



Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989

Act No. 149 of 1989 as amended

This compilation was prepared on 24 February 2010
taking into account amendments up to Act No. 4 of 2010

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

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to establish an Australian Institute of Aboriginal and Torres Strait Islander Studies, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989*.

2 Commencement [see Note 1]

This Act commences on the commencement of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

Note: The *Aboriginal and Torres Strait Islander Commission Act 1989* was renamed the *Aboriginal and Torres Strait Islander Act 2005*. See item 3 of Schedule 1 to the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*.

3 Interpretation

In this Act, unless the contrary intention appears:

Aboriginal and Torres Strait Islander studies means research and study in relation to aspects of the culture, history and society of Aboriginal persons or Torres Strait Islanders.

Aboriginal person means a person of the Aboriginal race of Australia.

appointed Councillor means a Councillor referred to in paragraph 12(1)(b) or (c).

Council means the Council of the Institute referred to in section 12.

Council Chairperson means the Chairperson of the Council appointed under subsection 14(1).

Councillor means a member of the Council.

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elected Councillor means a Councillor referred to in paragraph 12(1)(a).

Institute means the Australian Institute of Aboriginal and Torres Strait Islander Studies established by section 4.

Institute rules means rules made by the Council under section 48.

Principal means the Principal of the Institute referred to in section 24.

Research Advisory Committee means the Research Advisory Committee of the Institute referred to in section 31.

Torres Strait Islander means a descendant of an indigenous inhabitant of the Torres Strait Islands.

TSRA means the Torres Strait Regional Authority established by Part 3A of the *Aboriginal and Torres Strait Islander Act 2005*.

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part 2.5 of the *Criminal Code* (which deals with corporate criminal responsibility) is excluded from applying to offences against this Act by subsection 47(10).

Part 2—Australian Institute of Aboriginal and Torres Strait Islander Studies

4 Australian Institute of Aboriginal and Torres Strait Islander Studies

- (1) An Australian Institute of Aboriginal and Torres Strait Islander Studies is established.
- (2) The Institute:
 - (a) is a body corporate;
 - (b) shall have a seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Institute. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (3) The seal of the Institute shall be kept in such custody as the Council directs and shall not be used except as authorised by the Council.
- (4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Institute appearing on a document and shall presume that it was duly affixed.

Part 3—Functions of Institute

5 Functions of Institute

The Institute has the following functions:

- (a) to undertake and promote Aboriginal and Torres Strait Islander studies;
- (b) to publish the results of Aboriginal and Torres Strait Islander studies and to assist in the publication of the results of such studies;
- (c) to conduct research in fields relevant to Aboriginal and Torres Strait Islander studies and to encourage other persons or bodies to conduct such research;
- (d) to assist in training persons, particularly Aboriginal persons and Torres Strait Islanders, as research workers in fields relevant to Aboriginal and Torres Strait Islander studies;
- (e) to establish and maintain a cultural resource collection consisting of materials relating to Aboriginal and Torres Strait Islander studies;
- (f) to encourage understanding, in the general community, of Aboriginal and Torres Strait Islander societies;
- (g) such other functions as are conferred on the Institute by this Act;
- (h) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

6 Powers of Institute

- (1) The Institute has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the Institute under subsection (1) include, but are not limited to, the following powers:
 - (a) to accept gifts, grants, bequests and devises made to it;
 - (b) to act as trustee of money and other property vested in it on trust.

- (3) In spite of anything contained in this Act, any money or other property held by the Institute on trust shall be dealt with in accordance with the powers and duties of the Institute as trustee.

