

# Aboriginal Development Commission Act 1980

No. 34 of 1980

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# Aboriginal Development Commission Act 1980

No. 34 of 1980

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## An Act to establish an Aboriginal Development Commission, and to provide for related matters

[Assented to 16 May 1980]

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

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Aboriginal Development Commission Act* 1980.

#### Commencement

2. (1) Sections 1, 2 and 3 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Section 4, Parts II and III, sections 20, 21, 22 and 26 and Parts VI, VII and VIII shall come into operation on a date to be fixed by Proclamation.

(3) The remaining provisions of this Act shall come into operation on such date as is, or such respective dates as are, fixed by Proclamation, being a date or dates, as the case may be, not earlier than the date fixed under sub-section (2).

#### Purpose of Act

3. The purpose of this Act is to further the economic and social development of people of the Aboriginal race of Australia and people who are descendants of indigenous inhabitants of the Torres Strait Islands and, in particular, (as a recognition of the past dispossession and dispersal of such people) to establish a Capital Account with the object of promoting their development, self-management and self-sufficiency.

**Interpretation**

**4. (1)** In this Act, unless the contrary intention appears—

“Aboriginal body” means a body corporate—

- (a) that is controlled, whether directly or indirectly, by Aboriginals; and
- (b) the principal objects of which are conducive to the advancement of Aboriginals,

but does not include an Aboriginal Land Trust within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*;

“Aboriginal corporation” means an Aboriginal body declared by the Commission under section 43 to be an Aboriginal corporation;

“Aboriginal land trust” means a body corporate—

- (a) established by or under a law of the Commonwealth or of a State or Territory; and
- (b) having the function of providing Aboriginals with interests in land, assisting Aboriginals to acquire interests in land or acquiring interests in land on behalf or for the benefit of Aboriginals,

but does not include an Aboriginal Land Trust within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*;

“appoint” includes re-appoint;

“business enterprise” includes—

- (a) an enterprise relating to primary production; and
- (b) an enterprise relating to the provision of facilities for social purposes, whether or not resulting in the acquisition of gain;

“Capital Account” means the Aboriginal Entitlement Capital Account established by this Act;

“Capital Fund” means the fund referred to in paragraph 20 (3) (a);

“Chairman” means the Chairman of the Commission;

“Commission” means the Aboriginal Development Commission established by this Act;

“Deputy Chairman” means the Deputy Chairman of the Commission;

“dwelling” includes—

- (a) any building or part of a building, or any associated buildings, consisting in whole or in substantial part of residential accommodation; and
- (b) the appurtenances, outbuildings, and fences, and the provision for lighting, water supply, drainage and sewerage, associated with a dwelling,

and includes a caravan or similar form of movable residential accommodation;

“General Fund” means the fund referred to in paragraph 20 (3) (b);

“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 of the Commonwealth or of a State or Territory as an Aboriginal reserve;

“member” means a member of the Commission, and includes the Chairman and the Deputy Chairman;

“occupation” includes use;

“personal property” includes shares or stock in the capital of a company;

“Register” means the Aboriginal Land Register kept under section 32;

“spouse”, in relation to an Aboriginal, includes 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.

(2) References in this Act to Aboriginals shall be read as references to members of the Aboriginal race of Australia and to persons who are descendants of indigenous inhabitants of the Torres Strait Islands.

#### **Repeal of Aboriginal Loans Commission Act**

5. The *Aboriginal Loans Commission Act* 1974 is repealed.

#### **Repeal of Aboriginal Land Fund Act**

6. The *Aboriginal Land Fund Act* 1974 is repealed.

## **PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE ABORIGINAL DEVELOPMENT COMMISSION**

### **Establishment**

7. There is established by this Act a Commission by the name of the Aboriginal Development Commission.

### **Functions**

8. The functions of the Commission are, subject to and in accordance with this Act, to further the economic and social development of Aboriginals and, in particular, but without limiting the generality of the foregoing—

- (a) to assist communities and groups of Aboriginals to acquire land;
- (b) to assist Aboriginals to engage in business enterprises;
- (c) to assist Aboriginals to obtain finance for housing and for other personal needs, and to provide such finance;
- (d) to assist in the training of Aboriginals in relation to matters related to the functions of the Commission;
- (e) to administer and control the Capital Account;
- (f) to give advice and make recommendations to the Minister with respect to the furtherance of the economic and social development of Aboriginals; and

- (g) such other functions in connection with the furtherance of the economic and social development of Aboriginals as the Minister determines by notice in writing given to the Commission.

