



Aboriginal Land Grant (Jervis Bay Territory) Act 1986

Act No. 164 of 1986 as amended

This compilation was prepared on 15 October 2001
taking into account amendments up to Act No. 112 of 2001

The text of any of those amendments not in force
on that date is appended in the Notes section

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An Act to grant land in the Jervis Bay Territory to the Wreck Bay Aboriginal Community, and for other purposes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.

2 Interpretation

- (1) In this Act, unless the contrary intention appears:

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

Aboriginal Land means land that is Aboriginal Land because of a declaration under Part III.

annual general meeting means a meeting of the Council convened under section 20 or 21.

Australian National Botanic Gardens means the areas declared to be a reserve, and to which that name was assigned, by Proclamation under subsection 7(2) of the *National Parks and Wildlife Conservation Act 1975*.

Authority means an Authority established by or under a law of the Commonwealth or a law in force in the Territory.

Booderee Botanic Gardens means the part of the Australian National Botanic Gardens in the Jervis Bay Territory.

Booderee National Park means the Commonwealth reserve of that name within the Jervis Bay Territory under Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*.

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Chairperson means the Chairperson of the Council.

Community means the community known as the Wreck Bay Aboriginal Community.

Council means the Wreck Bay Aboriginal Community Council established by section 4.

Deputy Chairperson means the Deputy Chairperson of the Council.

Director has the meaning given by the *Environment Protection and Biodiversity Conservation Act 1999*.

Note: The Director is also an Authority.

executive committee means the committee established by section 28.

executive member means a member of the executive committee and includes the Chairperson, the Deputy Chairperson and the Secretary.

general meeting means:

- (a) an annual general meeting; or
- (b) a special general meeting.

land, unless the contrary intention appears, includes any seabed or any subsoil.

minerals includes:

- (a) gold, silver, copper, tin and other metals;
- (b) coal, shale, petroleum and valuable earths and substances;
- (c) mineral substances;
- (d) gems and precious stones; and
- (e) ores and other substances containing minerals;

whether suspended in water or not, but does not include water.

Register means the register kept in accordance with Division 2 of Part IV.

registered member means a person whose name is on the Register.

Registrar means the Registrar of the Wreck Bay Aboriginal Community Council.

Schedule Land means the land described in the Schedule.

Secretary means the Secretary of the Council.

special general meeting means a meeting of the Council convened under section 23.

Territory means the Jervis Bay Territory.

Note: For the manner in which the Chairperson and Deputy Chairperson may be referred to, see section 18B of the *Acts Interpretation Act 1901*.

3 Act to bind Crown

- (1) This Act binds the Crown in right of the Commonwealth.
- (2) Nothing in this Act renders the Crown in right of the Commonwealth liable to be prosecuted for an offence.

3A 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.

Part II—Establishment, constitution, functions and powers of Council

4 Establishment of Council

- (1) There is established by this Act a council by the name of the Wreck Bay Aboriginal Community Council.
 - (2) The Council:
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal; and
 - (c) may sue and be sued in its corporate name.
- Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Council. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Council appearing on a document and shall presume that the document was duly sealed.

4A Who are directors for the purposes of the *Commonwealth Authorities and Companies Act 1997*?

The members of the executive committee (not the registered members of the Council) are directors of the Council for the purposes of the application of the *Commonwealth Authorities and Companies Act 1997* to the Council.

5 Constitution of Council

The Council at any time shall consist of the persons who are registered members at that time.

6 Functions of Council

The functions of the Council are, subject to and in accordance with this Act:

- (a) to hold title to Aboriginal Land;
- (b) to exercise, for the benefit of the members of the Community, the Council's powers as owner of Aboriginal Land and of any other land owned by the Council;
- (c) to make representations to the Minister in relation to land that the Council considers should become Aboriginal Land and in relation to other matters relevant to this Act;
- (ca) in consultation with the Minister, to consider and, where practicable, take action for the benefit of the Community in relation to the housing, social welfare, education, training or health needs of the members of the Community;
- (cb) to provide community services to members of the Community;
- (cc) to protect and conserve natural and cultural sites on Aboriginal Land;
- (cd) to engage in land use planning in relation to Aboriginal Land;
- (ce) to manage and maintain Aboriginal Land; and
- (cf) to conduct business enterprises for the economic or social benefit of the Community;
- (d) such functions as are conferred on it by a provision of this Act (other than this section); and
- (e) any functions relating to the Community conferred on the Council by the regulations.

7 Powers of Council

- (1) In addition to any other powers conferred on it by this Act, the Council has, subject to this Act, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting the generality of subsection (1), the powers of the Council referred to in subsection (1) include, subject to this Act, power:
 - (a) to acquire, hold or dispose of real and personal property;
 - (b) to enter into contracts for the purposes of this Act; and
 - (c) to employ staff.

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- (3) The Council shall not, except with the approval of the Minister, enter into a contract involving the payment by the Council of an amount exceeding \$100,000, or, if a higher amount is prescribed, that amount.

Part III—Grant of land to Council

8 Initial grant of land

- (1) As soon as practicable after the first annual general meeting, the Minister:
 - (a) shall sign an instrument that declares that, at the time at which a copy of the instrument is given to the Chairperson, the Schedule Land shall become Aboriginal Land; and
 - (b) shall give a copy of the instrument, or cause a copy of the instrument to be given, to the Chairperson.
- (2) At the time at which the instrument referred to in subsection (1) is given to the Chairperson in accordance with paragraph (1)(b), the Schedule Land becomes Aboriginal Land.
- (3) As soon as practicable after the Minister has complied with subsection (1), the Minister shall cause to be published in the *Gazette* a notice stating that the Schedule Land has become Aboriginal Land.
- (4) Any failure to comply with the requirements of subsection (3) does not affect the operation of subsection (1).

