the close of nominations).

7—Uncontested elections

If only one nomination is received in relation to any office to be filled at an election under section 9, the relevant electoral official will declare the candidate duly elected to the office.

8—Voting

- (1) If more than one nomination is received in relation to an office to be filled at an election under section 9, an election by secret ballot in relation to the office will be held in accordance with this Schedule at a time and at locations determined by the returning officer (and such time should be approximately 21 days after the nominations close).
- (2) Voting will be conducted by use of voting marbles placed in receptacles each bearing the name and, if permissible under local custom, the photograph of a candidate, and the method of voting will be first past the post.
- (3) The relevant electoral official must place the receptacles in a line, the order of which is to be determined by lot conducted by the electoral official in the presence of another person.
- (4) Each person wishing to vote must cast their vote in the presence of an electoral official (but otherwise in private) by placing a voting marble in the receptacle that bears the name and, if permissible under local custom, the photograph of the candidate of their choice.
- (5) A person may, in an election, only cast—
 - (a) one vote in relation to the election of the Chairperson of the Executive Board; and
 - (b) one vote in relation to the election of other members of the Executive Board, and in any case must not vote in more than one electorate.

9—Counting of votes

- (1) The following provisions relate to the counting of votes at an election:
 - (a) an electoral official must count the votes for each candidate;
 - (b) the candidate receiving the greatest number of votes will be elected;
 - (c) in the event of a tie, an electoral official will determine who is elected by placing the names of the drawn candidates into a receptacle and drawing one out (and the candidate drawn out will be elected).
- (2) A candidate may nominate a person (not being a candidate) to represent him or her during the counting of votes by signing a scrutineer's form (and the scrutineer may view the handing out of voting marbles and counting of votes, but must not view an elector voting).

Part 3—Declaration of results

15—Provisional declarations

When the result of the election becomes apparent, the returning officer must make a provisional declaration of the result.

16—Recounts

- (1) At any time within 48 hours after the returning officer has made a provisional declaration, a candidate (not being a candidate in whose favour the provisional declaration was made) may, in a manner determined by the returning officer, request a recount of the votes cast in relation to the relevant vacancy and, in the event of a request being made, the returning officer must cause a recount of votes to be made unless the returning officer considers that there is no prospect that a recount would alter the result of the election.
- (2) The returning officer may, on his or her own initiative, during the period of 48 hours referred to in subclause (1), decide to conduct a recount of any votes cast in the election.
- (3) The following provisions apply to a recount:
 - (a) the returning officer should give the candidates reasonable notice of the time and place at which it is to be conducted;
 - (b) the returning officer may reverse a decision taken at the count;
 - (c) if the votes of two or more candidates are equal and one of them was excluded by lot at the count, the same candidate must be excluded at the recount.

17—Declaration of results and certificate

- (1) If the period for requesting a recount for an election expires without such a request having been made and the returning officer has not decided to initiate a recount, the returning officer must confirm the relevant provisional declarations, and immediately make out a return to the Minister certifying the election of specified candidates to specified offices.
- (2) If a recount is made, the returning officer must, according to the result of the recount—
 - (a) confirm the relevant provisional declaration; or
 - (b) revoke the provisional declaration and make a final declaration in accordance with the result of the recount,and then immediately make out a return to the Minister certifying the result of the election accordingly.
- (3) The returning officer—
 - (a) must notify all candidates, in writing, of the result of the election; and
 - (b) must within one month after the conclusion of the election cause public notice to be given of the result of the election in a manner determined by the Minister.

- (4) When the returning officer certifies the result of an election under subclause (1) or (2), the election of the candidate or candidates takes effect immediately.

Part 4—Disputed Returns

18—Constitution of Court

- (1) There will be a Court of Disputed Returns for the purposes of this Act.
- (2) The Court is constituted of a District Court Judge.
- (3) The Court, separately constituted under this clause, may sit contemporaneously to hear separate proceedings.
- (4) The Court is a court of record.
- (5) Subject to this Part, the procedure and powers of the Court are the same as those of the District Court when exercising its civil jurisdiction.

19—The clerk of the Court

- (1) There will be a clerk of the Court appointed by the Chief Judge of the District Court.
- (2) The office of clerk of the Court may be held in conjunction with any other office.

20—Jurisdiction of the Court

- (1) The Court has jurisdiction to hear and determine any petition addressed to it disputing the validity of an election under this Act.
- (2) The Court may not call in question the eligibility of a person—
 - (a) to nominate for the office of—
 - (i) member of the Executive Board to be elected from a particular electorate; or
 - (ii) Chairperson of the Executive Board; or
 - (b) to vote in an election held in relation to a particular electorate,
on the basis of whether or not they are a Pitjantjatjara, or a member of a particular community group.