Part 4—Members of Institute

7 Members of Institute

- (1) The following persons are, subject to this Part, members of the Institute:
 - (a) all persons who, immediately before the commencement of this section, were members of the Australian Institute of Aboriginal Studies;
 - (b) all persons who, immediately before that commencement, were listed in a register maintained by the Australian Institute of Aboriginal Studies as associate members or corresponding members of that Institute;
 - (c) such other persons as are appointed by the Council to be members of the Institute.
- (2) The Council shall not appoint a person to be a member of the Institute unless:
 - (a) the person has applied for membership of the Institute in accordance with the Institute rules;
 - (b) the person has a demonstrated interest in Aboriginal and Torres Strait Islander studies;
 - (c) the Research Advisory Committee has advised the Council whether or not the Committee considers the person should be appointed; and
 - (d) the Council has considered the advice of the Committee.

8 Period of membership

- (1) A person who becomes a member of the Institute because of paragraph 7(1)(a), or because of an appointment under paragraph 7(1)(c), continues to be a member because of that paragraph or appointment for a period of 5 years.
- (2) A person who becomes a member of the Institute because of paragraph 7(1)(b) continues to be a member because of that paragraph:

- (a) in the case of a person listed as an associate member of the Australian Institute of Aboriginal Studies—for a period equal to so much of the person’s term as an associate member as remained unexpired at the commencement of this section; and
 - (b) in the case of a person listed as a corresponding member of the Australian Institute of Aboriginal Studies—for a period of 5 years.
- (3) Nothing in this section prevents the Council from appointing as a member of the Institute a person who has previously been a member of the Institute.

9 Resignation

A member of the Institute may resign by writing signed by him or her and sent to the Principal.

10 Register of members

The Principal shall establish and maintain a register of the members of the Institute.

11 Rights of members

Membership of the Institute does not confer any rights or powers other than those expressly conferred by this Act or by the Institute rules.

Part 5—Council of Institute

Division 1—Constitution of Council

12 Constitution of Council

- (1) There shall be a Council of the Institute consisting of the following members:
 - (a) 4 persons elected by the members of the Institute in accordance with the Institute rules, being persons who are themselves members of the Institute;
 - (b) one person appointed by the Minister, being a person who is a Torres Strait Islander;
 - (c) 4 other persons appointed by the Minister, being persons who are Aboriginal persons or Torres Strait Islanders.
- (2) All the Councillors hold office on a part-time basis.

13 Responsibilities of Council

It is the responsibility of the Council to ensure the proper and efficient performance of the functions of the Institute and to determine the policy of the Institute with respect to any matter.

14 Chairperson and Deputy Chairperson of Council

- (1) The Minister shall appoint a Chairperson and a Deputy Chairperson of the Council from among the Councillors.
- (2) The Councillor who is the Chairperson or the Deputy Chairperson of the Council ceases to be the Chairperson or the Deputy Chairperson of the Council, as the case may be, if he or she ceases to be a Councillor.

Division 2—Administrative provisions

15 Term of office

- (1) An appointed Councillor holds office for such period, not exceeding 4 years, as is specified in the instrument of appointment.
- (2) An elected Councillor holds office for such period, not exceeding 4 years, as is determined in accordance with the Institute rules.

16 Remuneration and allowances

A Councillor is entitled to remuneration and allowances in accordance with section 45.

17 Leave of absence

- (1) The Minister may grant a Councillor leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.
- (2) The Minister may delegate, to the Council Chairperson, the power under subsection (1) to grant leave of absence to the other Councillors.

18 Acting appointments

- (1) The Deputy Chairperson of the Council shall act as the Council Chairperson:
 - (a) during a vacancy in the office of Council Chairperson, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Council Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) The Minister may appoint a person to act in the office of an appointed Councillor:
 - (a) during a vacancy in that office, whether or not an appointment has previously been made to the office; or

