



# **Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978**

**No. 11, 1978**

## **Compilation No. 4**

<b>Compilation date:</b>	5 March 2016
<b>Includes amendments up to:</b>	Act No. 10, 2015
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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978* that shows the text of the law as amended and in force on 5 March 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to empower Aboriginals and Torres Strait Islanders who live on reserves in Queensland to manage and control their own affairs**

## **1 Short title**

This Act may be cited as the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978*.

## **2 Commencement**

This Act shall come into operation on the day on which it receives the Royal Assent.

## **3 Interpretation**

In this Act, unless the contrary intention appears:

***Aboriginal*** means a person who is a member of the Aboriginal race of Australia.

***Aboriginal Community*** means a community for Aborigines established, or deemed to have been established, under or by the Aborigines Act.

***Aboriginal Community to which this Act applies*** means an Aboriginal Community in respect of which a declaration under subsection 5(3) is in force.

***Aboriginal Reserve*** means any land that is a reserve for the purposes of the Aborigines Act.

***Aboriginal Reserve to which this Act applies*** means an Aboriginal Reserve in respect of which a declaration under subsection 5(1) is in force.

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**Aborigines Act** means:

- (a) the *Aborigines Act* 1971 of Queensland or that Act as amended and in force at any relevant time; or
- (b) if that Act ceases to be in force and another Act is substituted for that Act—the substituted Act or that Act as amended and in force at any relevant time;

and includes:

- (c) any regulations and other instruments (including by-laws) as in force at any relevant time under or by virtue of the *Aborigines Act* 1971 or that Act as amended and in force at any relevant time, or under or by virtue of the substituted Act or that Act as amended and in force at any relevant time; and
- (d) any instruments (including any by-laws) as in force at any relevant time under or by virtue of those regulations as in force at any relevant time.

**Community** means an Aboriginal Community or an Islander Community.

**Community to which this Act applies** means an Aboriginal Community to which this Act applies or an Islander Community to which this Act applies.

**Council**, in relation to a Reserve or Community, means:

- (a) except in a case where paragraph (b) applies—the Aboriginal Council for the Reserve or Community or the Island Council for the Reserve or Community, as the case may be, established or continued in existence under or by the *Aborigines Act* or the *Torres Strait Islanders Act*, as the case may be; or
- (b) if a declaration under subsection 6(1) is in force at the relevant time in relation to the Reserve or Community—the body specified in that declaration.

**Islander** means a person who is a member of the race to which Torres Strait Islanders belong.

***Islander Community*** means a community for Islanders established, or deemed to have been established, under or by the Torres Strait Islanders Act.

***Islander Community to which this Act applies*** means an Islander Community in respect of which a declaration under subsection 5(4) is in force.

***Islander Reserve*** means any land that is a reserve for the purposes of the Torres Strait Islanders Act.

***Islander Reserve to which this Act applies*** means an Islander Reserve in respect of which a declaration under subsection 5(2) is in force.

***Reserve*** means an Aboriginal Reserve or an Islander Reserve.

***Reserve to which this Act applies*** means an Aboriginal Reserve to which this Act applies or an Islander Reserve to which this Act applies.

***Torres Strait Islanders Act*** means:

- (a) the *Torres Strait Islanders Act 1971* of Queensland or that Act as amended and in force at any relevant time; or
- (b) if that Act ceases to be in force and another Act is substituted for that Act—the substituted Act or that Act as amended and in force at any relevant time;

and includes:

- (c) any regulations and other instruments (including by-laws) as in force at any relevant time under or by virtue of the *Torres Strait Islanders Act 1971* or that Act as amended and in force at any relevant time, or under or by virtue of the substituted Act or that Act as amended and in force at any relevant time; and
- (d) any instruments (including any by-laws) as in force at any relevant time under or by virtue of those regulations as in force at any relevant time.

#### **4 Act binds Commonwealth and Queensland**

This Act binds the Crown in right of the Commonwealth and the Crown in right of the State of Queensland.