### **Powers**

**9. (1)** The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, but without limiting the generality of the foregoing, has power—

- (a) to make charges for work done or services rendered by or on behalf of the Commission;
- (b) to appoint agents, and to act as an agent for other persons, in respect of matters relating to the performance of the functions of the Commission;
- (c) to co-operate with States, the Northern Territory and local government bodies, and with other persons and organizations concerned with Aboriginal development;
- (d) to collect, or arrange for the collection of, information relating to the performance of the functions of the Commission; and
- (e) to accept gifts, devise and bequests made to the Commission, whether on trust or otherwise, and to act as trustee of moneys or other property vested in the Commission on trust.

**(2)** Notwithstanding anything contained in this Act—

- (a) the Commission shall not accept a gift, devise or bequest made to it subject to conditions in relation to the purposes for which it is to be applied unless the Commission is satisfied that those purposes are consistent with purposes for which the Commission has power to apply moneys of the Capital Account;
- (b) any moneys or other property vested in the Commission on trust shall be dealt with in accordance with the powers and duties of the Commission as trustee; and
- (c) where a gift, devise or bequest made to the Commission or to the Capital Account is subject to conditions in relation to the purposes for which it is to be applied, any moneys paid into the Capital Account as a result of the gift, devise or bequest, and any income derived from the investment of those moneys, shall be applied only for those purposes and subject to those conditions.

### **Conferral of functions and powers by State Acts, &c.**

**10.** It is hereby declared to be the intention of the Parliament that, except as otherwise directed by the Minister, the Commission shall have such functions and powers as are expressly conferred on it by a law of a State or of an internal Territory that are additional to those conferred by this Act.

**Directions by Minister**

**11. (1)** The Commission shall perform its functions and exercise its powers in accordance with such general directions as are given to it by the Minister in writing.

**(2)** Sub-section (1) does not empower the Minister to give directions relating to the content of any advice, information or recommendation that may be given by the Commission to a Minister, Department or authority of the Commonwealth or of a State or Territory.

**(3)** Subject to sub-section (4), the Minister shall cause a copy of any direction given by him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after that direction was given.

**(4)** A copy of a direction laid before the Parliament in accordance with sub-section (3) shall not disclose any matters known to the Commission to be held sacred by Aboriginals or by a particular community or group of Aboriginals.

**PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION**

**Nature of Commission**

**12. (1)** The Commission—

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

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

**Membership**

**13. (1)** The Commission shall consist of 10 members, namely—

- (a) a Chairman;
- (b) a Deputy Chairman; and
- (c) 8 other members,

who shall be appointed by the Governor-General.

**(2)** The members shall be Aboriginals.

**(3)** A member—

- (a) shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of his appointment; and
- (b) 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 only of there being a vacancy or vacancies in the membership of the Commission.

(5) The appointment of a member is not invalidated and shall not be called in question by reason of a defect or irregularity in or in connection with his appointment.

(6) The members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

#### **Leave of absence**

14. The Minister may, after consultation with the Commission, grant leave of absence to a member on such terms and conditions as to remuneration or otherwise as the Minister determines.

#### **Resignation**

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

#### **Acting appointments**

16. (1) The Minister may appoint a member to act as Chairman—

- (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 is, for any other reason, unable to perform the functions of his office.

(2) The Minister may appoint a person who is an Aboriginal 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 is, for any other reason, unable to perform the functions of his office.

(3) A person appointed under sub-section (1) or (2) to act during a vacancy shall not continue so to act for more than 12 months.

(4) An appointment of a person under sub-section (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(5) 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.

(6) 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, then, subject to sub-section (4), 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.

