

ABORIGINAL LOANS COMMISSION ACT 1974

No. 103 of 1974

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ABORIGINAL LOANS COMMISSION ACT 1974

No. 103 of 1974

An Act relating to the Provision of Financial Assistance for certain Purposes conducive to the Advancement of the Aboriginal People of Australia.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

- Short title. 1. This Act may be cited as the *Aboriginal Loans Commission Act* 1974.¹
- Commence-
ment. 2. This Act shall come into operation on the day on which it receives the Royal Assent.¹
- Repeal. 3. The *Aboriginal Enterprises (Assistance) Act* 1968 is repealed.
- Transitional. 4. (1) In this section—
“corporation” means the corporation established by the *Aboriginal Enterprises (Assistance) Act* 1968;
“previous fund” means the fund established by that Act;
“relevant date” means the date of commencement of this Act.
- (2) All moneys that were, immediately before the relevant date, standing to the credit of the previous fund become, on that date, by force of this section, moneys of the Aboriginal Enterprises Fund.
- (3) All rights and liabilities of the corporation subsisting immediately before the relevant date become, on that date, by force of this section, rights and liabilities of the Commission in its administration of the Aboriginal Enterprises Fund, and the moneys in that Fund may be used to discharge any such liabilities.
- (4) All rights and liabilities of Australia subsisting immediately before the relevant date by virtue of a guarantee given under section 9 of the *Aboriginal Enterprises (Assistance) Act* 1968, or that Act as amended, become, on that date, by force of this section, rights and liabilities of the Commission as if that guarantee had been given under section 21 of this Act.

5. In this Act, unless the contrary intention appears—

Definitions.

- “Aboriginal” means an indigenous inhabitant of Australia, and includes an indigenous inhabitant of the Torres Strait Islands;
- “Aboriginal Advancement Trust Account” means the trust account of that name maintained under section 62A of the *Audit Act* 1901-1973;
- “Aboriginal Enterprises Fund” means the Fund established by section 18;
- “Aboriginal Housing and Personal Loans Fund” means the Fund established by section 23;
- “approved bank” means the Commonwealth Trading Bank or another bank for the time being approved by the Treasurer;
- “approved body” means a body corporate—
- (a) that is controlled by Aboriginals; and
 - (b) the principal objects of which are conducive to the advancement of Aboriginals;
- “Chairman” means the Chairman of the Commission and a person appointed to act in the office of the Chairman;
- “Commission” means the Aboriginal Loans Commission established by this Act;
- “Fund” means a Fund established by this Act;
- “member” means a member of the Commission and a person appointed to act in the office of a member, and includes the Chairman;
- “spouse”, in relation to an Aboriginal, means a person who, although not legally married to the Aboriginal, is living with the Aboriginal as the Aboriginal’s spouse on a permanent and *bona fide* domestic basis.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF ABORIGINAL LOANS COMMISSION

6. (1) There is established by this Act a Commission by the name of the Aboriginal Loans Commission. Establishment of Commission.

(2) The Commission—

- (a) is a body corporate;
- (b) shall have a seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and shall presume that it was duly affixed.

Functions of Commission. 7. (1) The functions of the Commission are to administer and control the Funds.

(2) The Commission shall perform its functions in accordance with any general directions given by the Minister.

(3) The Commission shall include in each report prepared under sub-section 36 (1) particulars of any directions given by the Minister under sub-section (2) during the period to which the report relates.

Powers of Commission. 8. The Commission has power to do all things necessary or convenient to be done for or in connexion with, or as incidental to, the performance of its functions under this Act.

Delegation. 9. (1) The Commission may, by resolution approved by the Minister, delegate all or any of its powers or functions under this Act (except this power of delegation) to a member of the staff of the Commission.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the resolution.

(3) A delegation under this section is revocable by resolution of the Commission and does not prevent the exercise of a power or the performance of a function by the Commission.

PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION

Membership of Commission. 10. (1) The Commission shall consist of 5 members, namely—
(a) a Chairman; and
(b) 4 other members, of whom at least 2 shall be Aborigines.