#### **4A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### **5 Declaration of Reserves and Communities as Reserves and Communities to which this Act applies**

(1) Where:

- (a) the Council for an Aboriginal Reserve requests the Minister to make a declaration under this subsection; or
- (b) the Minister is satisfied that a substantial majority of the adult Aboriginals resident on an Aboriginal Reserve wish to manage and control their own affairs in the manner provided for by this Act;

the Minister may, by notice published in the *Gazette*, declare the reserve to be an Aboriginal Reserve to which this Act applies.

(2) Where:

- (a) the Council for an Islander Reserve requests the Minister to make a declaration under this subsection; or
- (b) the Minister is satisfied that a substantial majority of the adult Islanders resident on an Islander Reserve wish to manage and control their own affairs in the manner provided for by this Act;

the Minister may, by notice published in the *Gazette*, declare the reserve to be an Islander Reserve to which this Act applies.

(3) Where:



- (a) the Council for an Aboriginal Community requests the Minister to make a declaration under this subsection; or
- (b) the Minister is satisfied that a substantial majority of the adult Aboriginals who are the members of an Aboriginal Community wish to manage and control their own affairs in the manner provided for by this Act;

the Minister may, by notice published in the *Gazette*, declare the Community to be an Aboriginal Community to which this Act applies.

(4) Where:

- (a) the Council for an Islander Community requests the Minister to make a declaration under this subsection; or
- (b) the Minister is satisfied that a substantial majority of the adult Islanders who are the members of an Islander Community wish to manage and control their own affairs in the manner provided for by this Act;

the Minister may, by notice published in the *Gazette*, declare the Community to be an Islander Community to which this Act applies.

## **6 Declaration of Aboriginal Councils or Island Councils for the purposes of this Act**

(1) If, at any time:

- (a) there is not in existence for a Reserve to which this Act applies, or for a Community to which this Act applies, a Council of a kind referred to in paragraph (a) of the definition of **Council** in section 3; or

- (b) there is in existence for a Reserve to which this Act applies, or for a Community to which this Act applies, a Council of that kind, but the Minister is of the opinion that he or she should exercise his or her powers under this section to declare another body to be the Council for the Reserve or the Community;

the Minister may, by notice published in the *Gazette*, declare a body specified in the declaration to be the Council for the Reserve or for the Community, as the case may be, for the purpose of this Act.

- (2) A declaration under subsection (1) does not cease to have effect by reason that, after the making of the declaration, another body is established, or purports to be established, under or by the Aborigines Act or the Torres Strait Islanders Act as the Aboriginal Council for the Reserve or Community, or the Island Council for the Reserve or Community, as the case may be, to which the declaration relates.
- (3) A body specified in a declaration made by the Minister under subsection (1) may be a body constituted, for the purposes of this section, under or by the regulations.

## **7 Functions of Councils for Reserves and Communities to which this Act applies**

- (1) The Council for an Aboriginal Reserve to which this Act applies, or for an Islander Reserve to which this Act applies, shall manage and control the affairs of the Aboriginal community or the Islander community, as the case may be, residing on the Reserve.
- (2) The Council for a Reserve to which this Act applies has such other functions as are conferred on it by the regulations, being functions in relation to Aborigines and Islanders who reside on the Reserve or are on the Reserve.
- (3) The Council for an Aboriginal Community to which this Act applies, or for an Islander Community to which this Act applies,

shall manage and control the affairs of that Aboriginal Community or that Islander Community, as the case may be.

- (4) The Council for a Community to which this Act applies has such other functions as are conferred on it by the regulations, being functions in relation to Aboriginals or Islanders who are members of that Community or are on that part of the Reserve on which the Community is established that is appropriated for the use of the Community.

## **8 Councils responsible to communities**

- (1) The Council for an Aboriginal Reserve to which this Act applies, or for an Islander Reserve to which this Act applies, shall be responsible to, and only to, the Aboriginal community or the Islander community, as the case may be, residing on the Reserve for the conduct, discipline and well-being of the members of the Aboriginal community or the Islander community, as the case may be.
- (2) The Council for an Aboriginal Community to which this Act applies, or for an Islander Community to which this Act applies, shall be responsible to, and only to, that Aboriginal Community or that Islander Community, as the case may be, for the conduct, discipline and well-being of the members of that Community.

