

Prevention of Forced Closure of Remote Aboriginal Communities Bill 2017

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Defined terms

Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon Mr Robin Chapple, MLC)

**Prevention of Forced Closure of Remote
Aboriginal Communities Bill 2017**

A Bill for

**An Act to provide for the prevention of the forced closure of remote
Aboriginal communities.**

1 **Preamble**

- 2 A. Since time immemorial, the Aboriginal people of Western
3 Australia have inhabited lands in the State.
- 4 B. Under Aboriginal law and custom, the Aboriginal people of
5 Western Australia are the traditional owners of, and have
6 cultural responsibilities and rights in relation to, lands in the
7 State.
- 8 C. The Aboriginal people of Western Australia continue to have a
9 living cultural, spiritual, familial and social relationship with
10 those lands.
- 11 D. It has been agreed with the Commonwealth of Australia that
12 Western Australia is to take responsibility for providing services
13 to support remote Aboriginal communities.
- 14 E. Under the *Constitution Act 1889* the Parliament of Western
15 Australia resolves to acknowledge the Aboriginal people as the
16 First People of Western Australia and traditional custodians of
17 the land and to seek to effect a reconciliation with the
18 Aboriginal people of Western Australia.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Prevention of Forced Closure of Remote Aboriginal Communities Act 2017*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Terms used

In this Act —

decision about forced closure, of a remote Aboriginal community, has the meaning given in section 11;

Declaration on the Rights of Indigenous Peoples means the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007, contained in the annexure to General Assembly Resolution 61/295, endorsed by the Commonwealth of Australia on 3 April 2009, a copy of the English text of which is set out in Schedule 1;

forced closure, of a remote Aboriginal community, has the meaning given in section 8;

municipal and essential services has the meaning given in section 9;

public authority has the meaning given in section 10;

remote Aboriginal community has the meaning given in section 7.

4. Object of Act

The object of this Act is to prevent the forced closure of remote Aboriginal communities.

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1 **5. Operation of Act**

2 This Act has effect despite any provision of an Act referred to in
3 section 11(3) or any other written law under which a decision
4 about forced closure of a remote Aboriginal community is
5 made.

6 **6. Act binds the State**

7 (1) This Act binds the State.

8 (2) In this section —

9 **State** means the Crown in right of the State, and includes —

- 10 (a) the Government of the State; and
11 (b) a Minister of the Crown in right of the State; and
12 (c) a statutory corporation, or other entity, representing the
13 Crown in right of the State.

Part 2 — Key concepts defined

7. Remote Aboriginal communities

(1) A remote Aboriginal community means —

- (a) a community listed in the document entitled “Priority Investment Communities — WA”, a copy of which is set out in Schedule 2; and
- (b) a community wholly or principally composed of persons of Aboriginal descent as defined in the *Aboriginal Affairs Planning Authority Act 1972* section 4.

(2) For the purposes of subsection (1)(a), a community is listed in that document even if the community has been renamed, or is known by a different name.

8. Forced closure

Forced closure of a remote Aboriginal community means any action taken without the free, prior and informed consent of the members of the community that has the aim or effect of —

- (a) closing the community, or relocating the members of the community; or
- (b) deterring people from living in the community due to a lack of, or inadequate, municipal and essential services available to the members of the community.

9. Municipal and essential services

Municipal and essential services include the following —

- (a) a supply of power, in the form of electricity or gas or both;
- (b) a supply of potable water;
- (c) a sewerage system, septic tank or other waste water management treatment;
- (d) infrastructure provision (including houses, schools, hospitals, clinics and roads);

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- 1 (e) educational services;
- 2 (f) health services;
- 3 (g) a waste disposal or collection service;
- 4 (h) any other service prescribed by regulations to be a
- 5 municipal and essential service for the purposes of this
- 6 section.

7 **10. Public authority**

8 Each of the following is a public authority —

- 9 (a) the Crown in right of the State;
- 10 (b) the Government of the State;
- 11 (c) the Governor in Executive Council;
- 12 (d) a Minister of the Crown in right of the State;
- 13 (e) a State Government department, State trading concern,
- 14 State agency or instrumentality;
- 15 (f) a local government or a regional local government;
- 16 (g) any other body or person, whether incorporated or not,
- 17 that under a written law administers, provides or carries
- 18 on a municipal and essential service for the benefit of
- 19 the State or a part of the State;
- 20 (h) any other person or entity prescribed by regulations to
- 21 be a public authority for the purposes of this section.

**Part 3 — Decisions about forced closure of remote
Aboriginal communities**

11. Decisions about forced closure

(1) A decision by a public authority that will, or has the potential to, result in, or that has resulted in, the forced closure of a remote Aboriginal community is a decision about the forced closure of the community.

(2) In considering whether a decision is a decision about forced closure, it is irrelevant whether the public authority made the decision alone or jointly with any of the following —

- (a) another person or body, whether incorporated or not;
- (b) another State or Territory, or the Commonwealth;
- (c) an agency or instrumentality of another State or Territory, or of the Commonwealth.