9 Later grants of land

- (1) Where, at any time after the Schedule Land has become Aboriginal Land, the Minister becomes satisfied that:
 - (a) vacant Crown land in the Territory that adjoins Aboriginal Land is of significance to the Aboriginals who are members of the Community; and
 - (b) it would be appropriate to grant the first-mentioned land to the Council;the Minister may, by instrument in writing specifying the first-mentioned land, declare that the first-mentioned land is Aboriginal Land.
- (2) The Minister shall, as soon as practicable after making an instrument under subsection (1):

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- (a) cause a copy of the instrument to be published in the *Gazette*; and
 - (b) cause a copy of the instrument to be laid before each House of the Parliament.
- (3) Either House of the Parliament, within 15 sitting days of that House after a copy of an instrument has been laid before that House under subsection (2), may, in pursuance of a motion upon notice, pass a resolution disallowing the instrument.
- (4) Where:
- (a) a notice referred to in subsection (3) is given with respect to an instrument; and
 - (b) at the expiration of the period during which a resolution disallowing the instrument could have been passed:
 - (i) the notice has not been withdrawn and the relevant motion has not been called on; or
 - (ii) the relevant motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- the instrument shall be deemed to have been disallowed.
- (5) If:
- (a) neither House of the Parliament passes a resolution in accordance with subsection (3) disallowing an instrument made under subsection (1); and
 - (b) the instrument has not been deemed to have been disallowed under subsection (4);
- the instrument takes effect, and the land specified in the instrument becomes Aboriginal Land, on the day immediately following the last day upon which a resolution disallowing the instrument could have been passed.
- (6) If, before the expiration of 15 sitting days of a House of the Parliament after a copy of an instrument made under subsection (1) has been laid before that House:
- (a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and

- (b) a resolution for the disallowance of the instrument has not been passed by the first-mentioned House;
the copy of the instrument shall, for the purposes of this section, be deemed to have been laid before that first-mentioned House on the first sitting day of that first-mentioned House after the dissolution, expiry or prorogation, as the case may be.
- (7) Where an instrument made under subsection (1) takes effect, the Minister shall cause a notice to that effect to be published in the *Gazette*.
- (8) Any failure to comply with the requirements of subsection (7) does not affect the operation of subsection (5).

9A Grants of land within Booderee National Park etc. to Council

- (1) The Minister may declare in writing that land within the Booderee National Park is Aboriginal Land if he or she is satisfied that:
- (a) the land is of significance to the Aboriginals who are members of the Community; and
 - (b) it would be appropriate to grant the land to the Council.
- (2) The Minister may not make a declaration under subsection (1) unless the Council and the Director have entered into an agreement under which the Council agrees to grant to the Director a lease of all land that is to become Aboriginal Land under the declaration. The terms and conditions of the lease are to be set out in the agreement.
- (3) If the Minister proposes to make a declaration under subsection (1), the Minister must publish a notice in the *Gazette*:
- (a) stating his or her intention to do so; and
 - (b) describing the land that would become Aboriginal Land under the declaration.
- (4) The Minister's declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

10 Vesting of land

Where, because of section 8, 9 or 9A, land becomes Aboriginal Land, that land (including all rights, title and interests in that land)

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is vested in the Council without any conveyance, transfer or assignment.

11 Registration of vesting

Where the Secretary to the Department that deals with the administration of the Territory becomes aware that land (including any right, title or interest in land) has vested in the Council because of section 10, the Secretary to that Department shall cause such action to be taken as he or she considers necessary to register the vesting under the laws in force in the Territory.

12 Buildings etc. vest automatically

Subject to section 13, where, because of section 10, land vests in the Council, buildings and improvements on that land vest in the Council.

13 Occupation by Commonwealth etc.

- (1) Where, on the vesting of land in the Council because of section 10, the land or part of the land is being occupied or used by the Commonwealth or by an Authority, the Commonwealth or the Authority, as the case may be, is entitled to continue that occupation or use for such period as the land or part of the land, as the case may be, is required by the Commonwealth or the Authority.
- (2) During the period for which, because of subsection (1), the Commonwealth or an Authority is entitled to the occupation or use of land, or part of land, vested in the Council, any buildings or improvements on that land, or part of land, as the case may be, shall be deemed to be the property of the Commonwealth or the Authority, as the case may be.
- (3) Nothing in this section prevents the granting by the Council under section 38 of a lease of land to which subsection (1) applies to the Commonwealth or an Authority and, if such a lease is granted, the land ceases to be land to which this section applies.

14 Reservation of minerals

Where, because of this Part, land vests in the Council, the vesting is subject to the reservation that the right to any minerals existing in their natural condition on or below the surface of the land remains with the Commonwealth.

Part IV—Administration of Council

Division 1—Registrar of Council

15 Registrar of Council

- (1) There shall be a Registrar of the Wreck Bay Aboriginal Community Council.
- (2) The functions of the Registrar are such functions as are conferred on the Registrar by a provision of this Act or by the regulations.
- (3) The Registrar shall be a person holding or performing the duties of an office in the Department or the Aboriginal and Torres Strait Islander Commission who is appointed by the Minister in writing.

16 Delegation by Registrar

- (1) The Registrar may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Registrar, delegate to:
 - (a) a person holding or performing the duties of an office in the Department, being a person approved by the Secretary to the Department for the purpose; or
 - (b) a person holding or performing the duties of an office in the Aboriginal and Torres Strait Islander Commission, being a person approved by the Chief Executive Officer of that Commission for the purpose;all or any of the functions and powers of the Registrar under this Act, other than this power of delegation.
- (2) A function or power so delegated, when performed or exercised by the delegate, shall, for the purposes of this Act, be deemed to have been performed or exercised by the Registrar.
- (3) A delegation under subsection (1) does not prevent the performance of a function or the exercise of a power by the Registrar.