## **9 Provision of services by Councils for Reserves and Communities to which this Act applies**

- (1) Without limiting the services that, in the performance of its functions, may be provided or made available by the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, or that such a Council may arrange to be provided or made available, for the Aboriginals or Islanders who reside on the Reserve or are members of that Community, as the case may be, such a Council may provide or make available, or arrange to be provided or made available, for such Aboriginals or Islanders services relating to all or any of the following matters:

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- (a) housing;
  - (b) health;
  - (c) sewerage;
  - (d) water supply;
  - (e) electricity supply;
  - (f) communications;
  - (g) education or training;
  - (h) relief work for unemployed persons;
  - (j) roads and associated works;
  - (k) garbage collection and disposal;
  - (m) welfare;
  - (n) community amenities.
- (2) Subsection (1) shall not be construed as preventing any body, authority or person other than the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, from providing or making available for the Aboriginals or Islanders who reside on the Reserve or who are members of that Community, as the case may be, any services, including services relating to all or any of the matters specified in subsection (1).

### **10 Power of Councils for Reserves and Communities to which this Act applies to make by-laws**

- (1) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may make by-laws for purposes connected with its functions, including by-laws amending or varying by-laws as in force from time to time under this section.
- (2) By-laws made under subsection (1) may fix charges for services provided or made available by the Council for Aboriginals or Islanders, and may make provision with respect to the payment of such charges.
- (3) The amount of a charge referred to in subsection (2) may, if unpaid, be recovered by the Council by action in a court of

competent jurisdiction from an Aboriginal or an Islander to whom the service to which the charge relates has been provided or made available.

- (4) A by-law has no effect unless it has been approved by the Minister.
- (5) For the purposes of the *Legislation Act 2003*, a by-law made by the Council and approved by the Minister is a legislative instrument made by the Minister on the day the by-law is approved.

Note: A by-law made by the Council and approved by the Minister is stated to be a legislative instrument made by the Minister so that the Minister may perform the functions of a rule-maker in relation to the instrument under the *Legislation Act 2003*. For example, under that Act a rule-maker for a legislative instrument is required to lodge the instrument (and any amendments and compilations of the instrument) for registration under that Act.

- (8) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, shall use its best endeavours to ensure that the by-laws of the Council are made known to Aboriginals or Islanders who reside on the Reserve or are members of the Community.
- (9) A by-law does not apply in relation to a person who is not an Aboriginal or an Islander.
- (10) The by-laws may provide that any contravention of a by-law is an offence punishable, upon conviction, by a fine not exceeding \$20.
- (11) In proceedings for an offence referred to in subsection (10), it is a defence if the person was not aware of the by-law to which the offence relates.

Note: A defendant bears an evidential burden in relation to the matter in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

## **11 Powers of Councils for Reserves and Communities to which this Act applies**

- (1) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may do all things that are necessary or convenient to be done for or in connexion with the performance of its functions.
- (2) Subject to the regulations, the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may, in the performance of its functions, receive and disburse moneys.

## **12 Entry to Reserves or Communities**

- (1) Where:
  - (a) there is not in force under the Aborigines Act or Torres Strait Islanders Act in respect of a person a permit authorizing the person to reside on, or visit, a Reserve to which this Act applies, being a person who is not otherwise entitled to reside on, or visit, the Reserve; and
  - (b) the Council for the Reserve is satisfied that it would be for the benefit of the Aboriginal community or the Islander community, as the case may be, residing on the Reserve to permit the person to reside on, or visit, the Reserve;the Council may authorize the person to reside on, or visit, the Reserve.
- (2) A person in respect of whom there is in force an authority under subsection (1) to reside on, or visit, a Reserve shall not be prevented from entering and residing on, or visiting, as the case may be, and shall not be ejected from, the Reserve by reason that a permit authorizing the person to reside on, or visit, the Reserve is not in force in respect of the person under the Aborigines Act or the Torres Strait Islanders Act, and it shall not, for that reason, be unlawful for the person to be on the Reserve.
- (3) Where:

- (a) there is not in force under the Aborigines Act or Torres Strait Islanders Act in respect of a person a permit authorizing the person to reside on, or visit, a Reserve to which this Act applies, being a person who is not otherwise entitled to reside on, or visit, the Reserve; and
  - (b) the Council for a Community to which this Act applies, being a Community which is established on the Reserve, is satisfied that it would be for the benefit of that Community to permit the person to reside on, or visit, that part of the Reserve appropriated for the use of that Community;  
the Council may authorize the person to reside on, or visit, that part of the Reserve.
- (4) A person in respect of whom there is in force an authority under subsection (3) to reside on, or visit, a part of a Reserve shall not be prevented from entering and residing on, or visiting, as the case may be, and shall not be ejected from, that part of the Reserve, by reason that a permit authorizing the person to reside on, or visit, the Reserve is not in force in respect of the person under the Aborigines Act or the Torres Strait Islanders Act, and it shall not, for that reason, be unlawful for the person to be on that part of the Reserve.

### **13 Directions given under Aborigines Act or Torres Strait Islanders Act**

- (1) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, is not subject to control under the Aborigines Act or the Torres Strait Islanders Act, and, in particular, is not required to comply with any directions given to it under or by virtue of the Aborigines Act or the Torres Strait Islanders Act.
- (2) An Aboriginal or Islander who is residing on a Reserve to which this Act applies, or an Aboriginal or Islander who is a member of a Community to which this Act applies or a person who is residing on, or visiting, a Reserve or part of a Reserve in pursuance of an

authority that is in force in respect of him or her under section 12, is not required to comply with any directions given to him or her under or by virtue of the Aborigines Act or the Torres Strait Islanders Act.

- (3) In this section, *directions* means directions in any form, including directions in the form of instructions.

#### **14 By-laws under Aborigines Act or Torres Strait Islanders Act**

By-laws in force under the Aborigines Act or the Torres Strait Islanders Act do not apply in or in relation to a Reserve to which this Act applies or a Community to which this Act applies.

#### **15 Commonwealth may make land available to Councils for carrying out functions**

- (1) The Commonwealth may make available to the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, for the purpose of enabling the Council to perform its functions, any interest in land acquired by or otherwise vested in the Commonwealth.
- (2) In this section, *interest*, in relation to land, has the same meaning as in the *Lands Acquisition Act 1989*.

#### **16 This Act not to derogate from the *Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975***

The provisions of this Act are in addition to, and shall not be taken as being in derogation of, the provisions of the *Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975*.

#### **17 Regulations**

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



be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for and in relation to:

- (a) the constituting of bodies for the purposes of section 6;
- (b) the election of persons to such bodies; and
- (c) the incorporation of any such bodies.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978	11, 1978	10 April 1978	10 April 1978 (s 2)	
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	s 3 and 4: 20 Oct 1982 (s 2(16))	—
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	Sch: 2 Dec 1988 (s 2)	—
Lands Acquisition (Repeal and Consequential Provisions) Act 1989	21, 1989	20 April 1989	9 June 1989 (s 2)	—
Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Act 2001	112, 2001	17 Sept 2001	s 4, Sch 1 (items 11–13) and Sch 2 (items 1–6): 15 Oct 2001 (s 2)	s 4
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (item 2) and Sch 3 (items 348, 349): 5 Mar 2016 (s 2(1) item 2)	Sch 3 (items 348, 349)

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## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 4A.....	ad No 112, 2001
s 6.....	am No 112, 2001
s 10.....	am No 80, 1982; No 99, 1988; No 112, 2001; No 10, 2015
s 12.....	am No 112, 2001
s 13.....	am No 112, 2001
s 15.....	am No 21, 1989

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