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

(8) While a person is acting as the Chairman under this section, he has and may exercise all the powers, and shall perform all the functions, of the Chairman under this Act or any other law.

(9) While a person is acting as a member under this section, he has and may exercise all the powers, and shall perform all the functions, of a member under this Act or any other law, and shall be deemed to be a member for the purposes of sections 18, 19, 44 and 47.

(10) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

#### **Termination of appointment**

17. (1) The Governor-General may suspend a member from office by reason of misbehaviour or physical or mental incapacity.

(2) The Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

(3) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member ought to be restored to office and, if each House so passes such a resolution, the Governor-General shall terminate the suspension.

(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may terminate the appointment of the member.

(5) 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 18,
- the Governor-General may terminate his appointment.

### **Disclosure of interest**

**18. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 persons and of which he is not a Director, 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.

### **Meetings**

**19. (1)** The Commission shall hold such meetings as are necessary for the purposes of its functions.

**(2)** The Chairman or, if the Chairman is not available, the Deputy Chairman may at any time convene a meeting of the Commission.

**(3)** Where the Minister requests the Chairman or Deputy Chairman to do so, the Chairman or Deputy Chairman, as the case may be, shall forthwith convene a meeting of the Commission.

**(4)** At a meeting of the Commission, 6 members constitute a quorum.

**(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 but the Deputy Chairman is present at the meeting, the Deputy Chairman shall preside at the meeting.

**(7)** If neither the Chairman nor the Deputy Chairman is present at a meeting of the Commission, the members present shall elect one of their number to preside at the meeting.

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

**(9)** 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.

(10) In this section, a reference to the Chairman or the Deputy Chairman shall, if there is a person acting in the office of Chairman or Deputy Chairman, as the case may be, be read as a reference to the person so acting.

#### **PART IV—THE ABORIGINAL ENTITLEMENT CAPITAL ACCOUNT**

##### **Establishment of Capital Account**

**20. (1)** There is established by this Act an account by the name of the Aboriginal Entitlement Capital Account.

(2) The Capital Account is vested in the Commission.

(3) The Capital Account shall consist of 2 funds, namely:

(a) a fund, to be called the Capital Fund, for the purposes of accumulating capital for investment under section 22; and

(b) a fund, to be called the General Fund, for the purpose of providing moneys for the other purposes of this Act.

##### **Payments to General Fund**

**21. (1)** There shall be paid into the General Fund—

(a) any moneys appropriated by law for the purposes of the General Fund;

(b) any interest on, and repayments of, loans made out of the General Fund under sections 24 and 25;

(c) any moneys received by the Commission in respect of any dealings by it with property in pursuance of sections 28 and 29;

(d) the proceeds of the disposal of any other property of the Commission;

(e) any income derived from the investment of moneys standing to the credit of the Capital Account;

(f) any moneys borrowed by the Commission under section 38;

(g) any moneys received by the Commission by way of or as a result of a gift, devise or bequest, being moneys that, in the opinion of the Commission, are appropriate to be paid into the General Fund; and

(h) any other moneys received by the Commission.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, moneys referred to in paragraph (1) (a) are to be paid into the General Fund.

##### **Payments to Capital Fund**

**22. (1)** There shall be paid into the Capital Fund—

(a) any moneys appropriated by law for the purpose of providing capital for investment under this section; and

(b) any moneys received by the Commission by way of or as a result of a gift, devise or bequest, being moneys that, in the opinion of the Commission, are appropriate to be paid into that Fund.

(2) Moneys appropriated for the purpose specified in sub-section (1) shall be paid into the Capital Fund as soon as practicable after the appropriation is made.

(3) Moneys referred to in sub-section (1), and any moneys (other than income) derived from investments made under this section, shall be invested in the manner provided in paragraphs 37 (1) (a), (b) and (c).

(4) Moneys to which sub-section (3) applies shall not be dealt with otherwise than in accordance with that sub-section.