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- (b) during any period, or during all periods, when the appointed Councillor is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (3) A person appointed to act during a vacancy in the office of an appointed Councillor under subsection (2):
 - (a) shall not continue so to act for more than 6 months; and
 - (b) shall not be re-appointed to act during that vacancy for a period that would be continuous with the period of 6 months from the date when the person first started acting during that vacancy.
- (4) The Minister shall not appoint a person to act in an office of appointed Councillor unless, having regard to section 12, the person could be appointed to that office.
- (5) The Minister may appoint a member of the Institute to act in the office of an elected Councillor during any period, or during all periods, when the elected Councillor is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (6) The appointment of a person to act in the office of a Councillor who is also the Chairperson or Deputy Chairperson of the Council does not constitute an appointment of the person to act as the Chairperson or Deputy Chairperson, as the case may be.
- (7) Anything done by or in relation to a person purporting to act under an appointment made under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen;
 - (b) there was a defect or irregularity in connection with the appointment;
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

20 Resignation

A Councillor may resign by writing signed by him or her and sent to the Minister.

21 Termination of membership of Council

- (1) The Minister may terminate a person's membership of the Council because of misbehaviour or physical or mental incapacity.
- (2) If a member of the Council:
 - (a) is absent, except on leave granted under section 17, from 3 consecutive meetings of the Council; or
 - (b) fails, without reasonable excuse, to comply with section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;the Minister shall terminate the person's membership of the Council.
- (3) An elected Councillor ceases to be a Councillor if he or she ceases to be a member of the Institute.

22 Other terms and conditions

A Councillor holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice in writing published in the *Gazette*.

Division 3—Operations of Council

23 Meetings of Council

- (1) The Council Chairperson shall convene such meetings of the Council as, in the Chairperson's opinion, are necessary for the efficient performance of the Council's responsibilities.
- (2) The Minister may, at any time, convene a meeting of the Council.
- (3) The Council Chairperson shall convene a meeting of the Council upon receipt of a written request for a meeting signed by at least 4 Councillors.
- (4) At a meeting of the Council, a quorum is constituted by 5 Councillors.
- (5) Where:
 - (a) a Councillor who is present at a meeting is required by section 19 not to be present during the deliberations, or to take part in any decision, of the Council with respect to a particular matter; and
 - (b) when the Councillor leaves the meeting there is no longer a quorum present;the Councillors remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.
- (6) The Council Chairperson shall preside at all meetings of the Council at which he or she is present.
- (7) If the Council Chairperson is not present at a meeting of the Council:
 - (a) if the Deputy Chairperson of the Council is present, the Deputy Chairperson of the Council shall preside at the meeting; and
 - (b) in any other case, the Councillors present shall elect one of their number to preside at the meeting.
- (8) Questions arising at a meeting of the Council shall be determined by a majority of the votes of the Councillors present and voting.

- (9) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (10) The Council may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

Part 6—Principal

24 Principal

- (1) There shall be a Principal of the Institute who shall be appointed by the Council.
- (2) The Principal shall, subject to subsection (3), manage the day-to-day administration of the Institute.
- (3) The Principal shall, in managing the administration of the Institute and in exercising any powers conferred on the Principal by this Act, act in accordance with any policies determined, and any directions given, by the Council in writing.

25 Period of appointment

- (1) The Principal holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment.

26 Remuneration and allowances

The Principal is entitled to remuneration and allowances in accordance with section 45.

26A Recreation leave

The Principal is entitled to recreation leave in accordance with section 45A.

27 Resignation

The Principal may resign by writing signed by him or her and sent to the Council.

28 Other terms and conditions

The Principal holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Council by notice in writing published in the *Gazette*.

Part 7—Staff

29 Staff

- (1) Subject to section 30, the staff required to assist the Institute in the performance of its functions shall be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Principal and the APS employees assisting the Principal together constitute a Statutory Agency; and
 - (b) the Principal is the Head of that Statutory Agency.

30 Consultants

- (1) The Principal may, on behalf of the Institute, engage as consultants to the Institute persons having suitable qualifications and experience.
- (2) The terms and conditions on which consultants are engaged shall be as determined by the Council by notice published in the *Gazette*.