(3) The following are examples of decisions about the provision of municipal and essential services that may be a decision about the forced closure of a remote Aboriginal community —

- (a) a decision about the provision of a water service to a remote Aboriginal community under the *Water Services Act 2012*, or by a person licensed to provide a water service under that Act;
- (b) a decision about the land in respect of which statutory water service charges will apply under the *Water Services Act 2012*;
- (c) a decision about the supply of energy to a remote Aboriginal community under the *Energy Coordination Act 1994*;
- (d) a decision about the supply of electricity to a remote Aboriginal community under the *Electricity Industry Act 2004*, or by a person licensed under that Act;

s. 12

- 1 (e) a decision about the supply of gas to a remote
2 Aboriginal community under the *Energy Coordination*
3 *Act 1994* or by a person licensed under that Act;
- 4 (f) a decision under the *School Education Act 1999* to
5 establish, amalgamate or close a government school at a
6 remote Aboriginal community;
- 7 (g) a decision under the *Public Health Act 2016* or the
8 *Health Services Act 2016* that affects a remote
9 Aboriginal community;
- 10 (h) a decision about the provision of a municipal and
11 essential service under the *Local Government Act 1995*
12 that affects a remote Aboriginal community;
- 13 (i) any other decision prescribed by regulations for the
14 purposes of this section.
- 15 (4) A decision by a public authority about the provision of a
16 municipal and essential service includes a decision to cease to
17 provide, or to provide a reduction in, or limit access to, a
18 municipal and essential service.

19 **12. Matters that must be taken into account when making**
20 **decisions about forced closure**

21 In making a decision about the forced closure of a remote
22 Aboriginal community the public authority must use its best
23 endeavours to adhere to the principles set out in the *Declaration*
24 *on the Rights of Indigenous Peoples*, and in particular —

- 25 (a) Articles 8, 9 and 10 — the right of indigenous people
26 not to be subjected to forced assimilation or destruction
27 of their culture or removal from their lands and the right
28 to belong to an indigenous community or nation; and
- 29 (b) Articles 3, 4, 18 and 23 — the right of indigenous
30 people to self-determination, autonomy or
31 self-government in matters relating to their internal and
32 local affairs, to develop their own indigenous
33 decision-making institutions and to determine and

- 1 develop priorities and strategies for exercising their right
2 to development; and
- 3 (c) Articles 19 and 39 — the right of indigenous people to
4 be actively involved in developing and determining
5 health, housing and other economic and social
6 programmes involving them, the right to consultation
7 and cooperation in good faith from the State and to have
8 access to financial and technical assistance from the
9 State for the enjoyment of their rights.

10 **13. Review of certain decision about forced closure**

- 11 (1) A person specified in subsection (2) may apply to the State
12 Administrative Tribunal for a review of a decision about the
13 forced closure of a remote Aboriginal community.
- 14 (2) A member of a remote Aboriginal community may apply under
15 subsection (1) if —
- 16 (a) a decision about forced closure has been made about
17 their community; and
- 18 (b) the person has reason to believe, and does believe, that
19 the public authority that made the decision did not make
20 it in compliance with section 12.
- 21 (3) An application for a review of a decision about the forced
22 closure of a remote Aboriginal community may be made by, or
23 on behalf of, 1 or more than 1 person referred to in
24 subsection (2).
- 25 (4) An application for a review of a decision about the forced
26 closure of a remote Aboriginal community must be made
27 within —
- 28 (a) 6 months after the decision was made; or
- 29 (b) if the remote Aboriginal community affected was not
30 given written notice about the decision — 6 months
31 after it became apparent to 1 or more of the members of
32 the community that a decision about the forced closure
33 of their community had been made.

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- 1 (5) An application should be made in writing, but the executive
2 officer, as defined in the *State Administrative Tribunal Act 2004*
3 section 3(1), may formulate in writing any oral application
4 made to the State Administrative Tribunal.

5 **14. Regulations**

- 6 The Governor may make regulations prescribing all matters that
7 are required or permitted by this Act to be prescribed, or are
8 necessary or convenient to be prescribed, for giving effect to the
9 purposes of this Act.

Schedule 1 — Declaration of the Rights of Indigenous Peoples

[s. 3]

United Nations

General Assembly

Distr.: General
2 October 2007

Sixty-first session

Agenda item 68

Resolution adopted by the General Assembly on 13 September 2007

[without reference to a Main Committee (A/61/L.67 and Add. 1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting
13 September 2007*

1 **Annex**

2 **United Nations Declaration on the Rights of Indigenous Peoples**

3 *The General Assembly,*

4 *Guided* by the purposes and principles of the Charter of the United Nations, and
5 good faith in the fulfilment of the obligations assumed by States in accordance
6 with the Charter,

7 *Affirming* that indigenous peoples are equal to all other peoples, while
8 recognizing the right of all peoples to be different, to consider themselves
9 different, and to be respected as such,

10 *Affirming also* that all peoples contribute to the diversity and richness of
11 civilizations and cultures, which constitute the common heritage of humankind,

12 *Affirming further* that all doctrines, policies and practices based on or
13 advocating superiority of peoples or individuals on the basis of national origin
14 or racial, religious, ethnic or cultural differences are racist, scientifically false,
15 legally invalid, morally condemnable and socially unjust,