(2) The members shall be appointed by the Governor-General, and shall be part-time members.

(3) A member holds office, subject to this Act, for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(4) The performance of the functions or the exercise of the powers of the Commission is not affected by reason of there being a vacancy or vacancies in the membership of the Commission.

Remuneration and allowances. 11. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in operation, he shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

12. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines. Leave of absence.

13. A member may resign his office by writing signed by him and delivered to the Governor-General. Resignation.

14. (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity. Termination of appointments.

(2) If a member—

(a) is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Commission;

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or

(c) fails to comply with his obligations under section 17,

the Governor-General shall terminate the appointment of the member.

15. (1) The Minister may appoint a member to act as Chairman— Acting appointments.

(a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or, for any reason, is unable to perform the functions of his office.

(2) The Minister may appoint a person to act as a member, other than the Chairman—

(a) during a vacancy in the office of the member, other than the Chairman, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when a member, other than the Chairman, is absent from duty or from Australia, is acting as Chairman or, for any other reason, is unable to perform the functions of his office.

(3) A person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(4) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and

(b) at any time terminate such an appointment.

(5) Where a person is acting in an office in accordance with paragraph (1) (b) or (2) (b), and the office becomes vacant while that person is so acting, that person may continue so to act until the Minister

otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(6) The appointment of a person under this section ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(7) While the appointment of a person under this section remains in force, he has, and may exercise, all the powers, and shall perform all the functions, of the person in whose office he is acting.

(8) The validity of anything done by a person appointed under this section shall not be called in question on the ground that the occasion for his appointment had not arisen or that his appointment had ceased to have effect.

Meetings.

16. (1) The Commission shall hold such meetings as are necessary for the performance of its functions.

(2) The meetings of the Commission shall be convened by the Chairman.

(3) Where the Minister requests the Chairman to do so, the Chairman shall forthwith convene a meeting of the Commission.

(4) At a meeting of the Commission, a quorum is constituted by 4 members.

(5) The Chairman shall preside at all meetings of the Commission at which he is present.

(6) If the Chairman is not present at a meeting of the Commission, the members present shall elect one of their number to preside at the meeting.

(7) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting.

(8) The member presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

Disclosure of interest.

17. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Commission, and the member—

- (a) shall not take part after the disclosure in any deliberation or decision of the Commission with respect to that matter; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Commission in any such deliberation or decision.
- (3) If an interest referred to in sub-section (1) is patent, that sub-section does not apply, but sub-section (2) applies as if there had been a disclosure in accordance with sub-section (1).

PART IV—ABORIGINAL ENTERPRISES FUND

18. (1) There is established by this Act a fund by the name of the Aboriginal Enterprises Fund. Establishment of Fund.

(2) The Fund is vested in the Commission.

19. (1) There shall be paid into the Aboriginal Enterprises Fund— Payments to Fund.

- (a) such amounts out of the Aboriginal Advancement Trust Account as the Minister, with the concurrence of the Treasurer, from time to time directs;
- (b) any moneys appropriated by law for the purposes of the Fund;
- (c) any interest on, and repayments of, loans made out of the Fund;
- (d) any moneys received by the Commission in respect of any dealings by it with property in pursuance of section 22;
- (e) any income derived from the investment of moneys standing to the credit of the Fund;
- (f) any moneys paid by a person to Australia where payment of those moneys into the Fund would be consistent with the purposes for which the moneys are paid and the Treasurer considers it appropriate that the moneys should be paid into the Fund; and
- (g) any of the moneys received by the Commission in the administration of the Fund.

(2) For the purposes of paragraphs (1) (c) and (e), a reference to the Fund includes a reference to the Fund established by the *Aboriginal Enterprises (Assistance) Act 1968*.

20. (1) For the purposes of enabling Aboriginals to engage in business enterprises that are likely to become, or continue to be, successful, moneys in the Aboriginal Enterprises Fund may be applied— Application of Fund.