Part 8—Research Advisory Committee

31 Research Advisory Committee

- (1) There shall be a Research Advisory Committee of the Institute consisting of the following members:
 - (a) 3 members of the Council appointed by the Council;
 - (b) 8 members of the Institute elected by the members of the Institute in accordance with the Institute rules;
 - (c) the Principal.
- (2) A member who was appointed under paragraph (1)(a) ceases to be a member if he or she ceases to be a Councillor.
- (3) A person elected as a member as mentioned in paragraph (1)(b) ceases to be a member of the Research Advisory Committee if he or she ceases to be a member of the Institute.

32 Functions of Research Advisory Committee

The Research Advisory Committee has the following functions:

- (a) to assess applications for research grants made to the Institute and to make recommendations to the Council in relation to such applications;
- (b) to advise the Council in relation to research matters;
- (c) to advise the Council in relation to applications for membership of the Institute.

33 Remuneration and allowances

A member of the Research Advisory Committee is entitled to remuneration and allowances in accordance with section 45.

34 Resignation

A member of the Research Advisory Committee may resign by writing signed by him or her and sent to the Council.

35 Other terms and conditions

A member of the Research Advisory Committee holds office for such period, and on such terms and conditions in respect of matters not provided for by this Act, as are determined by the Council by notice published in the *Gazette*.

Part 9—Finance

36 Money payable to the Institute

- (1) There is payable to the Institute such money as is appropriated by the Parliament for the purposes of the Institute.
- (2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money so appropriated is to be paid to the Institute.

38 Application of money held by Institute

- (1) Money held by the Institute shall be applied only:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Institute in the performance of its functions and the exercise of its powers;
 - (b) in payment of any remuneration and allowances payable to any person under this Act or any other Act; and
 - (c) in making any other payments which the Institute is authorised or required to make under this Act.
- (2) Subsection (1) does not prevent investment of surplus money of the Institute under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

39 Exemption from taxation

The Institute is not subject to taxation under any law of the Commonwealth or of a State or Territory.

Part 10—Miscellaneous

41 Certain information not to be disclosed

- (1) Where information or other matter has been deposited with the Institute under conditions of restricted access, the Institute or the Council shall not disclose that information or other matter except in accordance with those conditions.
- (2) The Institute or the Council shall not disclose information or other matter held by it (including information or other matter covered by subsection (1)) if that disclosure would be inconsistent with the views or sensitivities of relevant Aboriginal persons or Torres Strait Islanders.

42 Informing TSRA about general conduct of Institute

- (2) The Council may from time to time inform the TSRA about the general conduct of the activities of the Institute.
- (3) Where the Council receives a request from the TSRA for information about the activities of the Institute, the Council may give to the TSRA, as the case may be, such information relating to the activities of the Institute as the Council thinks appropriate.

43 Minister may ask for advice

- (1) The Minister or the TSRA may, from time to time, ask the Council to provide advice on aspects of the culture, history and society of Aboriginal persons and Torres Strait Islanders.
- (2) The Council:
 - (a) shall comply with a request under subsection (1) made by the Minister; and
 - (b) may comply with a request under subsection (1) made by the TSRA.

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- (3) The Council may, in response to a request under subsection (1):
 - (a) prepare its advice having regard only to any relevant information that is already in the possession of the Institute; or
 - (b) if the Council considers it appropriate to do so—arrange for the conduct of research into the matter to which the request relates by or on behalf of the Institute, and prepare its advice having regard to that research and to any other relevant information that is otherwise in the possession of the Institute.

44 Delegation to Principal or staff

The Institute may, by writing under its seal, delegate any or all of its functions and powers to the Principal or to a member of the staff of the Institute.

45 Remuneration and allowances

- (1) The following provisions apply in relation to the holder of an office who is, by a provision of this Act, entitled to remuneration and allowances in accordance with this section:
 - (a) the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal;
 - (b) if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined, in writing, by the Minister;
 - (c) the holder of the office shall be paid such allowances as are determined, in writing, by the Minister.
- (2) A determination by the Minister for the purposes of paragraph (1)(b) or (c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

45A Recreation leave

The holder of an office who is, by a provision of this Act, entitled to recreation leave in accordance with this section is entitled to such recreation leave as is determined by the Remuneration Tribunal.