#### **Application of General Fund in relation to land**

**23. (1)** For the purposes of enabling Aboriginals to occupy land, moneys of the General Fund may be applied—

- (a) in making grants of money, on such terms and conditions as the Commission determines—
  - (i) to Aboriginal land trusts for the acquisition by those trusts of interests in land, and in such personal property as the Commission considers appropriate, for the object of enabling Aboriginals to occupy that land; and
  - (ii) to Aboriginal corporations for the acquisition by those corporations of interests in land, and in such personal property as the Commission considers appropriate, for the object of enabling members of those corporations to occupy that land;
- (b) in the acquisition by the Commission of interests in land or personal property in pursuance of section 27;
- (c) in making grants of money, on such terms and conditions as the Commission determines, to Aboriginal bodies to enable improvements to be made to land in which Aboriginal bodies hold interests; and
- (d) in making payments in respect of such investigations or inquiries as the Commission considers necessary in relation to—
  - (i) land or other property in relation to which moneys may be, or have been, applied in accordance with paragraph (a); or
  - (ii) land or other property in which interests have been, or may be, acquired or otherwise dealt with in pursuance of section 27.

(2) Moneys of the General Fund may also be applied in making other payments incidental to the application of moneys in accordance with paragraph (1) (a), (b) and (c).

(3) Moneys of the General Fund shall not be applied under paragraph (1) (a) or (b) in relation to any land unless—

- (a) particulars of an application in relation to that land have been entered in the Register under sub-section 32 (2); and
- (b) the Commission has endeavoured to consult with the appropriate authority responsible for planning in relation to the use and development of land in the State or Territory in which that land is situated.

**Application of General Fund in relation to business enterprises**

**24. (1)** For the purposes of enabling Aboriginals to engage in business enterprises, moneys of the General Fund may, subject to sub-section (3), be applied—

- (a) in making loans (including loans for the purpose of the acquisition from the Commission of shares or stock in the capital of a company held by the Commission) on such terms and conditions as are determined by the Commission;
- (b) in subscribing for, or otherwise acquiring, shares or stock in the capital of a company;
- (c) in making grants of money to Aboriginal bodies on such terms and conditions as are determined by the Commission;
- (d) in the acquisition of property in pursuance of section 28; and
- (e) in making payments in respect of the investigation of supervision of, or the provision of accounting services, management advice or technical assistance for or in relation to, a business enterprise in relation to which—
  - (i) moneys may be, or have been, applied in accordance with paragraph (a), (b) or (c);
  - (ii) a guarantee may be, or has been, given under section 30; or
  - (iii) property has been, or may be, acquired or otherwise dealt with in pursuance of section 28.

**(2)** Moneys of the General Fund may also be applied—

- (a) in making payments incidental to the application of moneys in accordance with paragraph (1) (a), (b), (c), (d) or (e); and
- (b) in meeting any liability under a guarantee given under section 30.

**(3)** The Commission shall not apply moneys of the General Fund under this section for the purpose of enabling an Aboriginal or Aboriginals to engage in a business enterprise unless the Commission is satisfied that the Aboriginal is, or the Aboriginals are, capable of engaging in that enterprise.

**(4)** Where the Commission informs an Aboriginal body to which a grant has been made under paragraph (1) (c) that the Commission is satisfied that the body has failed to fulfil any term or condition of the grant, the body shall be liable to repay to the Commission an amount equal to the amount of the grant, or an amount equal to so much of the grant as the Commission determines.

**Application of General Fund in relation to housing and personal loans**

**25. (1)** Moneys of the General Fund may be applied in making loans, on such terms and conditions as the Commission determines, to Aboriginals, and their spouses, for the following purposes:

- (a) the erection or purchase of dwellings or the purchase of land on which dwellings are to be erected or situated;
- (b) the extension, renovation or modification of, or the making of additions to, dwellings;

- (c) any purpose incidental to any of the foregoing purposes;
  - (d) the purchase of household effects;
  - (e) the re-payment of existing debts.
- (2) Moneys of the General Fund may also be applied—
- (a) in making payments in respect of any inquiries 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, made under section 30;
  - (b) in making loans to Aboriginal bodies for the purpose of enabling them to make loans 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—
    - (i) a person to whom a loan may be, or has been, made in accordance with sub-section (1);
    - (ii) an Aboriginal body to which a loan may be, or has been, made in accordance with paragraph (b); or
    - (iii) an Aboriginal body in relation to which a guarantee may be, or has been, given under section 30;
  - (d) in meeting any liability under a guarantee given under section 30;
  - (e) in the acquisition of property in pursuance of section 29; 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.