16 *Reaffirming* that indigenous peoples, in the exercise of their rights, should be
17 free from discrimination of any kind,

18 *Concerned* that indigenous peoples have suffered from historic injustices as a
19 result of, inter alia, their colonization and dispossession of their lands, territories
20 and resources, thus preventing them from exercising, in particular, their right to
21 development in accordance with their own needs and interests,

22 *Recognizing* the urgent need to respect and promote the inherent rights of
23 indigenous peoples which derive from their political, economic and social
24 structures and from their cultures, spiritual traditions, histories and
25 philosophies, especially their rights to their lands, territories and resources,

26 *Recognizing also* the urgent need to respect and promote the rights of
27 indigenous peoples affirmed in treaties, agreements and other constructive
28 arrangements with States,

29 *Welcoming* the fact that indigenous peoples are organizing themselves for
30 political, economic, social and cultural enhancement and in order to bring to an
31 end all forms of discrimination and oppression wherever they occur,

32 *Convinced* that control by indigenous peoples over developments affecting them
33 and their lands, territories and resources will enable them to maintain and

- 1 strengthen their institutions, cultures and traditions, and to promote their
2 development in accordance with their aspirations and needs,
- 3 *Recognizing* that respect for indigenous knowledge, cultures and traditional
4 practices contributes to sustainable and equitable development and proper
5 management of the environment,
- 6 *Emphasizing* the contribution of the demilitarization of the lands and territories
7 of indigenous peoples to peace, economic and social progress and development,
8 understanding and friendly relations among nations and peoples of the world,
- 9 *Recognizing in particular* the right of indigenous families and communities to
10 retain shared responsibility for the upbringing, training, education and
11 well-being of their children, consistent with the rights of the child,
- 12 *Considering* that the rights affirmed in treaties, agreements and other
13 constructive arrangements between States and indigenous peoples are, in some
14 situations, matters of international concern, interest, responsibility and
15 character,
- 16 *Considering also* that treaties, agreements and other constructive arrangements,
17 and the relationship they represent, are the basis for a strengthened partnership
18 between indigenous peoples and States,
- 19 *Acknowledging* that the Charter of the United Nations, the International
20 Covenant on Economic, Social and Cultural Rights² and the International
21 Covenant on Civil and Political Rights,² as well as the Vienna Declaration and
22 Programme of Action,³ affirm the fundamental importance of the right to
23 self-determination of all peoples, by virtue of which they freely determine their
24 political status and freely pursue their economic, social and cultural
25 development,
- 26 *Bearing in mind* that nothing in this Declaration may be used to deny any
27 peoples their right to self-determination, exercised in conformity with
28 international law,
- 29 *Convinced* that the recognition of the rights of indigenous peoples in this
30 Declaration will enhance harmonious and cooperative relations between the
31 State and indigenous peoples, based on principles of justice, democracy, respect
32 for human rights, non-discrimination and good faith,
- 33 *Encouraging* States to comply with and effectively implement all their
34 obligations as they apply to indigenous peoples under international instruments,

1 in particular those related to human rights, in consultation and cooperation with
2 the peoples concerned,

3 *Emphasizing* that the United Nations has an important and continuing role to
4 play in promoting and protecting the rights of indigenous peoples,

5 *Believing* that this Declaration is a further important step forward for the
6 recognition, promotion and protection of the rights and freedoms of indigenous
7 peoples and in the development of relevant activities of the United Nations
8 system in this field,

9 *Recognizing and reaffirming* that indigenous individuals are entitled without
10 discrimination to all human rights recognized in international law, and that
11 indigenous peoples possess collective rights which are indispensable for their
12 existence, well-being and integral development as peoples,

13 *Recognizing* that the situation of indigenous peoples varies from region to
14 region and from country to country and that the significance of national and
15 regional particularities and various historical and cultural backgrounds should
16 be taken into consideration,

17 *Solemnly proclaims* the following United Nations Declaration on the Rights of
18 Indigenous Peoples as a standard of achievement to be pursued in a spirit of
19 partnership and mutual respect:

20 *Article 1*

21 Indigenous peoples have the right to the full enjoyment, as a collective or as
22 individuals, of all human rights and fundamental freedoms as recognized in the
23 Charter of the United Nations, the Universal Declaration of Human Rights⁴ and
24 international human rights law.

25 *Article 2*

26 Indigenous peoples and individuals are free and equal to all other peoples and
27 individuals and have the right to be free from any kind of discrimination, in the
28 exercise of their rights, in particular that based on their indigenous origin or
29 identity.

30 *Article 3*

31 Indigenous peoples have the right to self-determination. By virtue of that right
32 they freely determine their political status and freely pursue their economic,
33 social and cultural development.

1 *Article 4*

2 Indigenous peoples, in exercising their right to self-determination, have the right
3 to autonomy or self-government in matters relating to their internal and local
4 affairs, as well as ways and means for financing their autonomous functions.