47 Conduct of directors, servants and agents

- (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

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- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to:
- (a) an offence created by the regulations; and
 - (b) an offence created by:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code*; or
 - (iii) section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the *Criminal Code*;being an offence that relates to this Act or the regulations.
- (10) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.
- Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

48 Rules

- (1) The Council may make rules, not inconsistent with this Act or the regulations, prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the Institute rules; or
 - (b) necessary or convenient to be prescribed by the Institute rules in connection with the conduct of the affairs of the Institute.
- (2) Rules made under this section are not statutory rules within the meaning of the *Statutory Rules Publication Act 1903*.

49 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all 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) Without limiting the generality of subsection (1), the regulations may:
 - (a) prescribe fees payable in respect of any matter under this Act; and
 - (b) provide penalties for breaches of the regulations not exceeding:
 - (i) in the case of a natural person—\$1,000; or
 - (ii) in the case of a body corporate—\$5,000.

Part 11—Consequential and transitional provisions

Division 1—Preliminary

50 Interpretation

In this Part, unless the contrary intention appears:

assets means property of every kind, and, without limiting the generality of the foregoing, includes:

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

authorised officer means the Minister, the Principal or a member of the staff of the new Institute authorised by the Minister in writing for the purposes of this Part.

commencement means the commencement of this Act.

liabilities means liabilities of every kind, and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

new Institute means the Australian Institute of Aboriginal and Torres Strait Islander Studies.

old Institute means the Australian Institute of Aboriginal Studies.

old Institute instrument means an instrument:

- (a) to which the old Institute was a party;
- (b) that was given to or in favour of the old Institute;
- (c) in which a reference is made to the old Institute; or

(d) under which money is, or may become, payable, or any other property is to be, or may become liable to be, transferred, to or by the old Institute;
being an instrument subsisting immediately before the commencement.

Part 11 Consequential and transitional provisions

Division 2 Repeal

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Division 2—Repeal

51 Repeal

The Australian Institute of Aboriginal Studies Act 1964 is repealed.

Division 3—Transitional provisions

52 Interim Council

- (1) This section applies in spite of anything in Part 5.
- (2) The persons who, immediately before the commencement, were members of the Council of the old Institute hold office as members of the Council of the new Institute during the transitional period.
- (3) Appointments of persons to the Council made under paragraphs 12(1)(b) and (c) during the transitional period take effect at the end of the transitional period.
- (4) If, immediately after the transitional period, not all positions on the Council have been filled, then, until persons have been appointed to all positions on the Council, the quorum at a meeting of the Council is constituted by a majority of the number of members of the Council holding office on the day of the meeting.
- (5) In this section:

transitional period means the period starting at the commencement and ending:

- (a) 3 months later; or
 - (b) when the results of the first elections held under paragraph 12(1)(a) are declared;
- whichever is earlier.

53 First Principal of the Institute

The following provisions apply in relation to the first Principal of the Institute in spite of anything to the contrary in Part 6:

- (a) the first Principal shall be the person who, immediately before the commencement, held the office of Principal of the Australian Institute of Aboriginal Studies;
- (b) that person commences to hold the office of Principal at the commencement as if he or she had been appointed to that office by the Council for a period (in this section called the *notional appointment period*) equal to so much of the person's term as Principal of the Australian Institute of

Section 54

Aboriginal Studies as remained unexpired immediately before the commencement;

- (c) that person is, as holder of the office of Principal during the notional appointment period, entitled to remuneration and allowances in accordance with section 45;
- (d) except as provided by paragraph (c), the terms and conditions applicable to that person as holder of the office of Principal during the notional appointment period are the same as the terms and conditions that were applicable to the person as holder of the office of Principal of the Australian Institute of Aboriginal Studies immediately before the commencement.