**Application of General Fund in relation to other matters**

**26. Moneys of the General Fund may be applied—**

- (a) in payment or discharge of the costs, expenses or other obligations incurred by the Commission in the performance of its functions and the exercise of its powers;
- (b) in making loans or grants of money, on such terms and conditions as the Commission determines, for purposes of or connected with the performance of functions, and the exercise of powers, conferred on the Commission in pursuance of paragraph 8 (1) (g) and section 10;
- (c) in payment of any remuneration, allowances or fees payable to any person (including an unincorporated body or association, and a partnership) under this Act;
- (d) for the purposes of training employees of the Commission;
- (e) for the purposes of assisting in the training of Aboriginals in relation to matters related to the application of moneys under sections 23, 24 and 25; and
- (f) in making other payments incidental to the application of moneys in accordance with this section.

**Grants of interests in property**

27. (1) The Commission may acquire by agreement any interests in land or personal property and may, on such terms and conditions as it determines, grant any interests so acquired, or any interests derived from interests so acquired, to Aboriginal land trusts for the object of enabling Aboriginals to occupy land or to Aboriginal corporations for the object of enabling members of those corporations to occupy land.

(2) No payment shall be due to the Commission in respect of a grant made under sub-section (1).

**Grants, &c., of property for purposes of business enterprises**

28. For the purposes of section 24, the Commission may acquire by agreement any real or personal property, and may grant, sell, lease or otherwise make available property so acquired to an Aboriginal or Aboriginals, or to an Aboriginal body, on such terms and conditions (if any) as are determined by the Commission.

**Acquisition of property for purposes of provision of housing, &c.**

29. The Commission may acquire by agreement any 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, on such terms and conditions (if any) as are determined by the Commission.

**Guarantees**

30. (1) Where the Commission is satisfied that a loan to be made by an Aboriginal body, or a bank, credit union or other lending institution—

(a) will be for a purpose specified in sub-section 24 (1); or

(b) 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.

**Disposal of interests in land, &c.**

31. (1) An Aboriginal corporation that acquires an interest in land, or in shares or stock in the capital of a company, under section 27, or as a result of the grant of moneys under section 23, shall not dispose of that interest, or of an interest derived from that interest, except in accordance with a notice under this section.

(2) The Commission may, after consultation with the Minister, by notice published in the *Gazette*, declare that a specified interest to which sub-section (1) applies may be disposed of in accordance with the notice.

(3) The Commission shall not make a declaration under sub-section (2) unless it is satisfied that the disposal of the interest in accordance with the notice will further the economic and social development of Aboriginals.

(4) A notice given under sub-section (2) is irrevocable.

(5) Where the Commission makes a declaration under sub-section (2) in relation to an interest held by an Aboriginal corporation as defined by the *Aboriginal Councils and Associations Act 1976*, the interest specified in the declaration shall, for the purposes of that Act, but subject to anything contained in the notice, be deemed to be a disposable estate or interest.

(6) Nothing in this section limits the right of an Aboriginal corporation to license or otherwise authorize members of the corporation to occupy land in which it holds an interest.

(7) In this section—

“Aboriginal corporation”, except in sub-section (5), includes an Aboriginal corporation as defined by the *Aboriginal Councils and Associations Act 1976*;

“dispose” includes to transfer, assign, lease, sub-lease, license or mortgage, and also includes to agree to dispose, and to grant consent to the disposal of.

## **PART V—THE ABORIGINAL LAND REGISTER**

### **Aboriginal Land Register**

32. (1) For the purpose of facilitating planning by the Commission in relation to the application of moneys of the General Fund under section 23, the Commission shall cause to be kept a register to be known as the Aboriginal Land Register.

(2) Upon application in writing being made to the Commission by or on behalf of a community or group of Aboriginals (including an Aboriginal land trust or Aboriginal corporation) for the grant of moneys to enable the acquisition of an interest in land under section 23, or for the grant of an interest under section 27, the Commission may cause particulars of the application to be entered in the Register.