5 *Article 5*

6 Indigenous peoples have the right to maintain and strengthen their distinct
7 political, legal, economic, social and cultural institutions, while retaining their
8 right to participate fully, if they so choose, in the political, economic, social and
9 cultural life of the State.

10 *Article 6*

11 Every indigenous individual has the right to a nationality.

12 *Article 7*

13 1. Indigenous individuals have the rights to life, physical and mental
14 integrity, liberty and security of person.

15 2. Indigenous peoples have the collective right to live in freedom, peace and
16 security as distinct peoples and shall not be subjected to any act of genocide or
17 any other act of violence, including forcibly removing children of the group to
18 another group.

19 *Article 8*

20 1. Indigenous peoples and individuals have the right not to be subjected to
21 forced assimilation or destruction of their culture.

22 2. States shall provide effective mechanisms for prevention of, and redress
23 for:

24 (a) Any action which has the aim or effect of depriving them of their
25 integrity as distinct peoples, or of their cultural values or ethnic identities;

26 (b) Any action which has the aim or effect of dispossessing them of
27 their lands, territories or resources;

28 (c) Any form of forced population transfer which has the aim or effect
29 of violating or undermining any of their rights;

30 (d) Any form of forced assimilation or integration;

- 1 (e) Any form of propaganda designed to promote or incite racial or
2 ethnic discrimination directed against them.

3 *Article 9*

4 Indigenous peoples and individuals have the right to belong to an indigenous
5 community or nation, in accordance with the traditions and customs of the
6 community or nation concerned. No discrimination of any kind may arise from
7 the exercise of such a right.

8 *Article 10*

9 Indigenous peoples shall not be forcibly removed from their lands or territories.
10 No relocation shall take place without the free, prior and informed consent of
11 the indigenous peoples concerned and after agreement on just and fair
12 compensation and, where possible, with the option of return.

13 *Article 11*

14 1. Indigenous peoples have the right to practise and revitalize their cultural
15 traditions and customs. This includes the right to maintain, protect and develop
16 the past, present and future manifestations of their cultures, such as
17 archaeological and historical sites, artefacts, designs, ceremonies, technologies
18 and visual and performing arts and literature.

19 2. States shall provide redress through effective mechanisms, which may
20 include restitution, developed in conjunction with indigenous peoples, with
21 respect to their cultural, intellectual, religious and spiritual property taken
22 without their free, prior and informed consent or in violation of their laws,
23 traditions and customs.

24 *Article 12*

25 1. Indigenous peoples have the right to manifest, practise, develop and teach
26 their spiritual and religious traditions, customs and ceremonies; the right to
27 maintain, protect, and have access in privacy to their religious and cultural sites;
28 the right to the use and control of their ceremonial objects; and the right to the
29 repatriation of their human remains.

30 2. States shall seek to enable the access and/or repatriation of ceremonial
31 objects and human remains in their possession through fair, transparent and
32 effective mechanisms developed in conjunction with indigenous peoples
33 concerned.

1 *Article 13*

2 1. Indigenous peoples have the right to revitalize, use, develop and transmit
3 to future generations their histories, languages, oral traditions, philosophies,
4 writing systems and literatures, and to designate and retain their own names for
5 communities, places and persons.

6 2. States shall take effective measures to ensure that this right is protected
7 and also to ensure that indigenous peoples can understand and be understood in
8 political, legal and administrative proceedings, where necessary through the
9 provision of interpretation or by other appropriate means.

10 *Article 14*

11 1. Indigenous peoples have the right to establish and control their
12 educational systems and institutions providing education in their own
13 languages, in a manner appropriate to their cultural methods of teaching and
14 learning.

15 2. Indigenous individuals, particularly children, have the right to all levels
16 and forms of education of the State without discrimination.

17 3. States shall, in conjunction with indigenous peoples, take effective
18 measures, in order for indigenous individuals, particularly children, including
19 those living outside their communities, to have access, when possible, to an
20 education in their own culture and provided in their own language.

21 *Article 15*

22 1. Indigenous peoples have the right to the dignity and diversity of their
23 cultures, traditions, histories and aspirations which shall be appropriately
24 reflected in education and public information.

25 2. States shall take effective measures, in consultation and cooperation with
26 the indigenous peoples concerned, to combat prejudice and eliminate
27 discrimination and to promote tolerance, understanding and good relations
28 among indigenous peoples and all other segments of society.

29 *Article 16*

30 1. Indigenous peoples have the right to establish their own media in their
31 own languages and to have access to all forms of non-indigenous media without
32 discrimination.

1 2. States shall take effective measures to ensure that State-owned media
2 duly reflect indigenous cultural diversity. States, without prejudice to ensuring
3 full freedom of expression, should encourage privately owned media to
4 adequately reflect indigenous cultural diversity.

5 *Article 17*

6 1. Indigenous individuals and peoples have the right to enjoy fully all rights
7 established under applicable international and domestic labour law.

8 2. States shall in consultation and cooperation with indigenous peoples take
9 specific measures to protect indigenous children from economic exploitation
10 and from performing any work that is likely to be hazardous or to interfere with
11 the child's education, or to be harmful to the child's health or physical, mental,
12 spiritual, moral or social development, taking into account their special
13 vulnerability and the importance of education for their empowerment.