Division 2—Register of members of Council

17 Register

- (1) There shall be prepared and kept in accordance with this Part a register to be known as the Register of Members of the Wreck Bay Aboriginal Community Council.
- (2) As soon as practicable after the commencement of this Act, the Department shall prepare and give to the Registrar a list of the persons who the Department is satisfied are Aboriginals who:
 - (a) resided in the Territory on 24 May 1986; and
 - (b) have attained the age of 18 years.
- (3) As soon as practicable after the Department has given the Registrar the list referred to in subsection (2), the Registrar shall prepare the Register and enter on it the names on the list.
- (4) After the first annual general meeting, the Register shall be kept by the Secretary.

18 Variation of Register

- (1) Subject to subsection (2), where, at a general meeting, a motion that a specified person is an Aboriginal member of the Community is passed in accordance with subsection 26(2), the Secretary shall enter the name of that person on the Register.
- (2) The Secretary shall not enter the name of a person on the Register in accordance with subsection (1) unless and until the Secretary is satisfied that the person has attained the age of 18 years.
- (3) Where, at a general meeting, a motion that a specified person whose name is on the Register is not an Aboriginal member of the Community is passed in accordance with subsection 26(2), the Secretary shall remove the name of that person from the Register.
- (4) Where the Secretary becomes satisfied that a person whose name is on the Register:
 - (a) has died; or

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(b) has not attained the age of 18 years;
the Secretary shall remove the name of that person from the Register.

19 Particulars on Register etc.

- (1) Where:
- (a) the Secretary is required by this Part to enter the name of a person on the Register; and
 - (b) the Secretary considers that the name of the person is not sufficient to identify the person;
- the Secretary shall enter on the Register, next to the name of that person, particulars sufficient to identify the person.
- (2) Where the name of a person is entered on the Register in accordance with this Part, the Secretary may enter next to that name particulars of the place of living of that person.

Division 3—Meetings of Council

20 First annual general meeting

- (1) As soon as practicable after the preparation of the Register, the Registrar shall convene the first annual general meeting of the Council.
- (2) Not later than 30 days before the first annual general meeting, the Registrar shall cause notice of the day, time and place of the meeting to be given to the registered members in such manner as the Registrar considers appropriate.
- (3) The Registrar shall preside at the first annual general meeting until a person is declared to have been elected as the Chairperson.

21 Convening of subsequent annual general meetings

- (1) The Chairperson shall, not later than 30 days before the expiration of 12 months from the day on which an annual general meeting finished, convene an annual general meeting of the Council to be held on a day not later than the expiration of the 12 months.
- (2) If the Registrar becomes satisfied that, because of vacancies in the offices of Chairperson and Deputy Chairperson or because the holders of those offices are unable to perform the duties of those offices, an annual general meeting required to be convened in accordance with subsection (1) would not be convened, the Registrar shall convene that meeting.
- (3) The person convening an annual general meeting under this section shall, not later than 30 days before the day fixed for the meeting, cause notice of the day, time and place of the meeting to be given to the registered members, in such manner as has been determined by the Council, or, if no manner has been determined, such manner as the person considers appropriate.

22 Purpose of annual general meetings

- (1) A purpose of an annual general meeting is the conduct of the elections of the executive members in accordance with Division 4.

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- (2) An annual general meeting may deal with any matters relating to the functions of the Council.

23 Convening of special general meetings

- (1) The Minister or the Chairperson may convene a special general meeting of the Council.
- (2) The Chairperson shall, on receipt of a written request signed by not less than 20 registered members, convene a special general meeting of the Council.
- (3) Where a person convenes a special general meeting, the person shall, not later than 30 days before the day fixed for the meeting, cause notice of the day, time and place of the meeting to be given to the registered members, in such manner as has been determined by the Council, or, if no manner has been so determined, such manner as the person considers appropriate.

24 Purpose of special general meetings

A special general meeting may deal with any matters relating to the functions of the Council.

25 Procedure at general meetings

- (1) Without limiting subsections 20(3) and 30(2), a general meeting may be attended by:
 - (a) the registered members; and
 - (b) such persons as the meeting determines by resolution may be present at the meeting.
- (2) The Chairperson shall preside at all general meetings at which he or she is present.
- (3) Where the Chairperson is not present at a general meeting:
 - (a) the Deputy Chairperson shall preside at the meeting; or
 - (b) if the Deputy Chairperson is not present at the meeting, the registered members present at the meeting shall elect one of their number to preside at the meeting.

- (4) Subject to section 26A, at a general meeting a quorum is constituted by a majority of the registered members.
- (5) Subject to this Act, the procedure at general meetings shall be determined by the Council.

26 Voting on motions at general meetings

- (1) Subject to subsection (2) and section 26A, motions moved at a general meeting shall be determined by a majority of the votes of the registered members present at the meeting and voting.
- (2) A motion referred to in subsection 18(1) or (3) moved at a general meeting shall be taken to be passed only if it is supported by not less than two-thirds of the registered members present at the meeting and voting.
- (3) A motion referred to in subsection 18(3) shall not be moved at a general meeting unless notice of the motion was given with, and in the same manner as, the notice of the day, time and place of the meeting given in accordance with this Act.
- (4) The person presiding at a general meeting has a deliberative vote and, in the event of an equality of votes on a motion, other than a motion referred to in subsection 18(1) or (3), also has a casting vote.