(3) When an application particulars of which have been entered in the Register under sub-section (2) has been granted, the Commission shall cause that fact to be recorded in the Register.



## **PART VI—STAFF**

### **Staff**

**33. (1)** The Commission may engage such employees as are necessary for the performance of its functions under this Act.

**(2)** The terms and conditions of employment (in respect of matters not provided for by this Act) of persons engaged under this section are such as are determined by the Commission with the approval of the Public Service Board.

### **Arrangements relating to staff**

**34.** The Commission may make arrangements for the services of officers or employees of—

- (a)** the Public Service of the Commonwealth or of a State or Territory;
- (b)** an authority of the Commonwealth or of a State or Territory; or
- (c)** any other organization or body,

to be made available to the Commission.

### **Engagement of consultants**

**35. (1)** The Commission may engage persons having suitable qualifications or experience to furnish advice to, or perform services for, the Commission otherwise than as members of the staff referred to in section 33 or by virtue of arrangements made under section 34.

**(2)** The terms and conditions of engagement of persons under sub-section **(1)** shall be such as are determined by the Commission with the approval of the Public Service Board.

**(3)** In this section, “person” includes an unincorporated body or association, and a partnership.

## **PART VII—FINANCE**

### **Estimates**

**36.** The Commission shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

### **Investment of moneys**

**37. (1)** Moneys of the General Fund not immediately required for the purposes of this Act may be invested—

- (a)** on deposit with an approved bank;
- (b)** in securities of the Commonwealth; or
- (c)** in any other manner approved by the Treasurer.

(2) In this section, “approved bank” means a trading bank as defined in sub-section 5 (1) of the *Banking Act 1959* or another bank approved by the Treasurer or a person authorized by the Treasurer to give approvals under this section.

### **Borrowing**

38. (1) The Commission may, with the approval of the Treasurer, borrow moneys that are from time to time necessary for the exercise of its powers or the performance of its functions under this Act.

(2) The Minister for Finance may, on behalf of the Commonwealth, out of moneys appropriated by the Parliament for the purpose, lend to the Commission, at such rate of interest and on such other terms and conditions as he determines, moneys that the Commission is authorized to borrow under sub-section (1).

(3) The Commission may give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

(4) The Treasurer may, on behalf of the Commonwealth, guarantee the repayment by the Commission of amounts borrowed under this section otherwise than from the Commonwealth and the payment of interest on amounts so borrowed.

(5) The Commission shall not borrow moneys except in accordance with this section.

### **Restrictions on contracts**

39. (1) Subject to sub-section (2), the Commission shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Commission of an amount exceeding \$100,000 or, if a higher amount is prescribed, that higher amount.

(2) Sub-section (1) does not apply to contracts entered into for a purpose for which moneys of the General Fund may be applied under section 23, 24 or 25.

### **Annual report and financial statements**

40. (1) Subject to this section, the Commission shall, as soon as practicable after 30 June in each year, prepare and submit to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister for Finance approves.

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

(3) The Commission shall not, in any annual report prepared under sub-section (1), disclose any matters known to the Commission to be held sacred by Aborigines or by a particular community or group of Aborigines.

(4) Before submitting a report to the Minister under sub-section (1), the Commission shall give the National Aboriginal Conference incorporated under the *Aboriginal Councils and Associations Act 1976* the opportunity of commenting on the report.

(5) Before submitting financial statements to the Minister under sub-section (1), the Commission shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether, in his opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in his opinion, show fairly the financial transactions and the state of the affairs of the Commission;
- (c) whether, in his opinion, 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.

(6) The Minister shall cause copies of the report and financial statements together with a copy of the report of the Auditor-General and a copy of any comments made by the National Aboriginal Conference to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

#### **Application of Division 2 of Part XI of Audit Act**

41. (1) It is hereby declared that the Commission is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) Division 2 of Part XI of the *Audit Act 1901* applies to the Commission as if sections 63E and 63H of that Act were omitted.

