

Model Local Law No. 7 (Indigenous Community Land Management) 2010

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Part 1 Preliminary

1 Short title

This model local law may be cited as *Model Local Law No. 7 (Indigenous Community Land Management) 2010*.

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.

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.

Example—

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;

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.

- (b) a person mentioned in the *Aboriginal and Torres Strait Islander 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.

⁶ See footnote 5.

- (2) A person must not breach a condition prescribed under subsection (1) regarding the use of a camping site.

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.

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

15 Prohibited and restricted activities

- (1) The local government may, by subordinate local law, declare an activity to be—
- (a) prohibited in a local government controlled area or road (a ***prohibited activity***); or
 - (b) restricted in a local government controlled area or road (a restricted activity).

Example for paragraph (a)—

The local government may declare that the lighting of fires is a prohibited activity in all local government controlled areas, in a particular local government controlled area or in a part of a local government controlled area.

Example for paragraph (b)-

The local government may declare that the playing of sport generally, or the playing of certain sports, is a restricted activity in that it is restricted to particular times of the day, week, month or year in all local government controlled areas, in a particular local government controlled area or in a part of a local government controlled area.

- (2) The local government must take reasonable steps to provide notice to members of the public regarding restricted activities declared for local government controlled areas or roads.
- (3) In this section—
- reasonable steps*** may include the display of a notice at a prominent place within each local government controlled area for which a declaration under subsection (1)(b) has been made, stating—
- (a) (a) if the declaration relates to the whole area—the restricted activities for the area; and
 - (b) (b)if the declaration relates to a part of the area—the restricted activities and a description of the part of the area to which the declaration applies; and
 - (c) in general terms, the provisions of subsection (4).
- (4) A person must not engage in a prohibited activity or a restricted activity.
- Maximum penalty - 20 penalty units

16 Motor vehicle access to parks and reserves

- (1) A ***motor vehicle access area*** is an area within a park or reserve that is—
- (a) a car park or roadway for which there is no sign or traffic control device indicating that vehicles owned by members of the public are excluded; or
 - (b) declared under a subordinate local law for this paragraph as a motor vehicle access area.
- (2) For the purposes of *Local Law No.1 (Administration)* __[insert year], section 5(b), it is a prescribed activity⁸ to bring a motor vehicle onto or drive a motor vehicle on any part of a park or reserve that is not a motor vehicle access area.

⁸ See footnote 4.

- (3) The local government may, by subordinate local law, declare a specific type of motor vehicle (a ***prohibited vehicle***) as prohibited in a specified motor vehicle access area.
- (4) For the purposes of *Local Law No.1 (Administration)* ___[insert year], section 5(b), it is a prescribed activity⁹ to bring a prohibited vehicle onto or drive a prohibited vehicle on the specified motor vehicle access area.
- (5) However, subsections (2) and (4) do not apply for an emergency vehicle.
- (6) The local government must take reasonable steps to provide notice to members of the public regarding—
 - (a) declarations of motor vehicle access areas under subsection (1)(b); and
 - (b) declarations of prohibited vehicles under subsection (3).
- (7) In this section—

emergency vehicle includes the following—

 - (a) an ambulance;
 - (b) a fire-engine;
 - (c) a police vehicle;
 - (d) another vehicle, including a tow truck, helicopter or mobile crane, if used in circumstances of an emergency.

reasonable steps include, as a minimum, the display of a notice at a prominent place within each declared motor vehicle access area, stating—

 - (a) a description of the declared motor vehicle access area; and
 - (b) a description of prohibited vehicles for the area; and
 - (c) in general terms, the provisions of subsections (2) and (4).

Part 6 Miscellaneous

17 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 place¹⁰, camp at a camping site¹¹ or conduct an activity¹², 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.

⁹ See footnote 4.

¹⁰ See section 6.

¹¹ See section 9.

¹² See section 7.

18 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;¹³ and
- (b) the parts of the trust area to which an approval under section 6 applies;¹⁴
- (c) conditions regarding the use of a camping site;¹⁵ and
- (d) designating land as a park;¹⁶ and
- (e) designating land as a reserve;¹⁷ and
- (f) declaration of prohibited or restricted activities for a park or reserve;¹⁸ and
- (g) declaration of motor vehicle access areas;¹⁹ and
- (h) declaration of prohibited vehicles.²⁰

¹³ See section 5.

¹⁴ See section 6(3).

¹⁵ See section 10.

¹⁶ See section 14(1).

¹⁷ See section 14(2).

¹⁸ See section 15(1).

¹⁹ See section 16(1)(b).

²⁰ See section 16(3).

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*.