26A Quorum at AGM

- (1) Where an annual general meeting fails because a quorum has not formed within 60 minutes of the notified time of the meeting:
 - (a) the Chairperson must reconvene the meeting in the same manner, for the same time, in the same place and for the same day of the following week, as the failed meeting; and
 - (b) at the reconvened meeting, a quorum is constituted by 40% of the registered members.
- (2) Where an annual general meeting convened under subsection (1) fails because a quorum has not formed within 60 minutes of the notified time of the meeting:

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- (a) the Chairperson must reconvene the meeting in the same manner, for the same time, in the same place and for the same day of the following week, as the failed meeting; and
 - (b) at the reconvened meeting, a quorum is constituted by 25% of the registered members.
- (3) Where it would be unreasonable or impracticable for a meeting to be reconvened at or on the time, day or place referred to in subsection (1) or (2) (as the case may be), the Chairperson may specify another time, day or place, provided the time and day specified are not earlier than the seventh day after the failed meeting, and the place is at, or in the proximity of the place referred to in subsection (1) or (2).
- (4) A reference in subsection (1) or (2) to *the same manner* means the manner in which the annual general meeting would normally be convened, except that notice of the meeting is to be given at least 6 days before the day of the meeting provided for in subsection (1), (2) or (3) (as the case may be).
- (5) This section does not affect the operation of subsections 26(2) to (4).

Division 4—Executive committee

27 Officers

There shall be:

- (a) a Chairperson of the Council;
- (b) a Deputy Chairperson of the Council; and
- (c) a Secretary of the Council.

28 Executive committee

- (1) There is established by this Act an executive committee of the Council.
- (2) The functions of the executive committee are:
 - (a) such functions as are conferred on it by a provision of this Act (other than this section), by the regulations or by the *Commonwealth Authorities and Companies Act 1997*; and
 - (b) to exercise the powers of the Council delegated to the executive committee under section 36.
- (3) The executive committee shall consist of:
 - (a) the Chairperson;
 - (b) the Deputy Chairperson;
 - (c) the Secretary; and
 - (d) 6 other members.

29 Executive members

- (1) A person is not eligible to be an executive member unless he or she is a registered member.
- (2) Subject to subsection (3), executive members shall be elected at annual general meetings.
- (3) Where a vacancy occurs in the office of an executive member earlier than 30 days before the next annual general meeting, the Chairperson, or, if there is no Chairperson, the Minister, shall

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convene a special general meeting and an election to fill that vacancy shall be held at that special general meeting.

- (4) Subject to this Act, an executive member holds his or her office from the time at which he or she is declared to have been elected to the office at an annual general meeting until the time, at the first or second annual general meeting, as the case may be, after that meeting, at which a person is declared to have been elected to that office.
- (5) An executive member is eligible for re-election.
- (6) The functions of the Secretary are:
 - (a) such functions as are conferred on the Secretary by a provision of this Act (other than this section) or by the regulations; and
 - (b) such functions as the Council or the executive committee determines to be necessary or desirable for the performance of the functions and the exercise of the powers of the Council.

30 Election of executive members

- (1) In this section, *office* means the office of an executive member.
- (2) An election to fill an office shall be conducted by:
 - (a) a person appointed, not less than 30 days before the election by a unanimous resolution of the executive members present at a meeting of the executive committee, to conduct the election; or
 - (b) if a person has not been appointed in accordance with paragraph (a) or a person so appointed is unable to conduct the election—the Registrar.
- (3) Where an election to fill an office is to be conducted at a general meeting, the notice required by this Act to be given in relation to the meeting shall identify, and call for nominations for, the office.
- (4) Where nominations are called for an office under subsection (3), 2 or more registered members may nominate another registered member for the office.

- (5) A nomination of a person for an office shall:
 - (a) be in writing;
 - (b) be signed by the person and by the persons nominating the person; and
 - (c) be given, at least 24 hours before the time of the general meeting at which the election is to take place, to the person conducting the election.
- (6) Where only one person eligible to be elected to an office is nominated for election to that office, that person shall be taken to be elected to that office.
- (7) Where 2 or more persons eligible for election to an office are nominated for election to that office, a secret ballot shall be conducted to determine which of those persons is to be elected to that office.
- (8) The persons eligible to vote in an election under subsection (7) at a general meeting are the registered members present at that meeting and each such registered member shall have one vote.
- (9) If, in an election of persons to an office, one of the candidates receives more votes than any other candidate, that candidate shall be taken to be elected to that office.
- (10) If, because 2 or more candidates have received the same number of votes at an election for an office, there is a failure of the election, one of those candidates shall be chosen by lot to fill the vacant office concerned and the candidate so chosen shall be taken to have been elected to that office.

31 Deputy Chairperson to act as Chairperson

- (1) The Deputy Chairperson shall act as the Chairperson:
 - (a) during a vacancy in the office of Chairperson; or
 - (b) during any period, or during all periods, when the Chairperson is absent from Australia, or is, for any reason, unable to perform the duties of the office of Chairperson.
- (2) While the Deputy Chairperson is acting as the Chairperson, the Deputy Chairperson has and may exercise all the powers, and shall perform all the duties, of the Chairperson.

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- (3) The validity of anything done by or in relation to the Deputy Chairperson purporting to act in the office of Chairperson under this section shall not be called in question on the ground that the occasion for the person to act had not arisen or had ceased.

32 Resignation

An executive member may resign his or her office by writing signed by him or her and delivered to the Registrar.

33 Removal of executive members

The Minister may, by writing signed by the Minister, remove an executive member from office:

- (a) for misbehaviour; or
- (b) for physical or mental incapacity.

34 Meetings of executive committee

- (1) The Chairperson:
 - (a) may, at any time, convene a meeting of the executive committee; and
 - (b) shall, on receipt of a written request signed by not fewer than 4 other executive members, convene a meeting of the executive committee.
- (2) The Minister may, at any time, convene a meeting of the executive committee.
- (3) The Chairperson shall preside at all meetings of the executive committee at which he or she is present.
- (4) Where the Chairperson is not present at a meeting of the executive committee:
 - (a) the Deputy Chairperson shall preside at the meeting; or
 - (b) if the Deputy Chairperson is not present at the meeting—the executive members present shall appoint one of their number to preside at the meeting.
- (5) At a meeting of the executive committee, 5 executive members constitute a quorum.