#### **Exemption from taxation**

42. (1) Subject to section 128V of the *Income Tax Assessment Act 1936*, the Commission is not subject to taxation under any law of the Commonwealth or of a State or Territory.

(2) Stamp duty or any similar tax is not payable under a law of the Commonwealth or of a State or Territory in respect of any document executed by or on behalf of the Commission, or any transaction, in relation to the borrowing of moneys by the Commission.

### **PART VIII—MISCELLANEOUS**

#### **Commission to declare bodies to be Aboriginal corporations**

43. (1) Upon application made in writing to the Commission by an Aboriginal body, the Commission shall, if it is satisfied that all the members of the

body are Aboriginals who are members of the same community of Aboriginals, declare, by notice published in the *Gazette*, that the body is an Aboriginal corporation for the purposes of this Act.

(2) The Commission may, after consultation with the Minister, by notice published in the *Gazette*, declare that a specified Aboriginal body (other than an Aboriginal body to which sub-section (1) applies) is an Aboriginal corporation for the purposes of this Act.

### **Delegation**

44. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member of the Commission or a member of the staff of the Commission any of its powers under this Act, other than its powers under sub-section 31 (2) and section 43 and this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commission.

(3) A delegation under this section does not prevent the exercise of a power by the Commission.

### **Committees**

45. (1) The Commission may appoint a committee to assist the Commission, in accordance with directions given to it by the Commission, in relation to any matter or class or matters relating to the functions of the Commission.

(2) A committee shall consist of such persons, whether members or not, as the Commission thinks fit.

(3) A committee shall make such investigations, and furnish to the Commission such reports, in connection with the matter or class of matters in relation to which it has been appointed as the Commission directs and, if requested by the Commission to do so, may make recommendations in relation to that matter or any matter included in that class of matters.

### **Remuneration and allowances**

46. (1) A member of the Commission or a member of a committee appointed under section 45 shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A person referred to in sub-section (1) shall be paid such allowances as are prescribed.

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

**Protection against actions**

47. (1) No action, suit or proceeding lies against a member of the Commission or a member of a committee appointed under section 45 for or in relation to an act done in good faith for the purposes of this Act.

(2) This section does not limit or abridge any defence existing apart from this section.

**Rights of public servants**

48. Where a person engaged under section 33 on a full-time basis was, immediately before his engagement, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

**Regulations**

49. 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.

**PART IX—TRANSITIONAL**

**Interpretation**

50. In this Part—

“Development Commission” means the Commission established by this Act;

“Land Fund Commission” means the Aboriginal Land Fund Commission established by the *Aboriginal Land Fund Act 1974*;

“Loans Commission” means the Aboriginal Loans Commission established by the *Aboriginal Loans Commission Act 1974*;

“original Commission” means the Loans Commission or the Land Fund Commission.

**Transfer of rights, liabilities, &c.**

51. (1) On the date on which an Act that established an original Commission is repealed by this Act—

- (a) any rights, property or assets (other than the shares referred to in section 55) that immediately before that date were vested in the original Commission are, by force of this sub-section, vested in the Development Commission and shall, for the purposes of sections 27, 28 and 29,

be deemed to have been acquired by the Development Commission by agreement;

- (b) all debts, liabilities and obligations of the original Commission existing immediately before that date become, by force of this sub-section, debts, liabilities and obligations of the Development Commission, and the moneys of the General Fund may be applied in payment or discharge of any such debt, liability or obligation; and
- (c) any arrangement or contract to which the original Commission was a party and which was in force immediately before that date continues in force, notwithstanding the repeal, but that arrangement or contract has effect, on and after that date, as if—
  - (i) the Development Commission were substituted for the original Commission as a party to the arrangement or contract; and
  - (ii) any reference in the arrangement or contract to the original Commission were (except in relation to matters that occurred before that date) a reference to the Development Commission.

(2) Where, immediately before the date on which an Act that established an original Commission is repealed by this Act, proceedings to which the original Commission was a party were pending in any court, the Development Commission is, by force of this sub-section, substituted for the original Commission as a party to the proceedings.