14 3. Indigenous individuals have the right not to be subjected to any
15 discriminatory conditions of labour and, inter alia, employment or salary.

16 *Article 18*

17 Indigenous peoples have the right to participate in decision-making in matters
18 which would affect their rights, through representatives chosen by themselves in
19 accordance with their own procedures, as well as to maintain and develop their
20 own indigenous decision-making institutions.

21 *Article 19*

22 States shall consult and cooperate in good faith with the indigenous peoples
23 concerned through their own representative institutions in order to obtain their
24 free, prior and informed consent before adopting and implementing legislative
25 or administrative measures that may affect them.

26 *Article 20*

27 1. Indigenous peoples have the right to maintain and develop their political,
28 economic and social systems or institutions, to be secure in the enjoyment of
29 their own means of subsistence and development, and to engage freely in all
30 their traditional and other economic activities.

31 2. Indigenous peoples deprived of their means of subsistence and
32 development are entitled to just and fair redress.

1 *Article 21*

2 1. Indigenous peoples have the right, without discrimination, to the
3 improvement of their economic and social conditions, including, inter alia, in
4 the areas of education, employment, vocational training and retraining, housing,
5 sanitation, health and social security.

6 2. States shall take effective measures and, where appropriate, special
7 measures to ensure continuing improvement of their economic and social
8 conditions. Particular attention shall be paid to the rights and special needs of
9 indigenous elders, women, youth, children and persons with disabilities.

10 *Article 22*

11 1. Particular attention shall be paid to the rights and special needs of
12 indigenous elders, women, youth, children and persons with disabilities in the
13 implementation of this Declaration.

14 2. States shall take measures, in conjunction with indigenous peoples, to
15 ensure that indigenous women and children enjoy the full protection and
16 guarantees against all forms of violence and discrimination.

17 *Article 23*

18 Indigenous peoples have the right to determine and develop priorities and
19 strategies for exercising their right to development. In particular, indigenous
20 peoples have the right to be actively involved in developing and determining
21 health, housing and other economic and social programmes affecting them and,
22 as far as possible, to administer such programmes through their own
23 institutions.

24 *Article 24*

25 1. Indigenous peoples have the right to their traditional medicines and to
26 maintain their health practices, including the conservation of their vital
27 medicinal plants, animals and minerals. Indigenous individuals also have the
28 right to access, without any discrimination, to all social and health services.

29 2. Indigenous individuals have an equal right to the enjoyment of the
30 highest attainable standard of physical and mental health. States shall take the
31 necessary steps with a view to achieving progressively the full realization of this
32 right.

1 *Article 25*

2 Indigenous peoples have the right to maintain and strengthen their distinctive
3 spiritual relationship with their traditionally owned or otherwise occupied and
4 used lands, territories, waters and coastal seas and other resources and to uphold
5 their responsibilities to future generations in this regard.

6 *Article 26*

7 1. Indigenous peoples have the right to the lands, territories and resources
8 which they have traditionally owned, occupied or otherwise used or acquired.

9 2. Indigenous peoples have the right to own, use, develop and control the
10 lands, territories and resources that they possess by reason of traditional
11 ownership or other traditional occupation or use, as well as those which they
12 have otherwise acquired.

13 3. States shall give legal recognition and protection to these lands, territories
14 and resources. Such recognition shall be conducted with due respect to the
15 customs, traditions and land tenure systems of the indigenous peoples
16 concerned.

17 *Article 27*

18 States shall establish and implement, in conjunction with indigenous peoples
19 concerned, a fair, independent, impartial, open and transparent process, giving
20 due recognition to indigenous peoples' laws, traditions, customs and land tenure
21 systems, to recognize and adjudicate the rights of indigenous peoples pertaining
22 to their lands, territories and resources, including those which were traditionally
23 owned or otherwise occupied or used. Indigenous peoples shall have the right to
24 participate in this process.

25 *Article 28*

26 1. Indigenous peoples have the right to redress, by means that can include
27 restitution or, when this is not possible, just, fair and equitable compensation,
28 for the lands, territories and resources which they have traditionally owned or
29 otherwise occupied or used, and which have been confiscated, taken, occupied,
30 used or damaged without their free, prior and informed consent.

31 2. Unless otherwise freely agreed upon by the peoples concerned,
32 compensation shall take the form of lands, territories and resources equal in
33 quality, size and legal status or of monetary compensation or other appropriate
34 redress.

1 *Article 29*

- 2 1. Indigenous peoples have the right to the conservation and protection of
3 the environment and the productive capacity of their lands or territories and
4 resources. States shall establish and implement assistance programmes for
5 indigenous peoples for such conservation and protection, without
6 discrimination.
- 7 2. States shall take effective measures to ensure that no storage or disposal
8 of hazardous materials shall take place in the lands or territories of indigenous
9 peoples without their free, prior and informed consent.
- 10 3. States shall also take effective measures to ensure, as needed, that
11 programmes for monitoring, maintaining and restoring the health of indigenous
12 peoples, as developed and implemented by the peoples affected by such
13 materials, are duly implemented.