- (6) Questions arising at a meeting of the executive committee shall be determined by a majority of the votes of the executive members present and voting and the person presiding at the meeting has a deliberative vote and, in the case of an equality of votes, also has a casting vote.

Division 5—Miscellaneous

35 Committees

- (1) The Council may, from time to time, by resolution establish such committees as the Council considers necessary or desirable for the purposes of this Act.
- (2) A committee shall consist of not fewer than 4, nor more than 7, registered members.
- (3) Where the Chairperson is a member of a committee, the Chairperson shall convene, and preside at, meetings of the committee.
- (4) Where the Deputy Chairperson is a member of a committee and the Chairperson is not a member of the committee, the Deputy Chairperson shall convene, and preside at, meetings of the committee.
- (5) Where neither the Chairperson nor the Deputy Chairperson is a member of a committee, the committee shall elect a member of the committee to convene, and preside at, meetings of the committee.
- (6) A member of a committee may resign by writing signed by the member and given to the executive committee.

36 Delegation

- (1) The Council may, by resolution, either generally or as otherwise provided by the resolution, delegate to the executive committee or a committee established under section 35 all or any of its powers under this Act, other than 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 Council.
- (3) A delegation under this section does not prevent the exercise of a power by the Council.

Part V—Dealings with Aboriginal Land

37 Interpretation

- (1) In this Part, unless the contrary intention appears:

adopted, in relation to a child, means adopted:

- (a) under the law of a State or a Territory relating to the adoption of children; or
- (b) under the law of any other place relating to the adoption of children, if the validity of the adoption would be recognised under the law of any State or any Territory.

relative, in relation to a registered member, means any of the following, namely:

- (a) a parent or grandparent of the member or of his or her spouse;
- (b) a child or other lineal descendant of the member, of his or her spouse or of any other person specified in paragraph (a); and
- (c) the spouse of the member or of any other person specified in paragraph (a) or (b).

spouse, in relation to a person, includes a person who, although not legally married to the person, is living with the person as the person's spouse on a permanent and *bona fide* domestic basis.

- (2) For the purposes of this Part, Aboriginal Land in respect of which a lease has been granted shall be taken to be used for domestic purposes if, and only if:
- (a) in a case where a sub-lease of the land has not been granted, the person or persons who have the benefit of the lease usually reside on the land or intend to begin to usually reside on the land as soon as practicable; or
 - (b) in a case where a sub-lease of the land has been granted, the person or persons who have the benefit of the sub-lease usually reside on the land or intend to begin to usually reside on the land as soon as practicable.

Section 38

- (3) For the purposes of this Part, Aboriginal Land in respect of which a lease has been granted shall be taken to be used for business purposes if, and only if:
 - (a) in a case where a sub-lease of the land has not been granted, the person or persons who have the benefit of the lease conduct a business on the land or intend to begin to conduct a business on the land as soon as practicable; or
 - (b) in a case where a sub-lease of the land has been granted, the person or persons who have the benefit of the sub-lease conduct a business on the land or intend to begin to conduct a business on the land as soon as practicable.
- (4) Any relationship referred to in the definition of *relative* in subsection (1) includes a relationship traced through, or to, a person who is or was an adopted child, and, for that purpose, the relationship between an adopted child and his or her adoptive parent, or each of his or her adoptive parents, shall be deemed to be or to have been the natural relationship of child and parent.

38 Dealings in Aboriginal Land by Council

- (1) Except as provided by this Part, the Council shall not deal with or dispose of, or agree to deal with or dispose of, any estate or interest in Aboriginal Land.
- (2) Subject to this section, the Council may grant a lease of Aboriginal Land (other than land within the Booderee National Park or the Booderee Botanic Gardens):
 - (a) to a registered member or registered members for use for domestic purposes;
 - (b) to a registered member or registered members for use for business purposes;
 - (c) to a registered member or registered members for use for the benefit of the members, or of a significant number of the members, of the Community;
 - (d) with the consent in writing of the Minister—to a person other than a registered member, or to persons at least one of whom is not a registered member, for use for domestic purposes;

- (e) with the consent in writing of the Minister—to a person other than a registered member, or to persons at least one of whom is not a registered member, for use for business purposes; or
 - (f) to the Commonwealth or an Authority.
- (3) Except with the consent of the Minister, the term of a lease shall not exceed:
- (a) in the case of a lease to which paragraph (2)(a) applies—99 years;
 - (b) in the case of a lease to which paragraph (2)(b) or (c) applies—25 years; or
 - (c) in any other case—15 years.
- (4) The Council may grant a person a licence to use Aboriginal Land (other than land within the Booderee National Park or the Booderee Botanic Gardens).
- (5) Where the Council grants a lease of, or a licence to use, Aboriginal Land to the Commonwealth or to an Authority under this section, the rent and other amounts payable under the lease or licence shall be determined by the Minister.
- (6) The *Lands Acquisition Act 1989* does not apply to the grant of a lease under this section.

38A Agreement to lease land within Booderee National Park etc. to Director

If a notice is published in the *Gazette* under subsection 9A(3), the Council and the Director must, as soon as practicable after the notice is published, enter into an agreement under which the Council agrees to grant to the Director a lease of the land described in the notice so as to enable the Director to hold the land for the purposes of Division 4 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*.

38B Lease of Booderee National Park etc. to Director

- (1) As soon as practicable after a declaration by the Minister under subsection 9A(1) has come into force, the Council must grant to

Section 38C

the Director a lease of the land that has become Aboriginal Land under the declaration.

- (2) The terms and conditions of the lease are those set out in the agreement between the Council and the Director under section 38A.
- (3) Except with the consent of the Minister, the term of a lease must not be more than 99 years.