21—Procedure upon petition

- (1) A petition to the Court must—
 - (a) set out the facts relied on to invalidate the election; and
 - (b) set out the relief to which the petitioner claims to be entitled; and
 - (c) be signed by a candidate at the election in dispute or by an elector for that election; and
 - (d) be lodged with the clerk of the Court within 28 days after the conclusion of the election; and
 - (e) be accompanied by the prescribed amount as security for costs.
- (2) A copy of the petition must be served on—
 - (a) any person declared elected in the disputed election; and

- (b) Anangu Pitjantjatjara; and
 - (c) if it is alleged that the election is invalid on account of an act or omission of an electoral official—the returning officer.
- (3) If, having been served under subclause (2), a person or Anangu Pitjantjatjara proposes to contest the petition, the person or Anangu Pitjantjatjara must, within 14 days after service, or such further time as may be allowed by the Court (on application made either before or after the expiration of the period of 14 days), lodge with the clerk of the Court, and serve on the petitioner, a reply.
- (4) A reply must—
- (a) set out the facts on which the applicant proposes to rely; and
 - (b) ask for any relief to which the applicant claims to be entitled; and
 - (c) be executed by—
 - (i) if the applicant is a natural person—the applicant; or
 - (ii) if the applicant is Anangu Pitjantjatjara—Anangu Pitjantjatjara.

22—Powers of the Court

- (1) The Court must sit as an open court, and its powers include the following:
- (a) to adjourn;
 - (b) to compel the attendance of witnesses and the production of documents;
 - (c) to examine witnesses on oath, affirmation or declaration;
 - (d) with the consent of the parties to the proceedings, to receive evidence on affidavit or by statutory declaration;
 - (e) subject to this Act and the rules, to determine its procedure in each case;
 - (f) to declare—
 - (i) that a person who was returned as elected was not duly elected; and
 - (ii) that a candidate who was not returned as elected was duly elected;
 - (g) to declare an election void;
 - (h) to dismiss or uphold a petition, in whole or in part;
 - (i) to amend or allow the amendment of a petition or reply;
 - (j) to punish contempt of its authority by fine or imprisonment.
- (2) The Court may exercise all or any of its powers under this clause on such grounds as the Court in its discretion thinks just and sufficient.
- (3) The Court is not bound by the rules of evidence.
- (4) The Court must act according to good conscience and the substantial merits of the case without regard to legal technicalities.
- (5) A decision of the Court is final and without appeal.

23—Illegal practices

- (1) The Court cannot declare an election void, or that a candidate returned as elected was not duly elected, on the ground of an illegal practice found by the Court to have been committed unless the Court is satisfied, on the balance of probabilities, that the result of the election was affected by the illegal practice.
- (2) If an illegal practice under section 9A(1)(a)(i) or 9A(2)(b) is found by the Court to have been committed, the illegal practice will be taken to have affected the result of the election unless the contrary is proved on the balance of probabilities.
- (3) No finding by the Court as to whether an illegal practice was committed constitutes a bar to criminal proceedings in relation to the illegal practice or may be admitted as evidence in such proceedings.
- (4) If the Court finds that an illegal practice occurred in relation to an election, the clerk of the Court must report the finding to the Minister.
- (5) In this clause—

illegal practice means an offence against Part 2 Division 4 of this Act.

24—Effect of decision

- (1) If pursuant to this Part a person returned as elected is declared not to have been duly elected, that person ceases to be a member of the Board or the Chairperson of Anangu Pitjantjatjara (as the case requires) and the person declared to have been duly elected will take his or her place accordingly.
- (2) If pursuant to this Part an election is declared void, a person returned as elected at the election ceases to be a member of the Board or the Chairperson of Anangu Pitjantjatjara (as the case requires).

25—Participation of Anangu Pitjantjatjara in proceedings

- (1) The Court may—
 - (a) on the application of a party to the proceedings—order that Anangu Pitjantjatjara be joined as a party to the proceedings; or
 - (b) on the application of Anangu Pitjantjatjara—allow Anangu Pitjantjatjara to intervene in the proceedings.
- (2) Anangu Pitjantjatjara may only be joined as a party to the proceedings or allowed to intervene if the Court is satisfied that it is fair and reasonable that Anangu Pitjantjatjara participate in the proceedings.
- (3) If Anangu Pitjantjatjara is allowed to intervene in the proceedings, it may intervene in the manner and to the extent directed by the Court, and on such other conditions as the Court may direct.

26—Right of appearance

A party to proceedings before the Court may appear personally or be represented by counsel.

27—Case stated

The Court may, of its own motion or on the application of a party to proceedings, state a question of law for the opinion of the Full Court of the Supreme Court.

