

ABORIGINAL LAND FUND ACT 1974

No. 159 of 1974

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ABORIGINAL LAND FUND ACT 1974

No. 159 of 1974

An Act to assist Aboriginal Communities to acquire Land outside Aboriginal Reserves.

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 Land Fund Act* 1974.¹
- Commencement. 2. This Act shall come into operation on the day on which it receives the Royal Assent.¹
- Definitions. 3. In this Act, unless the contrary intention appears—
- “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 corporation” means a body corporate of which all the members for the time being are persons as to whom the Minister is satisfied that they are members of a community of Aboriginals;
 - “Aboriginal land trust” means a body corporate established by a law of Australia or of a State or Territory and having the function of providing Aboriginals with interests in land or assisting Aboriginals to acquire interests in land;
 - “approved bank” means the Commonwealth Trading Bank or another bank for the time being approved by the Treasurer;
 - “Chairman” means the Chairman of the Commission or a person appointed to act in the office of the Chairman;
 - “Commission” means the Aboriginal Land Fund Commission established by this Act;
 - “Fund” means the Fund established by section 16;
 - “interest”, in relation to land, means a legal or equitable estate or interest (including a licence) in the land;
 - “land” does not include land set aside under any law as an Aboriginal reserve;

“member” means a member of the Commission or a person appointed to act in the office of a member, and includes the Chairman;

“occupation” includes use, and “occupy” has a corresponding meaning.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF ABORIGINAL LAND FUND COMMISSION

4. (1) There is established by this Act a Commission by the name of the Aboriginal Land Fund 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.

5. (1) The Commission has such functions as are conferred upon it by this Act. Functions of Commission.

(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 29 (1) particulars of any directions given by the Minister under sub-section (2) during the period to which the report relates.

6. 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. Powers of Commission.

7. (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. Delegation.

(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.** **8.** (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.** **9.** (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*.
- Leave of absence.** **10.** The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines.
- Resignation.** **11.** A member may resign his office by writing signed by him and delivered to the Governor-General.
- Termination of appointments.** **12.** (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.
- (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 15,
- the Governor-General shall terminate the appointment of the member.

13. (1) The Minister may appoint a member to act as Chairman— Acting
appoint-
ments.
- (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 a 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.

14. (1) The Commission shall hold such meetings as are necessary Meetings. 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.

Disclosure of interest.

15. (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 LAND FUND

Establishment of Fund.

16. (1) There is hereby established a fund to be known as the Aboriginal Land Fund.

(2) The Fund is vested in the Commission.

Moneys of Fund.

17. (1) There shall be paid into the Fund—

- (a) the unexpended balance, as at the commencement of this Act, of the amount set aside in the Aboriginal Advancement Trust Account as provision for acquisition of properties off reserves;
- (b) any moneys appropriated by law for the purposes of the Fund;
- (c) the proceeds of the disposal of any property of the Commission;
- (d) gifts or bequests made for the purposes of the Fund; and

(e) income derived from the investment of moneys of the Fund.

(2) The Treasurer may give directions as to the amounts in which, and the times at which, moneys referred to in paragraph (1) (b) are to be paid into the Fund.

18. Moneys of the Fund may be applied—

Application
of Fund.

- (a) in making grants under section 19; and
- (b) in discharging the obligations and liabilities of the Commission arising under this Act.

19. The Commission may make grants of money out of the Fund—

Grants of
money.

- (a) to an Aboriginal corporation to enable it to acquire an interest in land for the purpose of enabling the members of that corporation to occupy that land; and
- (b) to an Aboriginal land trust to enable it to acquire an interest in land for the purpose of enabling Aboriginals to occupy that land.

20. (1) The Commission may, on such terms and conditions, if any, as it thinks fit—

Grants of
interests in
land.

- (a) grant to an Aboriginal corporation an interest in land for the purpose of enabling the members of that corporation to occupy that land; and
- (b) grant to an Aboriginal land trust an interest in land for the purpose of enabling Aboriginals to occupy that land.

(2) No payment shall be due to the Commission in respect of any interest granted under sub-section (1).

21. (1) For the purposes of section 20, the Commission may acquire by agreement any interest in land.

Commission
may acquire
land.

(2) The power conferred by sub-section (1) extends to the acquisition of shares in a body corporate for the purposes of acquiring an interest in land held by that body corporate.

PART V—MISCELLANEOUS

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

Staff of
Commission.

23. Moneys of the Fund not immediately required for the purposes of this Act may be invested—

Investment.

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

Bank
accounts.

24. (1) The Commission may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least 1 such account.

(2) The Commission shall pay all moneys received by the Commission into an account maintained under this section.

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

Accounts
and records.

25. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and of the Fund and shall do all things necessary to ensure that all payments out of the Fund 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.

Exemption
from
taxation.

26. The income of the Fund 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.

Audit.

27. (1) The Auditor-General shall inspect and audit the accounts and financial records kept under section 25 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 Fund 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.

28. (1) Notwithstanding anything to the contrary in any law of Australia or of a State or Territory, but subject to sub-section (2), no execution or attachment or process of a like nature shall be issued against an interest in land granted to an Aboriginal corporation or an Aboriginal land trust under section 20 or acquired by such a corporation or trust wholly by means of moneys granted under section 19. Execution.

(2) Sub-section (1) does not apply in relation to execution, attachment or other process issued—

- (a) for the enforcement of, or in pursuance of, a term or condition subject to which the interest in land is held; or
- (b) in pursuance of a law by or under which a rate, tax or charge is imposed in relation to the land.

29. (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. Annual and supplementary reports.

(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 as the Minister requires.

Regulations. **30.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed.

NOTE

1. Act No. 159, 1974; assented to 17 December 1974.