38C Minister may grant lease

If the Minister is satisfied that the Council has refused, or is unwilling, to grant to the Director a lease of Aboriginal Land within the Booderee National Park as required under the agreement entered into with the Director under section 38A, the Minister may, on behalf of the Council, grant the lease to the Director as set out in the agreement.

39 Surrender of Aboriginal Land

With the consent in writing of the Minister, the Council may surrender to the Crown the whole of its estate or interest in any part of Aboriginal Land.

40 Rights of existing occupiers

Where, immediately before land became Aboriginal Land, a registered member was in occupation of the land with the consent, express or implied, of the Commonwealth or of an Authority, the Council shall, in accordance with section 38, grant that person a lease of that land, being a lease:

- (a) the term of which:
 - (i) commences at the time at which the land became Aboriginal Land; and
 - (ii) is for the maximum period permitted for the lease by subsection 38(3);
- (b) the terms and conditions of which do not provide for any payment by the person in respect of a building or improvements erected on the land solely at the expense of the person; and

- (c) the terms and conditions of which may include terms and conditions approved by the Minister in writing under which the person is to pay to the Council in respect of buildings and improvements on the land (other than buildings or improvements to which paragraph (b) applies) amounts amounting in the aggregate to the value of those buildings and improvements at the time at which the land became Aboriginal Land.

41 Dealings in land leased from Council

- (1) Subject to this section, where the Council has granted a lease of Aboriginal Land to a person, that person, or a person who has been granted a sub-lease of the land under this section, may grant a sub-lease of the whole of the land.
- (2) Except with the consent in writing of the Minister, a person shall not grant a sub-lease of Aboriginal Land to a person other than a registered member, the Commonwealth or an Authority.
- (3) Except with the consent in writing of the Minister, a person shall not grant a sub-lease of Aboriginal Land for use for purposes other than the purposes for which the land is required to be used by the lease in respect of the land.

42 Devise of interests in Aboriginal Land etc.

- (1) Where a registered member has the benefit, or a share in the benefit, of a lease or sub-lease of Aboriginal Land for use for domestic purposes, that benefit or share is capable of transmission, by will or under a law relating to intestacy in force in the Territory, to a relative of the member.
- (2) Where the benefit, or a share in the benefit, of a lease or sub-lease of Aboriginal Land is transmitted because of subsection (1), the purposes for which the land is required to be used by the lease or sub-lease, as the case may be, shall not be taken to be altered.

Part VI—Miscellaneous

43 Laws relating to mining

Any law in force in the Territory authorising mining or exploration for minerals (including any law providing for rights known as miner's rights) does not apply in relation to Aboriginal Land so as to authorise the entry or remaining of a person on the land or the doing of any act by a person on the land.

44 Mining operations

If minerals, in their natural state and capable of being exploited for commercial purposes, are discovered on or below the surface of Aboriginal Land, operations for the recovery of the minerals shall not be carried on by a person otherwise than in accordance with an agreement to which the Commonwealth, the Council and that person are parties.

45 Exemption from rates etc.

The Council is not liable to pay in respect of Aboriginal Land any rates or other taxes imposed by or under a law in force in the Territory.

46 Application of laws of Territory to Aboriginal Land

This Act does not affect the application to Aboriginal Land of a law in force in the Territory to the extent that that law is capable of operating concurrently with this Act.

47 Protection of environment

- (1) In the performance of its functions the Council shall have regard to the preservation of the environment.
- (2) Where the Council proposes to carry out any works or projects that could have a significant effect on the environment, the Council

shall give the Minister particulars in writing of the works or project.

- (3) In this section, *environment* includes all aspects of the surroundings of a natural person, whether affecting the person as an individual or in the person's social groupings.

48 Significant sites

- (1) Where the Minister is satisfied that a place on Aboriginal Land is of special significance to Aboriginal members of the Community, the Minister may, by notice in writing published in the *Gazette* specifying that place, declare that that place is a significant place for the purposes of this Act.
- (2) Where a declaration under subsection (1) is in force in relation to a place, the Council may cause signs to be displayed at or near the place identifying the place and stating that entry into it by persons other than Aboriginal members of the Community is prohibited by this Act.
- (3) A person commits an offence if:
- (a) the person enters or remains in a place; and
 - (b) a declaration under subsection (1) is in force in relation to the place; and
 - (c) a sign is displayed in relation to the place; and
 - (d) the sign is displayed under subsection (2).

Penalty: \$1,000.

- (3A) Strict liability applies to paragraphs (3)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3B) Subsection (3) does not apply if:
- (a) the person enters or remains in the place:
 - (i) in performing functions under this Act; or
 - (ii) otherwise in accordance with this Act or a law in force in the Territory; or
 - (iii) with the consent of the Council; or
 - (b) the person is an Aboriginal member of the Community.

Section 49

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

- (4) A person commits an offence if:
- (a) the person does an act; and
 - (b) the act results in damage or disturbance to a place; and
 - (c) a declaration under subsection (1) is in force in relation to the place; and
 - (d) a sign is displayed in relation to the place; and
 - (e) the sign is displayed under subsection (2).

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (4A) Strict liability applies to paragraphs (4)(c) and (e).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) A person shall not be convicted of offences against subsections (3) and (4) in relation to the same act.
- (6) Without limiting the generality of subsection (4), a person shall be taken, for the purposes of that subsection, to have damaged or disturbed a place in relation to which a sign is displayed under subsection (2) if, by reason of any act done by that person, the special significance of the place to Aboriginal members of the Community has been adversely affected.
- (7) In any proceedings for the prosecution of a person for an offence against subsection (3) or (4), evidence that a sign stating that entry into the place by persons other than Aboriginal members of the Community is prohibited by this Act was displayed at or near that place at a particular time is evidence that the sign was so displayed at that time in accordance with subsection (2).
- (8) Nothing in this section shall be read as extending the right of access to any Aboriginal Land to which this section does not apply.