28—Costs

- (1) The Court may make orders for costs as it thinks just (including an order for costs in favour of or against Anangu Pitjantjatjara if it has been joined as a party to the proceedings or has intervened in the proceedings).
- (2) If an election is declared void, or a candidate returned as elected is declared not to have been duly elected, on account of an act or omission of an electoral official, any costs in favour of the petitioner must, to the extent to which they are attributable to that act or omission, be awarded against the Crown.
- (3) An order under this clause may be enforced as an order of the District Court.

29—Rules of the Court

The Chief Judge of the District Court may make rules—

- (a) regulating the practices and procedures of the Court; and
- (b) fixing fees to be paid in respect of proceedings before the Court; and
- (c) making any other provision necessary or expedient for the purposes of this Schedule.

Part 5—Miscellaneous

30—Amendment of Schedule

The Governor may, by regulation, amend this Schedule.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1981	20	<i>Pitjantjatjara Land Rights Act 1981</i>	19.3.1981	2.10.1981 (<i>Gazette 2.10.1981 p1139</i>)
1987	50	<i>Pitjantjatjara Land Rights Act Amendment Act 1987</i>	30.4.1987	18.6.1987 (<i>Gazette 18.6.1987 p1542</i>)
2004	25	<i>Pitjantjatjara Land Rights (Executive Board) Amendment Act 2004</i>	15.7.2004	16.8.2004 (<i>Gazette 22.7.2004 p2594</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 50/1987 s 3	18.6.1987
Pt 1		
s 2	omitted under <i>Legislation Revision and Publication Act 2002</i>	16.8.2004
s 3	amended by 50/1987 s 3	18.6.1987
	omitted under <i>Legislation Revision and Publication Act 2002</i>	16.8.2004
s 4		
Anangu Pitjantjatjaraku	amended by 50/1987 s 3	18.6.1987
the constitution	amended by 50/1987 s 3	18.6.1987
Electoral Commissioner	inserted by 25/2004 s 4	16.8.2004
the Executive Board	amended by 50/1987 s 3	18.6.1987
petrol	inserted by 50/1987 s 4	18.6.1987
Pt 2		
Headings preceding s 5	amended by 50/1987 s 3	18.6.1987

Pitjantjatjara Land Rights Act 1981—16.8.2004 to 26.10.2005

Legislative history

s 5	amended by 50/1987 s 3	18.6.1987
Heading preceding s 6	amended by 50/1987 s 3	18.6.1987
s 6		
s 6(1)	amended by 50/1987 s 3	18.6.1987
s 6(2)	amended by 50/1987 ss 3, 5	18.6.1987
s 7	amended by 50/1987 s 3	18.6.1987
Heading preceding s 8	amended by 50/1987 s 3	18.6.1987
s 8	amended by 50/1987 s 3	18.6.1987
Heading preceding s 9	amended by 50/1987 s 3	18.6.1987
s 9		
s 9(1)	amended by 50/1987 s 3	18.6.1987
s 9(2)	amended by 50/1987 s 3	18.6.1987
	substituted by 25/2004 s 5(1)	16.8.2004
s 9(3)	<i>deleted by 25/2004 s 5(2)</i>	<i>16.8.2004</i>
s 9(4)	amended by 50/1987 s 3	18.6.1987
	substituted by 25/2004 s 5(3)	16.8.2004
s 9(5)	amended by 50/1987 s 3	18.6.1987
	amended by 25/2004 s 5(4)	16.8.2004
s 9(6)	amended by 50/1987 s 3	18.6.1987
	substituted by 25/2004 s 5(5)	16.8.2004
s 9(7)	inserted by 25/2004 s 5(5)	16.8.2004
s 9A	inserted by 25/2004 s 6	16.8.2004
ss 11—13	amended by 50/1987 s 3	18.6.1987
s 14		
s 14(1)	amended by 50/1987 s 3	18.6.1987
s 14(3)	amended by 50/1987 s 3	18.6.1987
	amended by 25/2004 s 7(1)	16.8.2004
s 14(4)	<i>deleted by 25/2004 s 7(2)</i>	<i>16.8.2004</i>
s 14(5)	amended by 50/1987 s 3	18.6.1987
Pt 3		
Heading preceding s 15	amended by 50/1987 s 3	18.6.1987
s 15		
s 15(1) and (3)	amended by 50/1987 s 3	18.6.1987
s 17	amended by 50/1987 s 3	18.6.1987
s 19		
s 19(1)	amended by 50/1987 s 3	18.6.1987
s 19(3)	substituted by 50/1987 s 6(a)	18.6.1987
s 19(4) and (5)	amended by 50/1987 s 3	18.6.1987
s 19(5a)—(5c)	inserted by 50/1987 s 6(b)	18.6.1987
s 19(6) and (7)	amended by 50/1987 s 3	18.6.1987
s 19(8)	amended by 25/2004 s 8(1)	16.8.2004
s 19(9)	amended by 50/1987 s 3	18.6.1987