14 *Article 30*

- 15 1. Military activities shall not take place in the lands or territories of
16 indigenous peoples, unless justified by a relevant public interest or otherwise
17 freely agreed with or requested by the indigenous peoples concerned.
- 18 2. States shall undertake effective consultations with the indigenous peoples
19 concerned, through appropriate procedures and in particular through their
20 representative institutions, prior to using their lands or territories for military
21 activities.

22 *Article 31*

- 23 1. Indigenous peoples have the right to maintain, control, protect and
24 develop their cultural heritage, traditional knowledge and traditional cultural
25 expressions, as well as the manifestations of their sciences, technologies and
26 cultures, including human and genetic resources, seeds, medicines, knowledge
27 of the properties of fauna and flora, oral traditions, literatures, designs, sports
28 and traditional games and visual and performing arts. They also have the right
29 to maintain, control, protect and develop their intellectual property over such
30 cultural heritage, traditional knowledge, and traditional cultural expressions.
- 31 2. In conjunction with indigenous peoples, States shall take effective
32 measures to recognize and protect the exercise of these rights.

1 *Article 32*

2 1. Indigenous peoples have the right to determine and develop priorities and
3 strategies for the development or use of their lands or territories and other
4 resources.

5 2. States shall consult and cooperate in good faith with the indigenous
6 peoples concerned through their own representative institutions in order to
7 obtain their free and informed consent prior to the approval of any project
8 affecting their lands or territories and other resources, particularly in connection
9 with the development, utilization or exploitation of mineral, water or other
10 resources.

11 3. States shall provide effective mechanisms for just and fair redress for any
12 such activities, and appropriate measures shall be taken to mitigate adverse
13 environmental, economic, social, cultural or spiritual impact.

14 *Article 33*

15 1. Indigenous peoples have the right to determine their own identity or
16 membership in accordance with their customs and traditions. This does not
17 impair the right of indigenous individuals to obtain citizenship of the States in
18 which they live.

19 2. Indigenous peoples have the right to determine the structures and to select
20 the membership of their institutions in accordance with their own procedures.

21 *Article 34*

22 Indigenous peoples have the right to promote, develop and maintain their
23 institutional structures and their distinctive customs, spirituality, traditions,
24 procedures, practices and, in the cases where they exist, juridical systems or
25 customs, in accordance with international human rights standards.

26 *Article 35*

27 Indigenous peoples have the right to determine the responsibilities of
28 individuals to their communities.

29 *Article 36*

30 1. Indigenous peoples, in particular those divided by international borders,
31 have the right to maintain and develop contacts, relations and cooperation,
32 including activities for spiritual, cultural, political, economic and social
33 purposes, with their own members as well as other peoples across borders.

1 2. States, in consultation and cooperation with indigenous peoples, shall
2 take effective measures to facilitate the exercise and ensure the implementation
3 of this right.

4 *Article 37*

5 1. Indigenous peoples have the right to the recognition, observance and
6 enforcement of treaties, agreements and other constructive arrangements
7 concluded with States or their successors and to have States honour and respect
8 such treaties, agreements and other constructive arrangements.

9 2. Nothing in this Declaration may be interpreted as diminishing or
10 eliminating the rights of indigenous peoples contained in treaties, agreements
11 and other constructive arrangements.

12 *Article 38*

13 States in consultation and cooperation with indigenous peoples, shall take the
14 appropriate measures, including legislative measures, to achieve the ends of this
15 Declaration.

16 *Article 39*

17 Indigenous peoples have the right to have access to financial and technical
18 assistance from States and through international cooperation, for the enjoyment
19 of the rights contained in this Declaration.

20 *Article 40*

21 Indigenous peoples have the right to access to and prompt decision through just
22 and fair procedures for the resolution of conflicts and disputes with States or
23 other parties, as well as to effective remedies for all infringements of their
24 individual and collective rights. Such a decision shall give due consideration to
25 the customs, traditions, rules and legal systems of the indigenous peoples
26 concerned and international human rights.

27 *Article 41*

28 The organs and specialized agencies of the United Nations system and other
29 intergovernmental organizations shall contribute to the full realization of the
30 provisions of this Declaration through the mobilization, inter alia, of financial
31 cooperation and technical assistance. Ways and means of ensuring participation
32 of indigenous peoples on issues affecting them shall be established.

1 *Article 42*

2 The United Nations, its bodies, including the Permanent Forum on Indigenous
3 Issues, and specialized agencies, including at the country level, and States shall
4 promote respect for and full application of the provisions of this Declaration and
5 follow up the effectiveness of this Declaration.

6 *Article 43*

7 The rights recognized herein constitute the minimum standards for the survival,
8 dignity and well-being of the indigenous peoples of the world.

9 *Article 44*

10 All the rights and freedoms recognized herein are equally guaranteed to male
11 and female indigenous individuals.

12 *Article 45*

13 Nothing in this Declaration may be construed as diminishing or extinguishing
14 the rights indigenous peoples have now or may acquire in the future.