49 Public access

- (1) Subject to this section, where the Minister is satisfied that:

- (a) a place that forms part of Aboriginal Land was, immediately before it became part of such land, a place to which the public had access; and
 - (b) it is desirable that the public should continue to have access to that place;
- the Minister may, by notice in writing published in the *Gazette* specifying that place, declare that that place is a place to which this section applies.
- (2) The Minister shall not make a declaration under subsection (1) in relation to:
 - (a) a place to which a declaration under subsection 48(1) applies; or
 - (b) a place that is the subject of a lease to a person for use for domestic purposes within the meaning of Part V.
 - (3) The public shall have right of access to a place in respect of which a declaration under subsection (1) is in force (other than a place that has become a place referred to in subsection (2)), but that access is subject to the regulations.
 - (4) In this section, *place* includes a road, a path and a trail.

50 Registrar may inquire into grievances

Where a person who is or has been a registered member informs the Registrar that the person is aggrieved by action taken under this Act (other than action taken by the Minister or action taken in compliance with a judgment, order or decree of a court or of a person acting judicially) and requests the Registrar to inquire into that action, the Registrar may, in the Registrar's discretion, comply with that request and, if the Registrar considers it appropriate to do so, may inform the Minister or the Council of the result of the inquiries.

52 Annual report to be laid before meeting of Council

The executive committee must table a copy of the annual report on the Council at the next general meeting of the Council held after the deadline for the financial year to which the report relates. The report is prepared under section 9 of the *Commonwealth*

Section 52A

Authorities and Companies Act 1997 and the deadline is as specified in that section.

52A By-laws

- (1) In this section *Aboriginal Land* does not include land declared under section 9A.
- (2) The Council may make by-laws for or with respect to:
 - (a) economic enterprise on Aboriginal Land;
 - (b) cultural activities on Aboriginal Land;
 - (c) the management, access, conservation, fire protection, development and use of Aboriginal Land;
 - (d) the declaration of sacred or significant sites or other areas of significance to Aboriginal people on Aboriginal Land;
 - (e) the activities to be permitted on Aboriginal Land or any part of it;
 - (f) protection and conservation of flora or fauna found on Aboriginal Land;
 - (g) in relation to Aboriginal Land, the cutting, removal and sale of timber, the granting of revocable licences and the payment of royalties for timber to the Council;
 - (h) hunting, shooting and fishing on Aboriginal Land;
 - (i) control of visitors in, and charging fees (to be paid to the Council) for entrance to, Aboriginal Land;
 - (j) the regulation and control of motor traffic and parking on Aboriginal Land;
 - (k) the appointment of persons to enforce the by-laws, and the powers and duties of those persons.
- (3) The by-laws may apply any regulation made under the *Environment Protection and Biodiversity Conservation Act 1999* to Aboriginal Land, with whatever changes are needed for that purpose.
- (4) A by-law, in applying a regulation referred to in subsection (3) relating to an offence, must not change the penalty for that offence.

- (5) A by-law must not be inconsistent with a law of the Commonwealth or a law in force in the Territory, but a regulation referred to in subsection (3) may, in its application to Aboriginal Land, be inconsistent with a law in force in the Territory.
- (6) The by-laws may provide that a contravention of a by-law is an offence.
- (7) The regulations may provide, in respect of an offence against the by-laws, for the imposition of:
 - (a) if the offender is a natural person—a fine not exceeding 5 penalty units; or
 - (b) if the offender is a corporation—a fine not exceeding 25 penalty units.
- (8) The regulations may make provision for and in relation to enabling a person who is alleged to have committed an offence against the by-laws to pay to the Commonwealth, as an alternative to prosecution, a penalty not exceeding:
 - (a) in the case of a natural person—1 penalty unit; or
 - (b) in the case of a corporation—5 penalty units.
- (9) Subsections (7) and (8) do not apply in relation to an offence against a regulation referred to in subsection (3) in its application to Aboriginal Land.
- (10) If the Council makes a by-law, it shall, within 7 days after making it, give a copy of the by-law to the Minister.
- (11) Where the Minister receives a copy of any by-laws, the Minister shall:
 - (a) cause the by-laws to be notified in the *Gazette*; and
 - (b) cause a copy of the by-laws to be laid before each House of the Parliament within 15 sitting days of that House after receipt by the Minister.
- (12) By-laws take effect from the day on which they are notified in the *Gazette*, or, where a later date is specified in the by-laws, from that later date.

Section 53

- (13) If a copy of any by-laws is not laid before a House of the Parliament within 15 sitting days of that House after receipt by the Minister, the by-laws cease to have effect at the end of that period.
- (14) Where a copy of a by-law has been laid before a House of the Parliament under this section, the provisions of section 48 (other than subsections (1), (2) and (3)) and sections 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to the by-laws as if, in those provisions, references to regulations were references to by-laws and references to repeal were references to revocation.

53 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Before the Governor-General makes regulations for the purposes of section 49 in relation to a place that forms part of Aboriginal Land, the Minister must consider any representations made to the Minister by the Council or the executive committee in relation to public access to the place.

**Part VII—Amendment of Jervis Bay Territory
Acceptance Act 1915**

54 Principal Act

The *Jervis Bay Territory Acceptance Act 1915* is in this Part referred to as the Principal Act.

