



Aboriginal Land Grant (Jervis Bay Territory) Act 1986

No. 164 of 1986

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Interpretation
3. Act to bind Crown

PART II—ESTABLISHMENT, CONSTITUTION, FUNCTIONS AND POWERS OF COUNCIL

4. Establishment of Council
5. Constitution of Council
6. Functions of Council
7. Powers of Council

PART III—GRANT OF LAND TO COUNCIL

8. Initial grant of land
9. Later grants of land
10. Vesting of land
11. Registration of vesting
12. Buildings, &c., vest automatically
13. Occupation by Commonwealth, &c.
14. Reservation of minerals

PART IV—ADMINISTRATION OF COUNCIL

Division 1—Registrar of Council

15. Registrar of Council
16. Delegation by Registrar

TABLE OF PROVISIONS—*continued*

Section

Division 2—Register of members of Council

- 17. Register
- 18. Variation of Register
- 19. Particulars on Register, &c.

Division 3—Meetings of Council

- 20. First annual general meeting
- 21. Convening of subsequent annual general meetings
- 22. Purpose of annual general meetings
- 23. Convening of special general meetings
- 24. Purpose of special general meetings
- 25. Procedure at general meetings
- 26. Voting on motions at general meetings

Division 4—Executive committee

- 27. Officers
- 28. Executive committee
- 29. Executive members
- 30. Election of executive members
- 31. Deputy Chairperson to act as Chairperson
- 32. Resignation
- 33. Removal of executive members
- 34. Meetings of executive committee

Division 5—Miscellaneous

- 35. Committees
- 36. Delegation

PART V—DEALINGS WITH ABORIGINAL LAND

- 37. Interpretation
- 38. Dealings in Aboriginal Land by Council
- 39. Surrender of Aboriginal Land
- 40. Rights of existing occupiers
- 41. Dealings in land leased from Council
- 42. Devise of interest in Aboriginal Land, &c.

PART VI—MISCELLANEOUS

- 43. Laws relating to mining
- 44. Mining operations
- 45. Exemption from rates, &c.
- 46. Application of laws of Territory to Aboriginal Land
- 47. Protection of environment
- 48. Significant sites
- 49. Public access
- 50. Registrar may inquire into grievances
- 51. Financial records
- 52. Annual statements
- 53. Regulations

PART VII—AMENDMENT OF JERVIS BAY TERRITORY ACCEPTANCE
ACT 1915

- 54. Principal Act
- 55. Repeal of section 5 and insertion of new section—
5. Disposal of Crown Lands

SCHEDULE



Aboriginal Land Grant (Jervis Bay Territory) Act 1986

No. 164 of 1986

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

[Assented to 18 December 1986]

[Date of commencement 15 January 1987]

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 Land Grant (Jervis Bay Territory) Act 1986*.

Interpretation

2. (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;

Aboriginal Land Grant (Jervis Bay Territory) No. 164, 1986

- “annual general meeting” means a meeting of the Council convened under section 20 or 21;
- “Authority” means an Authority established by or under a law of the Commonwealth or a law in force in the Territory;
- “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;
- “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;
- “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.

- (2) For the purposes of this Act—
- (a) the Chairperson may be referred to as the Chairman or the Chairwoman, as the case requires; and
 - (b) the Deputy Chairperson may be referred to as the Deputy Chairman or the Deputy Chairwoman, as the case requires.

Act to bind Crown

3. (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.

PART II—ESTABLISHMENT, CONSTITUTION, FUNCTIONS AND POWERS OF COUNCIL

Establishment of Council

4. (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.

(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.

Constitution of Council

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

Functions of Council

6. 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;
- (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.

Powers of Council

7. (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 sub-section (1), the powers of the Council referred to in sub-section (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.

(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 \$1,000, or, if a higher amount is prescribed, that amount.

PART III—GRANT OF LAND TO COUNCIL

Initial grant of land

8. (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 sub-section (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 sub-section (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 sub-section (3) does not affect the operation of sub-section (1).

Later grants of land

9. (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 sub-section (1)—

- (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 sub-section (2), may, in pursuance of a motion upon notice, pass a resolution disallowing the instrument.

Aboriginal Land Grant (Jervis Bay Territory) No. 164, 1986

(4) Where—

- (a) a notice referred to in sub-section (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 sub-section (3) disallowing an instrument made under sub-section (1); and
- (b) the instrument has not been deemed to have been disallowed under sub-section (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 sub-section (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 sub-section (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 sub-section (7) does not affect the operation of sub-section (5).

Vesting of land

10. Where, because of section 8 or 9, land becomes Aboriginal Land, that land (including all rights, title and interests in that land) is vested in the Council without any conveyance, transfer or assignment.

Registration of vesting

11. 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.

Buildings, &c., vest automatically

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

Occupation by Commonwealth, &c.

13. (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 sub-section (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 sub-section (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.

Reservation of minerals

14. 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

Registrar of Council

15. (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 who is appointed by the Minister in writing.