15 *Article 46*

16 1. Nothing in this Declaration may be interpreted as implying for any State,
17 people, group or person any right to engage in any activity or to perform any act
18 contrary to the Charter of the United Nations or construed as authorizing or
19 encouraging any action which would dismember or impair, totally or in part, the
20 territorial integrity or political unity of sovereign and independent States.

21 2. In the exercise of the rights enunciated in the present Declaration, human
22 rights and fundamental freedoms of all shall be respected. The exercise of the
23 rights set forth in this Declaration shall be subject only to such limitations as are
24 determined by law and in accordance with international human rights
25 obligations. Any such limitations shall be non-discriminatory and strictly
26 necessary solely for the purpose of securing due recognition and respect for the
27 rights and freedoms of others and for meeting the just and most compelling
28 requirements of a democratic society.

29 3. The provisions set forth in this Declaration shall be interpreted in
30 accordance with the principles of justice, democracy, respect for human rights,
31 equality, non-discrimination, good governance and good faith.

32

1 ¹ See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53*
2 (A/61/53), part one, chap. II, sect. A.

3
4 ² See resolution 2200 A (XXI), annex.

5
6 ³ A/CONF.157/24 (Part I), chap. III.

7
8 ⁴ Resolution 217 A (III).

1 **Schedule 2 — Priority Investment Communities — WA**

2 [s. 7]

3 **Town Based Communities**

4 Bilgungurr
5 Bindi Bindi
6 Bondini
7 Budulah
8 Bungardi
9 Burawa
10 Burrinunga
11 Cheeditha
12 Cullacabardee
13 DarIngunaya
14 Djimung Nguda
15 Gnangara
16 Gooda Binya
17 Irrungadji
18 Junjuwa
19 Karmulinunga
20 Kurnangki
21 Madunka Ewurry
22 Mallingbar
23 Mardiwah Loop
24 Marmion Village
25 Mindi Rardi
26 Mirlma
27 Morrell Park (Four Mile)
28 Mungullah
29 Nambi Village
30 Nicholson Block
31 Nillir Irbanjin (One Mile)
32 Ninga Mia Village
33 Nullywah
34 Parnpajinya
35 Pipunya
36 Red Hill (Lundja)
37 Tkalka Boorda
38 Warrayu
39 Wongatha Wonganarra

1 **Category A**

- 2 Bardi (Ardyaloon)
- 3 Beagle Bay
- 4 Bidyadanga
- 5 Billard
- 6 Blackstone (Papulankutja)
- 7 Djarindjin
- 8 Glen Hill (Mandangala)
- 9 Jigalong
- 10 Kalumburu
- 11 Kurrawang
- 12 Lombadina
- 13 Mowanjum
- 14 Mt Margaret
- 15 Ngurawanna
- 16 Wakathuni
- 17 Wangkatjunga
- 18 Warakurna
- 19 Warburton
- 20 Warmun (Turkey Creek)
- 21 Woolah (Doon Doon)
- 22 Yandeyarra (Mugarinya)
- 23 Yardgee
- 24 Youngaleena
- 25 Yungngora

26 **Category B**

- 27 Balgo (Wirrimanu)
- 28 Bayulu
- 29 Bobieding
- 30 Cosmo Newberry
- 31 Cotton Creek (Parnngurr)
- 32 Ganinyi (Louisa Downs)
- 33 Goolgaradah
- 34 Guda Guda
- 35 Imintji
- 36 Innawonga
- 37 Jarlmadangah
- 38 Joy Springs (Eight Mile)
- 39 Koongie Park

- 1 Kundat Djaru (Ringer Soak)
- 2 Kupungarri (Mt Barnett)
- 3 La Djadarr Bay
- 4 Looma
- 5 Milba
- 6 Mindibungu (Billiluna)
- 7 Mulan (Lake Gregory)
- 8 Muludja
- 9 Ngalinkadji
- 10 Ngumpan
- 11 Pandanus Park
- 12 Pia Wadjari
- 13 Pullout Springs (Girriyoowa)
- 14 Punju Njamal
- 15 Punmu
- 16 Rocky Springs
- 17 Wararn
- 18 Wingellina
- 19 Wuggan (Wuggabun)
- 20 Yakanarra
- 21 Yiyili
- 22 Yulga Jinna

23 **Category C**

- 24 Alligator Hole
- 25 Badjaling
- 26 Balginjirr
- 27 Barrel Well
- 28 Baulu Wah
- 29 Bawoorrooga
- 30 Bedunburra
- 31 Bell Springs
- 32 Bells Point
- 33 Bidijul
- 34 Billinue
- 35 Bindurrk
- 36 Biridu
- 37 Birndirri
- 38 Bow River
- 39 Brunbrunganjal (Kittys Well)