- (a) in making loans;
- (b) in subscribing for, or otherwise acquiring, shares or stock in the capital of a company;
- (c) in the acquisition of property in pursuance of section 22; and
- (d) in making payments in respect of the investigation or supervision of a business enterprise in relation to which—

- (i) moneys may be, or have been, applied in accordance with paragraph (a) or (b);
 - (ii) a guarantee may be, or has been, given under section 21; or
 - (iii) property has been, or may be, acquired or otherwise dealt with in pursuance of section 22.
- (2) Moneys of the Fund may also be applied—
- (a) in making other payments incidental to the application of moneys in accordance with paragraph (1) (a), (b) or (c); and
 - (b) in meeting any liability under a guarantee given under section 21.

(3) In sub-section (1), “business enterprise” includes an enterprise relating to primary production.

Guarantees. 21. (1) Where the Commission is satisfied that the making of a loan by a bank, credit union or other lending institution will be for the purpose specified in sub-section 20 (1), the Commission may guarantee the due payment of all moneys (including interest) payable by the borrower in accordance with the terms and conditions of the loan.

(2) The operation of this section is subject to such limits as the Treasurer determines as to the total amount of moneys (other than interest) the payment of which may at any time be the subject of guarantees under this section.

Acquisition of property for re-sale, &c. 22. The Commission may acquire real or personal property required for the purposes of a business enterprise of a kind referred to in sub-section 20 (1) and may, for the purposes of enabling Aboriginals to engage in that enterprise, sell, lease or otherwise make available property so acquired to an Aboriginal or Aboriginals or to an approved body, upon such terms and subject to such conditions as are determined by the Commission.

PART V—ABORIGINAL HOUSING AND PERSONAL LOANS FUND

Establishment of Fund. 23. (1) There is established by this Act a fund by the name of the Aboriginal Housing and Personal Loans Fund.

(2) The Fund is vested in the Commission.

Payments to Fund. 24. (1) There shall be paid into the Aboriginal Housing and Personal Loans Fund, out of the Aboriginal Advancement Trust Account, an amount of \$5,000,000.

(2) There shall also be paid into the Fund—

- (a) such further amounts out of the Aboriginal Advancement Trust Account as the Minister, with the concurrence of the Treasurer, from time to time directs;
- (b) any moneys appropriated by law for the purposes of the Fund;
- (c) any interest on, and repayments of, loans made out of the Fund;
- (d) any moneys received by the Commission in respect of any dealings by it with property in pursuance of section 27;
- (e) any income derived from the investment of moneys standing to the credit of the Fund;
- (f) any moneys paid by a person to Australia where payment of those moneys into the Fund would be consistent with the purposes for which the moneys are paid and the Treasurer considers it appropriate that the moneys should be paid into the Fund; and
- (g) any other moneys received by the Commission in the administration of the Fund.

25. (1) Moneys in the Aboriginal Housing and Personal Loans Fund may be applied in making loans to Aboriginals, and their spouses, for the following purposes:— Application of Fund.

- (a) the erection or purchase of dwellings or the purchase of land on which dwellings are to be erected;
 - (b) the payment of medical, dental and funeral expenses;
 - (c) the purchase of household effects;
 - (d) the purchase of vehicles for purposes connected with the earning of income;
 - (e) the payment of expenses for or in connexion with education;
 - (f) the repayment of existing debts.
- (2) Moneys of the Fund may also be applied—
- (a) in making payments in respect of any enquiries necessary in relation to loans that may be, or have been, made in accordance with sub-section (1) or guarantees that may be, or have been, given under section 26;
 - (b) in making loans to approved bodies for the purpose of enabling them to make loans that they have the legal capacity to make to Aboriginals, and their spouses, for all or any of the purposes referred to in sub-section (1);
 - (c) in making payments in respect of the investigation or supervision of an approved body—
 - (i) to which a loan may be, or has been, made in accordance with paragraph (b); or
 - (ii) in relation to which a guarantee may be, or has been given under section 26;

- (d) in meeting any liability under a guarantee given in accordance with section 26;
- (e) in the acquisition of property in pursuance of section 27; and
- (f) in making any payment incidental to the application of moneys in accordance with sub-section (1) or the preceding paragraphs of this sub-section.