(3) In making any determination under sub-section 30 (2), the Treasurer may have regard to guarantees to which the Commission is a party by virtue of the operation of paragraph (1) (c) of this section.

(4) Where, before the date on which an Act that established an original Commission is repealed by this Act—

- (a) a complaint was made to the Ombudsman, or the Ombudsman commenced an investigation, under the *Ombudsman Act 1976* in relation to action taken by the original Commission; and
- (b) the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*,

the *Ombudsman Act 1976* applies on and after that date as if that action had been taken by the Development Commission.

### **Certain grants and approvals, &c., to be administered by Commission**

52. (1) On, or as soon as practicable after, the date fixed under sub-section 2 (2), the Minister may, by notice in writing, authorize the Development Commission to act as agent of the Commonwealth in relation to specified grants of moneys paid in whole or in part before that date to an Aboriginal or Aboriginal body by the Department, howsoever described, having responsibility at the relevant time in relation to Aboriginal affairs.

(2) On, or as soon as practicable after, the date fixed under sub-section 2 (2), the Minister may, by notice in writing, determine that a specified approval for, or arrangement or agreement relating to the making of a grant of

moneys to an Aboriginal or Aboriginal body (other than a grant of moneys paid in whole or in part before that date) is an approval, arrangement or agreement to which sub-section (3) applies.

(3) An approval, arrangement or agreement to which this sub-section applies shall, on and from the date on which it is specified under sub-section (2), be deemed to be an approval for, or an arrangement or agreement relating to, a grant of moneys to be made under section 24 and—

- (a) in the case of an approval—it shall be deemed to have been made by the Development Commission; or
- (b) in the case of an arrangement or agreement—it has effect as if—
  - (i) the Development Commission were substituted for the Commonwealth as a party; and
  - (ii) any reference in it to the Commonwealth were a reference to the Development Commission.

(4) Sub-section 24 (4) does not apply in relation to a grant made in pursuance of sub-section (3) of this section.

(5) In this section, a reference to an approval, arrangement or agreement includes a reference to a variation of an approval, arrangement or agreement.

#### **Powers and functions of Commission**

53. At any time after the Chairman and not less than 3 other members have been appointed, and before the expiration of 6 months after the commencement of Part II—

- (a) the Development Commission may exercise its powers and perform its functions;
- (b) notwithstanding sub-section 19 (4), at a meeting of the Commission a quorum is constituted by a majority of the members for the time being holding office; and
- (c) the exercise of the powers or the performance of the functions of the Commission is not affected by reason only of there being fewer than 10 members.

#### **Conversion of outstanding loans to grants**

54. (1) In this section, “commencing date” means the date on which the *Aboriginal Loans Commission Act 1974* is repealed.

(2) Where, on the commencing date, an amount is, by virtue of section 51, payable to the Development Commission under, or by virtue of, a contract made between the Loans Commission, or the corporation established by the *Aboriginal Enterprises (Assistance) Act 1968*, and an Aboriginal body, the Development Commission may, subject to the approval of the Minister, discharge the Aboriginal body from liability to pay the whole or a part of that amount.

- (3) A discharge under sub-section (2)—

- (a) shall be by instrument under the common seal of the Development Commission;
- (b) shall specify the amount in respect of which the liability of the Aboriginal body is discharged; and
- (c) may be given on such terms and conditions (if any) as the Development Commission determines.

(4) Where a discharge is given under this section, the amount in respect of which the liability of an Aboriginal body is discharged shall, for the purposes of this Act, be deemed to be the grant of an amount equal to the first-mentioned amount made under paragraph 24 (1) (c) on the terms and conditions (if any) determined by the Commissioner under sub-section (3) of this section.

**Vesting of shares in Aboriginal Arts and Crafts Pty. Ltd. in Australia Council**

55. On the date on which the *Aboriginal Loans Commission Act 1974* is repealed, all the shares in the capital of Aboriginal Arts and Crafts Pty. Ltd., being a company incorporated under the *Companies Ordinance 1962*, as amended, of the Australian Capital Territory, that were, immediately before that date, beneficially owned by the Loans Commission are, by force of this section, vested in the Council established by the *Australia Council Act 1975*.