- 1 Budgarjook
- 2 Bulgin
- 3 Bunnengarra
- 4 Bunningbarr
- 5 Burrjuk (Banana Wells)
- 6 Burringurrah
- 7 Buttah Windee (Gidgee Gully)
- 8 Carnot Springs
- 9 Chile Creek
- 10 Chinaman Garden
- 11 Cockatoo
- 12 Cockatoo Springs
- 13 Cone Bay (Larinyuwar)
- 14 Coonana
- 15 Crocodile Hole
- 16 Darlu Darlu
- 17 Dillon Springs
- 18 Dingo Springs
- 19 Djaradjung
- 20 Djarworrada
- 21 Djibbinj
- 22 Djilimbardi
- 23 Djugaragyn
- 24 Djugerari (Cherabun)
- 25 Djulburr
- 26 Dodnun
- 27 Embulgun
- 28 Emu Creek (Gulgagulganeng)
- 29 Five Mile
- 30 Fletcher Family
- 31 Fly Well
- 32 Four Mile
- 33 Frazier Downs
- 34 Galamanda
- 35 Galeru Gorge
- 36 Geboowama
- 37 Gillaroong
- 38 Gilly Sharpe
- 39 Gnylmarung
- 40 Goobinj
- 41 Goodarlargin

- 1 Goojarr Gonnyool
- 2 Goolarabooloo
- 3 Goolarrgon
- 4 Goombading
- 5 Goombaragin
- 6 Goonjarlan
- 7 Goose Hill
- 8 Gudumul
- 9 Gulberang
- 10 Gullaweed
- 11 Gulumonon
- 12 Gumbarmun
- 13 Gurrbalgun
- 14 Hollow Springs
- 15 Honeymoon Beach
- 16 Iragul
- 17 Jabir Jabir
- 18 Jameson (Mantamaru)
- 19 Janterriji
- 20 Jarlmadanka
- 21 Jilariya
- 22 Jimbalakudunj
- 23 Jimbilum
- 24 Jinparinya
- 25 Julgnunn
- 26 Jundaru
- 27 Kadjina
- 28 Kalungkurriji
- 29 Kalyadan
- 30 Kandiwal
- 31 Karalundi
- 32 Karnparni (Three Mile)
- 33 Kartang Rija
- 34 Kayirriwarney
- 35 Kearney Range
- 36 Kiwirrkurra
- 37 Koorabye
- 38 Kumbrarumba
- 39 Kunawarritji
- 40 Kupartiya
- 41 Kurinyjarn

- 1 Kurlku
- 2 Kutkabubba
- 3 Lamboo Station (Loongie Park)
- 4 Linga
- 5 Loongabib
- 6 Loumard
- 7 Lumuku (Osmond Valley Station)
- 8 Maddarr
- 9 Majaddin
- 10 Malaburra
- 11 Marribank
- 12 Marta Marta
- 13 Marunbabidi
- 14 McGowan Island
- 15 Mercedes Cove
- 16 Mia Maya
- 17 Middle Lagoon
- 18 Millargoona
- 19 Mimbi
- 20 Mingalkala
- 21 Mingullatharndo
- 22 Miniata
- 23 Molly Springs
- 24 Monbon
- 25 Moongardi
- 26 Morard
- 27 Mowla Bluff
- 28 Mud Springs
- 29 Mudjarri
- 30 Mudnumm
- 31 Mulga Queen
- 32 Mullibidee
- 33 Mundud
- 34 Munget
- 35 Munmural
- 36 Munthanmar
- 37 Murphy Creek
- 38 Neem
- 39 Ngadalargin
- 40 Ngallagunda
- 41 Ngamakoon

- 1 Ngarlan
- 2 Ngarlan Burr
- 3 Ngulwirriwirri
- 4 Ngurtuwarda
- 5 Nilargoon
- 6 Nillygan
- 7 Nimbing
- 8 Norman Creek
- 9 Nudugun
- 10 Nulla Nulla
- 11 Nunju Yallet
- 12 Nygah Nygah
- 13 Nyumwah
- 14 Oombulgurri
- 15 Pago
- 16 Pantijan
- 17 Parukupan
- 18 Patch Up
- 19 Patjarr
- 20 Raddajali
- 21 RB River Junction
- 22 Red Creek
- 23 Red Shells
- 24 Rollah
- 25 Strelley
- 26 Tappers Inlet
- 27 Tirralintji
- 28 Tjalka Wara
- 29 Tjirrkarli
- 30 Tjukurla
- 31 Tjuntjuntjara
- 32 Ullawarra
- 33 Walgun
- 34 Wamali
- 35 Wanamulnyndong
- 36 Wandanooka (Kardaloo)
- 37 Warralong
- 38 Weymul
- 39 White Rock
- 40 Whulich
- 41 Windida

- 1 Windjingayre
- 2 Woodstock Homestead
- 3 Wulununjur
- 4 Wungu
- 5 Wurrenranginy
- 6 Yandarinya
- 7 Yardoogarra
- 8 Yarri Yarri
- 9 Yatharla
- 10 Yawuru
- 11 Yirralallem
- 12 Yulumbu

Defined terms

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

| Defined term | Provision(s) |
|-------------------------------------------------------|---------------------|
| decision about forced closure..... | 3 |
| Declaration on the Rights of Indigenous Peoples | 3 |
| forced closure..... | 3 |
| municipal and essential services | 3 |
| public authority | 3 |
| remote Aboriginal community | 3 |
| State | 6(2) |