55 Amendment of the *Jervis Bay Territory Acceptance Act 1915*

[published separately]

Schedule—Definition of Schedule Land

Subsection 2(1)
(definition of *Schedule Land*)

All that piece of land in the Territory *commencing* at the south eastern most corner of Block 61 Jervis Bay Territory as shown in the plan catalogued in the Office of the Registrar of Titles Canberra as Deposited Plan 4480 and being a point at high water mark of the South Pacific Ocean and bounded *thence* on the south west by that high water mark generally in a north westerly direction being the south western boundary of Block 61 and of Block 60 as shown in the said Deposited Plan 4480 to the most westerly point of Block 60 and bounded *thence* by that high water mark generally in a westerly direction to a point at a bearing of 283 degrees 44 minutes 30 seconds distant 918.5 metres from that most westerly point of Block 60 and bounded *thence* on the north west by a line bearing north easterly 32 degrees 51 minutes 40 seconds distant 2142 metres to a corner post of a south west boundary fence of the Royal Australian Navy Airfield *thence* on the north east by that boundary fence bearing south easterly 138 degrees 20 minutes distant 683.2 metres and 138 degrees 11 minutes 10 seconds distant 451 metres and by that boundary fence and its prolongation bearing 136 degrees 37 minutes 30 seconds distant 1245.1 metres and *thence* on the south east by lines bearing 215 degrees 41 minutes 50 seconds distant 1114.1 metres and 215 degrees 59 minutes 40 seconds distant 769.6 metres to the point of commencement and containing an area of 403 hectares more or less, excluding the reserves of width 20 metres for the public roads known variously as Wreck Bay Road and Summercloud Bay Road and that part of Boorarla Road leading from Wreck Bay Road south easterly and south westerly to the boat ramp at Summercloud Bay.

Table of Acts**Notes to the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*****Note 1**

The *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* as shown in this compilation comprises Act No. 164, 1986 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions prior to 16 July 1999 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aboriginal Land Grant (Jervis Bay Territory) Act 1986</i>	164, 1986	18 Dec 1986	15 Jan 1987	
<i>Lands Acquisition (Repeal and Consequential Provisions) Act 1989</i>	21, 1989	20 Apr 1989	9 June 1989 (<i>see</i> s. 2 and <i>Gazette</i> 1989, No. S185)	—
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	150, 1989	27 Nov 1989	5 Mar 1990 (<i>see</i> <i>Gazette</i> 1990, No. S48)	—
<i>Aboriginal Land Grant and Management (Jervis Bay Territory) Legislation Amendment Act 1995</i>	103, 1995	29 Sept 1995	29 Sept 1995	Sch. 1 (item 1)
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 87-93): 1 Jan 1998 (<i>see</i> <i>Gazette</i> 1997, No. GN49) (a)	—
<i>Environmental Reform (Consequential Provisions) Act 1999</i>	92, 1999	16 July 1999	Schedule 4 (items 12-22) and Schedule 7 (items 1-4): 1 July 2000 (b)	Sch. 4 (items 16, 19, 22) and Sch. 7 (item 4): [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Act 2001</i>	112, 2001	17 Sept 2001	15 Oct 2001	S. 4 [see Table A]

Act Notes

- (a) The *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* was amended by Schedule 2 (items 87-93) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (a) The *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* was amended by Schedule 4 (items 12-15, 17, 18, 20 and 21) and Schedule 7 (items 1-3) only of the *Environmental Reform (Consequential Provisions) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences when the *Environment Protection and Biodiversity Conservation Act 1999* commences.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 2.....	am. No. 103, 1995; No. 152, 1997; No. 92, 1999
Note to s. 2.....	ad. No. 152, 1997
S. 3A	ad. No. 112, 2001
Note to s. 4(2).....	ad. No. 152, 1997
S. 4A	ad. No. 152, 1997
Ss. 6, 7.....	am. No. 103, 1995
Heading to s. 9A.....	am. No. 92, 1999
S. 9A	ad. No. 103, 1995 am. No. 92, 1999
S. 10.....	am. No. 103, 1995
Ss. 15, 16.....	am. No. 150, 1989
Ss. 25, 26.....	am. No. 103, 1995
S. 26A	ad. No. 103, 1995
S. 28.....	am. No. 152, 1997
S. 29.....	am. No. 103, 1995
S. 38.....	am. No. 21, 1989; No. 103, 1995; No. 92, 1999
Heading to s. 38A.....	am. No. 92, 1999
S. 38A	ad. No. 103, 1995 am. No. 92, 1999
Heading to s. 38B.....	am. No. 92, 1999
S. 38B	ad. No. 103, 1995
S. 38C	ad. No. 103, 1995 am. No. 92, 1999
S. 48	am. No. 112, 2001
S. 51.....	rep. No. 152, 1997
S. 52.....	rs. No. 152, 1997
S. 52A	ad. No. 103, 1995 am. No. 92, 1999
S. 53.....	am. No. 92, 1999

Table A

Table A

Application, saving or transitional provisions

Environmental Reform (Consequential Provision) Act 1999 (No. 92, 2000)

Schedule 4

16 Saving

To avoid doubt, the amendments of section 9A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* by this Schedule do not affect the validity of a declaration made under that section before the amendments.

19 Application

The amendments of section 38A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* made by this Schedule do not require the Council and the Director to enter into an agreement relating to land described in a notice published under subsection 9A(3) of that Act if the Council and the Director had made an agreement relating to that land under that section before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.

Note: Part 2 of this Schedule converts an agreement between the Council and the Director into an agreement between the Council and the Commonwealth.

22 Saving of by-laws applying regulations

A by-law that:

- (a) was made under section 52A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* before the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) applied a regulation made under the *National Parks and Wildlife Conservation Act 1975*;

continues in force despite the amendment of subsection 52A(3) of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* by this Schedule.

Schedule 7

4 Transitional—regulations

- (1) Regulations described in subsection 53(2) of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* made under that Act and in force immediately before the commencement of this item have effect after that commencement as if they had been made under that section as amended by this Act.
- (2) Subitem (1) does not prevent the amendment of regulations described in that subitem.

*Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation
Amendment (Application of Criminal Code) Act 2001
(No. 112, 2001)*

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