Guarantees. **26.** (1) Where the Commission is satisfied that a loan to be made by a bank, credit union or other lending institution is a loan that could be made by the Commission under sub-section 25 (1), the Commission may guarantee the due payment of all moneys (including interest) payable by the borrower in accordance with the terms and conditions of the loan.

(2) The operation of this section is subject to such limits as the Treasurer determines as to the total amount of moneys (other than interest) the payment of which may at any time be the subject of guarantees under this section.

Acquisition of property for re-sale, &c. **27.** The Commission may acquire real or personal property required for purposes for which the Commission is empowered by sub-section 25 (1) to make loans and may sell, lease or otherwise make available property so acquired to Aboriginals, and their spouses, upon such terms and subject to such conditions as are determined by the Commission.

PART VI—MISCELLANEOUS

Staff of Commission. **28.** The staff necessary to assist the Commission shall be persons appointed or employed under the *Public Service Act* 1922-1974.

Directions of Treasurer as to payment of certain moneys to Funds. **29.** The Treasurer may give directions as to the amounts in which, and the times at which, moneys referred to in paragraphs 19 (1) (b) and 24 (2) (b) are to be paid to the Commission.

Power to purchase and dispose of assets. **30.** The Commission shall not, without the approval of the Minister—

- (a) acquire any property for a consideration exceeding in amount or value \$100,000 or, if a higher amount is prescribed, that higher amount;
- (b) dispose of any property where the amount or value of the consideration for the disposal, or the value of the property, exceeds \$100,000 or, if a higher amount is prescribed, that higher amount; or
- (c) enter into a contract under which the Commission is to pay, or receive, whether by way of a lump sum or by way of periodical payments, an amount exceeding \$100,000 or, if a higher amount is prescribed, that higher amount.

31. Moneys of a Fund not immediately required for the purposes of **Investment.** this Act may be invested—

- (a) on fixed deposit with an approved bank;
- (b) in securities of Australia; or
- (c) in such other manner as the Treasurer approves.

32. (1) The Commission may open and maintain accounts with an **Bank** approved bank or approved banks and shall maintain at all times at least **accounts.** 1 such account in respect of each of the Funds.

(2) The Commission shall pay all moneys received by the Commission in respect of a Fund into an account maintained under this section for the purposes of that Fund.

(3) Payment of any moneys into an account maintained under this section for the purposes of a Fund shall be deemed to be payment of those moneys into that Fund.

33. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and of the Funds and shall do all things necessary to ensure that all payments out of the Funds are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission. **Accounts and records.**

34. The income of the Funds and the transactions of the Commission are not subject to taxation under a law of Australia or of a State or Territory other than Papua New Guinea. **Exemption from taxation.**

35. (1) The Auditor-General shall inspect and audit the accounts **Audit.** and financial records kept under section 33 and records relating to the assets of, or in the custody of, the Commission and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commission relating directly or indirectly to the payment of moneys into or out of the Funds or the acquisition, receipt, custody or disposal of assets of, or in the custody of, the Commission.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any accounts, records, documents or papers referred to in sub-section (4).

(6) The Auditor-General or a person authorized by him may require a person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

Annual and
supplemen-
tary reports.

36. (1) The Commission shall, as soon as practicable after the end of each financial year, prepare and submit to the Minister a report of its operations during that year together with financial statements in respect of that year in such form as the Treasurer approves.

(2) Before submitting financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause the report and financial statements of the Commission, together with the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(4) The first report and financial statements of the Commission under the preceding provisions of this section shall be submitted as soon as practicable after 30 June 1975, and shall relate to the operations of the Commission during the period that commenced at the commencement of this Act and ended on that date.

(5) The Commission shall submit to the Minister such other reports relating to the operations of the Commission and the management of the Funds as the Minister requires.

Regulations.

37. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed.

1974

Aboriginal Loans Commission

No. 103

NOTE

1. Act No. 103, 1974; assented to 28 November 1974.