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Indigenous Community Land Management



Wujal Wujal
Aboriginal
Shire Council

WUJAL WUJAL ABORIGINAL SHIRE COUNCIL

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Model Local Law No. 7 (Indigenous Community Land Management) 2009

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THIS MODEL LOCAL LAW MAY BE ADOPTED UPON COMMENCEMENT OF THE LGA 2009

Part 1 Preliminary

1 Short title

This model local law may be cited as *Model Local Law No. 7 (Indigenous Community Land Management) 2009*.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to enable local governments that have jurisdiction over trust areas under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to regulate the use of these areas.
- (2) The purpose is to be achieved by providing for—
 - (a) the authorisation of persons to enter, be in or live in the trust area, complementing the provisions of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 6; and
 - (b) the regulation of scientific research within the trust area; and
 - (c) the designation and management of camping sites within the trust area; and
 - (d) the designation and regulation of the use of parks and reserves within the local government's area.

3 Definitions—the dictionary

The dictionary in the schedule defines particular words used in this local law.

4 Relationship with other laws¹

This local law is—

- (a) in addition to, and does not derogate from—
 - (i) the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*; and
 - (ii) other laws about Aboriginal and Torres Strait Islander interests in land; and
- (b) to be read with *Local Law No. 1 (Administration)*__ [insert year].

Part 2 Authority to enter etc. trust area

5 Authorisation of classes of persons

- (1) For the purposes of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 53(1)(c), the local government may, by subordinate local law, specify a class or category of persons who are authorised to enter, be in or live in the trust area.

Example—

¹ This local law and any subordinate local law made under it do not apply to the extent of any inconsistency with a law of the State or the Commonwealth. See the Act, section 27.

The local government may specify that the customers of a particular tour operator or the employees of a particular construction company are authorised to enter a part of the trust area.

- (2) The subordinate local law must state the parts of the trust area where the authorisation applies.²
- (3) The subordinate local law may state that the authorisation is subject to specified conditions.
- (4) A person must comply with the specified conditions for an authorisation.
Maximum penalty for subsection (4)—35 penalty units.

6 Authorisation of individuals

- (1) This section applies to a person who does not have authority to enter, be in or live in the trust area under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, sections 53(1)(a), 53(1)(b) or 54.
- (2) For the purposes of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 53(1)(c), the local government may grant approval authorising the person to enter, be in or live in the trust area.³
- (3) An approval mentioned in subsection (2) applies to the parts of the trust area specified by subordinate local law.⁴

Part 3 Scientific research

7 Approval required to undertake scientific research

- (1) For the purposes of *Local Law No.1 (Administration) __[insert year]*, section 5(b), it is a prescribed activity⁵ to conduct scientific research within the trust area.
- (2) However, conducting scientific research within the trust area is not a prescribed activity for the following persons—
 - (a) a person who is conducting scientific research in the course of performing a function, or exercising a power, under an Act that requires the person to be in the trust area;
 - (b) a person mentioned in the *Aboriginal and Torres Strait Islander*

² See the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 53(3). See also section 53(2) regarding the requirement for written consent of the grantee of Aboriginal or Torres Strait Islander land before making a local law that authorises entry to that land.

³ *Local Law No. 1 (Administration) __[insert year]*, section 5(c), provides that a **prescribed activity** includes “an activity for which a Local Government Act authorises the local government to grant an approval but does not make any other provision, except provision that is consistent with this part, about the process for the local government to grant the approval.” *Local Law No. 1 (Administration) __[insert year]*, section 7, provides that an approval required for a prescribed activity must be obtained under part 2 of that local law. As a result, an approval to enter, be in or live in the trust area must be obtained under that part.

⁴ See footnote 2.

⁵ *Local Law No.1 (Administration) __[insert year]*, section 6, creates an offence for a person to undertake a prescribed activity without a current approval granted by the local government. Section 7 requires that the approval be obtained under part 2 of that local law.

Communities (Justice, Land and Other Matters) Act 1984, section 54, who is conducting scientific research related to the purpose of their entry to the trust area;

- (c) a person who is assisting, or is acting under the direction or control of, a person mentioned in paragraph (a).
- (3) In this section—

scientific research means all studies, surveys and research in both natural sciences and social sciences including anthropology, history, prehistory, cultural appreciation and sociology.

Part 4 Camping sites

8 Designation of camping sites

- (1) The local government may, by resolution, designate a part of the trust area for the purposes of camping (a **camping site**).
- (2) However, a resolution under subsection (1) may only be made for a part of the trust area that is—
 - (a) an accessible place; or
 - (b) a place that the local government has decided, by a resolution made under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 50(1)(b), to be a place to which persons who are not residents of the trust area may have access.
- (3) A resolution may be made under subsection (1) for a place that is Aboriginal or Torres Strait Islander land only with the written consent of the grantee of the land.
- (4) In this section—

accessible place see the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 50(7).