Delegation by Registrar

16. (1) The Registrar may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Registrar, delegate to 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, 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 sub-section (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

Register

17. (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 sub-section (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.

Variation of Register

18. (1) Subject to sub-section (2), where, at a general meeting, a motion that a specified person is an Aboriginal member of the Community is passed in accordance with sub-section 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 sub-section (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 sub-section 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
- (b) has not attained the age of 18 years,

the Secretary shall remove the name of that person from the Register.

Particulars on Register, &c.

19. (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

First annual general meeting

20. (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.

Convening of subsequent annual general meetings

21. (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 sub-section (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.

Purpose of annual general meetings

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

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

Convening of special general meetings

23. (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.

Purpose of special general meetings

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

Procedure at general meetings

25. (1) Without limiting sub-sections 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) 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.

Voting on motions at general meetings

26. (1) Subject to sub-section (2), 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 sub-section 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 sub-section 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 sub-section 18 (1) or (3), also has a casting vote.

Division 4—Executive Committee

Officers

27. There shall be—

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

Executive committee

28. (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) or by the regulations; 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.

Executive members

29. (1) A person is not eligible to be an executive member unless he or she is a registered member.

(2) Subject to sub-section (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 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 a general meeting until the time, at the next annual general meeting 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.

Election of executive members

30. (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 sub-section (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 sub-section (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.

Deputy Chairperson to act as Chairperson

31. (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.

(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.

Resignation

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

Removal of executive members

33. 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.

Meetings of executive committee

34. (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

Committees

35. (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.

Delegation

36. (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

Interpretation

37. (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.

(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

Aboriginal Land Grant (Jervis Bay Territory) No. 164, 1986

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.

Dealings in Aboriginal Land by Council

38. (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—

- (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.

(5) Where the Council grants a lease of, or a licence to use, Aboriginal Land to the Commonwealth or to an Authority, the rent and other amounts payable under the lease or licence shall be determined by the Minister.

Surrender of Aboriginal Land

39. 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.

Rights of existing occupiers

40. 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.

Dealings in land leased from Council

41. (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.

Devise of interests in Aboriginal Land, &c.

42. (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 sub-section (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

Laws relating to mining

43. 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.

Mining operations

44. 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.

Exemption from rates, &c.

45. 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.

Application of laws of Territory to Aboriginal Land

46. 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.

Protection of environment

47. (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.

Significant sites

48. (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 sub-section (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) Except in the performance of functions under this Act or otherwise in accordance with this Act or a law in force in the Territory or with the consent of the Council, a person, other than an Aboriginal member of the Community, shall not enter or remain in any place in relation to which a sign is displayed under sub-section (2).

Penalty: \$1,000.

(4) A person shall not damage or disturb any place in relation to which a sign is displayed under sub-section (2).

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

(5) A person shall not be convicted of offences against sub-sections (3) and (4) in relation to the same act.

(6) Without limiting the generality of sub-section (4), a person shall be taken, for the purposes of that sub-section, to have damaged or disturbed a place in relation to which a sign is displayed under sub-section (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 sub-section (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 sub-section (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.

Public access

49. (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 sub-section (1) in relation to—

- (a) a place to which a declaration under sub-section 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 sub-section (1) is in force (other than a place that has become a place referred to in sub-section (2)), but that access is subject to the regulations.

(4) In this section, "place" includes a road, a path and a trail.

Registrar may inquire into grievances

50. 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.

Financial records

51. The Council shall cause to be kept proper accounts and records of the financial transactions and affairs of the Council.

Annual statements

52. (1) The Council shall, as soon as practicable after the end of each financial year, prepare and furnish to the Minister financial statements in respect of that year in such form as the Minister approves and a copy of the report on those statements prepared in accordance with sub-section (2).

(2) Financial statements referred to in sub-section (1) shall be audited by a person having prescribed qualifications and appointed by the Council for the purpose, who shall report to the Council—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records; and
- (c) as to such other matters arising out of the statements as the person so appointed considers should be reported to the Council.

Regulations

53. (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) The power of the Governor-General to make regulations for the purposes of section 49 in relation to a place that forms part of Aboriginal Land shall be exercised only on advice of the Executive Council, being advice that has taken into consideration any representations made to the

Aboriginal Land Grant (Jervis Bay Territory) No. 164, 1986

Minister by the Council or by the executive committee in relation to public access to that place.

**PART VII—AMENDMENT OF JERVIS BAY TERRITORY
ACCEPTANCE ACT 1915**

Principal Act

54. The *Jervis Bay Territory Acceptance Act 1915*¹ is in this Part referred to as the Principal Act.

55. Section 5 of the Principal Act is repealed and the following section is substituted:

Disposal of Crown Lands

“5. Subject to the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*, Crown lands in the territory shall not be sold or disposed of for any estate of freehold.”.

SCHEDULE

Sub-section 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.

NOTE

1. No. 19, 1915, as amended. For previous amendments, see No. 70, 1955; No. 216, 1973; and No. 37, 1976.

[*Minister's second reading speech made in—
House of Representatives on 29 May 1986
Senate on 13 June 1986*]