	amended by 25/2004 s 8(2)	16.8.2004
s 19(9a)	inserted by 50/1987 s 6(c)	18.6.1987
s 19(10) and (11)	amended by 50/1987 s 3	18.6.1987
s 19(12)	amended by 50/1987 s 3	18.6.1987
s 20		
s 20(2a)	inserted by 50/1987 s 7(a)	18.6.1987
s 20(4)	amended by 50/1987 s 3	18.6.1987
s 20(5)	amended by 50/1987 s 7(b)	18.6.1987
s 20(6) and (7)	amended by 50/1987 s 3	18.6.1987
s 20(7a) and (7b)	inserted by 50/1987 s 7(c)	18.6.1987
s 20(8), (10) and (14)	amended by 50/1987 s 3	18.6.1987
s 20(14a) and (14b)	inserted by 50/1987 s 7(d)	18.6.1987
s 20(17), (20) and (21)	amended by 50/1987 s 3	18.6.1987
s 21		
s 21(3)	amended by 50/1987 s 3	18.6.1987
s 21(4)	substituted by 50/1987 s 8	18.6.1987
s 21(5) and (6)	<i>deleted by 50/1987 s 8</i>	18.6.1987
s 22		
s 22(2)	amended by 50/1987 s 3	18.6.1987
s 23		
s 23(1)	amended by 50/1987 ss 3, 9	18.6.1987
s 24		
s 24(1)	amended by 50/1987 s 3	18.6.1987
s 24(3)	amended by 50/1987 s 10	18.6.1987
s 26		
s 26(3) and (4)	amended by 50/1987 s 3	18.6.1987
s 27		
s 27(1) and (4)	amended by 50/1987 s 3	18.6.1987
s 28		
s 28(1), (4), (7) and (9)	amended by 50/1987 s 3	18.6.1987
s 29		
s 29(2)	amended by 50/1987 s 3	18.6.1987
s 30	amended by 50/1987 s 3	18.6.1987
s 31	amended by 50/1987 s 3	18.6.1987
s 32		
s 32(1), (2), (4)—(6)	amended by 50/1987 s 3	18.6.1987
Pt 4		
s 35		
s 35(2)	amended by 50/1987 s 3	18.6.1987
s 36		

s 36(1) and (5)	amended by 50/1987 s 3	18.6.1987
Pt 5		
s 39	amended by 50/1987 s 3	18.6.1987
ss 42A and 42B	inserted by 50/1987 s 11	18.6.1987
s 42C	inserted by 50/1987 s 11	18.6.1987
	expired: s 42C(11)—omitted under <i>Legislation Revision and Publication Act 2002</i>	
s 42D	inserted by 50/1987 s 11	18.6.1987
	expired: proclamation (Gazette 18 June 1987 p 1542)—omitted under <i>Legislation Revision and Publication Act 2002</i>	(18.6.1987)
s 43		
s 43(1)	amended by 50/1987 s 12(b)	18.6.1987
	(c) and (d) deleted by 50/1987 s 12(a)	18.6.1987
	(f) deleted by 50/1987 s 12(b)	18.6.1987
s 43(2)	amended by 50/1987 ss 3, 12(c)	18.6.1987
s 43(3)—(13)	inserted by 50/1987 s 12(d)	18.6.1987
Sch 3	inserted by 25/2004 s 9	16.8.2004

Transitional etc provisions associated with Act or amendments

Pitjantjatjara Land Rights (Executive Board) Amendment Act 2004, Sch 1—Transitional provisions

- 1 In this Schedule—

Anangu Pitjantjatjara means the body corporate of that name established under the principal Act;

Executive Board means the Executive Board of Anangu Pitjantjatjara established under the principal Act;

principal Act means the *Pitjantjatjara Land Rights Act 1981*.
- 2 Subject to clause 3, and despite a provision of the principal Act, or a relevant provision of the constitution of Anangu Pitjantjatjara, an election conducted in accordance with section 9 of the principal Act (as amended by this Act) at which the members and Chairperson of the Executive Board are elected must be conducted not later than 8 weeks after the date of commencement of this Act.
- 3 However, if the returning officer for the election determines that it would be impracticable or culturally inappropriate to conduct the election within the period referred to in clause 2, the election may be conducted after the end of that period (but should be held as soon as is practicable and culturally appropriate).
- 4 Despite a provision of the principal Act, or a relevant provision of the constitution of Anangu Pitjantjatjara, the term of office of a member of the Executive Board elected on 7 November 2002 will be taken to be the period from 7 November 2002 until the election referred to in clause 2 (and the member is, subject to the constitution, eligible for re-election).
- 5 An act or decision of the Executive Board that would have been valid if done or made after the commencement of clause 4 will be taken to be valid for all purposes.

Historical versions

Reprint No 1—15.11.1991