9 Approval required for camping

- (1) For the purposes of *Local Law No.1 (Administration) ___[insert year]*, section 5(b), it is a prescribed activity to camp within a camping site.⁶
- (2) In this section—

camp see the *Recreation Areas Management Act 2006*, schedule.

10 Conditions on use of camping site

- (1) The local government may, by subordinate local law, prescribe conditions regarding the use of a camping site, which may have regard to the traditional and cultural land uses of the residents of the trust area or persons who have a particular connection with the camping site under Aboriginal tradition or Island custom.
- (2) A person must not breach a condition prescribed under subsection (1) regarding the use of a camping site.

⁶ See footnote 5.

Maximum penalty for subsection (2)—20 penalty units.

11 Fee for camping approval

Prescribed fees fixed by the local government for approvals under section 9 may differ for residents and non-residents of the local government's area.⁷

12 Temporary closures

- (1) An authorised person may temporarily close the whole, or part, of a camping site—
 - (a) if the authorised person reasonably believes that there is a likelihood of flooding, fire, other danger or emergency that may pose a risk to a person camping at the site; or
 - (b) if such closure is necessary for the observance of a traditional or cultural practice; or
 - (c) if such closure is necessary for maintenance or other work to be carried out; or
 - (d) if such closure is necessary for the rehabilitation of the place or site; or
 - (e) if such closure is necessary to conserve or protect the cultural or natural resources of the area or native wildlife.
- (2) A person must not camp in a camping site, or a part of a camping site, that is closed.

Maximum penalty for subsection (2)—20 penalty units.

Part 5 Parks and reserves

13 Application to Aboriginal or Torres Strait Islander land

A subordinate local law under this part may be made in relation to a place that is Aboriginal land or Torres Strait Islander land only with the written consent of the grantee.

14 Designation of parks and reserves

- (1) The local government may, by subordinate local law, designate land under the local government's control as a *park*.
- (2) The local government may, by subordinate local law, designate land under the local government's control as a *reserve*.
- (3) Land should be designated as a park (rather than as a reserve) if it is to be used predominantly for public recreation.

15 Prohibited and restricted activities

- (1) The local government may, by subordinate local law, declare an activity to be—

⁷ See the Act, section 97, regarding the local government's power to fix cost-recovery fees.

- (a) prohibited in a park or reserve (a *prohibited activity*); or
- (b) restricted in a park or reserve (a *restricted activity*).

Example for paragraph (a)—

The local government may declare that the playing of certain sports is a prohibited activity in all parks, in a particular park or in a part of a park.

- (2) The local government must take reasonable steps to provide notice to members of the public regarding the prohibited activities or restricted activities declared for parks or reserves.
- (3) A person must not engage in a prohibited activity or a restricted activity.
Maximum penalty for subsection (3)—20 penalty units.

- (4) In this section—

reasonable steps include, as a minimum, the display of a notice at a prominent place within each park or reserve for which a declaration under subsection (1) has been made, stating—

- (a) if the declaration relates to the whole park or reserve— the prohibited and restricted activities for the park or reserve; and
- (b) if the declaration relates to a part of the park or reserve— the prohibited and restricted activities and a description of the part to which the declaration applies; and
- (c) the provisions of subsection (3).

Part 6 Miscellaneous

16 Approval to be produced on request

- (1) Where an authorised person reasonably believes that a person present in the trust area is a person who requires approval to be in a place⁸, camp at a camping site⁹ or conduct an activity¹⁰, the authorised person may request the person to produce the relevant approval for inspection.
- (2) A person must comply with a request under subsection (1).

Maximum penalty for subsection (2)—40 penalty units.

17 Subordinate local laws

The local government may make subordinate local laws about—

- (a) the classes or categories of persons who are authorised to enter, be in or live in the trust area;¹¹ and
- (b) the parts of the trust area to which an approval under section 6 applies;¹²

⁸ See section 6.

⁹ See section 9.

¹⁰ See section 7.

¹¹ See section 5.

¹² See section 6(3).

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- (c) conditions regarding the use of a camping site;¹³ and
 - (d) designating land as a park;¹⁴ and
 - (e) designating land as a reserve;¹⁵ and
 - (f) declaration of prohibited or restricted activities for a park or reserve.¹⁶

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¹³ See section 10.

¹⁴ See section 14(1).

¹⁵ See section 14(2).

¹⁶ See section 15(1).

Schedule Dictionary

Section 3

Aboriginal land see the *Aboriginal Land Act 1991*, section 10.

authorised person see *Local Law No.1 (Administration) ___[insert year]*, schedule 1.

camping site see section 8.

park includes part of a park.

prescribed fee see *Local Law No.1 (Administration) ___[insert year]*, schedule 1.

reserve includes part of a reserve.

resident means a member of the community residing in the trust area.

Torres Strait Islander land see the *Torres Strait Islander Land Act 1991*, section 9.

trust area means a part of the local government's area that is a trust area within the meaning of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 48.

the Act means the *Local Government Act 2009*.

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