54 Transfer of assets and liabilities of old Institute

- (1) At the commencement, the assets and liabilities of the old Institute become assets and liabilities of the new Institute.
- (2) The following provisions apply to assets and liabilities that have become assets and liabilities of the new Institute because of subsection (1):
 - (a) an asset that was, immediately before the commencement, held by the old Institute on trust shall, after the commencement, be held by the new Institute on trust and subject to the terms of the trust on which the asset was so held by the old Institute;
 - (b) liabilities of the old Institute to make payments shall, after the commencement, be taken to be liabilities incurred by the new Institute in the performance of its functions and the exercise of its powers.

55 Old Institute instruments

An old Institute instrument continues to have effect after the commencement but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring after the commencement, has effect as if a reference in the instrument to the old Institute were a reference to the new Institute.

56 Pending proceedings

Where, immediately before the commencement, proceedings to which the old Institute was a party were pending in any court, the new Institute is, after the commencement, substituted for the old Institute as a party to the proceedings and has the same rights in the proceedings as the old Institute had.

57 Research Advisory Committee

- (1) A member of the Research Advisory Committee appointed under paragraph 31(1)(a) during the transitional period ceases to hold office as a member of the Research Advisory Committee at the end of the transitional period.
- (2) Until persons have been appointed or elected to all the positions on the Research Advisory Committee covered by paragraphs 31(1)(a) and (b), the quorum at a meeting of the Research Advisory Committee is constituted by a majority of the number of members of the Research Advisory Committee holding office on the day of the meeting.
- (3) In this section:

transitional period has the same meaning as it has in section 52.

59 Certificates with respect to assets, liabilities and instruments

- (1) An authorised officer may, by writing, certify that:
 - (a) an asset or liability specified or described in the certificate became, because of section 54, an asset or liability of the new Institute; or
 - (b) an instrument specified or described in the certificate is an old Institute instrument.
- (2) A certificate under subsection (1) is, in all courts and for all purposes, evidence of the matter stated in the certificate.
- (3) Where a document purports to be a certificate under subsection (1) signed by a person purporting to be an authorised officer, judicial notice shall be taken of the signature of the person and of the fact that the person is or was an authorised officer.

Section 60

60 State or Territory officer may act on certificate

Where:

(a) under section 54, an estate or interest in land becomes an asset of the new Institute; and

(b) a certificate that:

(i) identifies the land and the estate or interest;

(ii) states that the estate or interest has, because of that section, become an asset of the new Institute; and

(iii) is signed by an officer of the Attorney-General's Department authorised by the Secretary to that Department to give such certificates;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

the officer with whom the certificate is lodged may deal with and give effect to the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the estate or interest to the new Institute duly executed under the laws in force in that State or Territory.

61 Transfer of appropriated money

(1) The following provisions have effect for the purposes of the operation of an Appropriation Act after the commencement:

(a) references in the Act to the old Institute shall be read as references to the new Institute;

(b) references in the Act to the *Australian Institute of Aboriginal Studies Act 1964* shall be read as references to this Act.

(2) In this section:

Appropriation Act means an Act appropriating money for expenditure in respect of a financial year and includes an Act appropriating money, by way of interim provision, for such expenditure.

62 Contracts of employment not preserved

Nothing in this Part preserves a contract of employment entered into by the old Institute.

63 Transfer of staff to Australian Public Service

Section 81B of the *Public Service Act 1922* has effect in relation to any person who, immediately before the commencement:

- (a) was employed by the old Institute; and
- (b) was an unattached officer for the purposes of the *Public Service Act 1922*;

as if the person had ceased to be an officer of the Australian Public Service immediately before the commencement.

64 Operation of Superannuation Benefit (Interim Arrangement) Act

- (1) The Superannuation Act and any related law apply in relation to any person who:

- (a) before the commencement, was employed by the old Institute; and
- (b) after the commencement, is employed under the *Public Service Act 1922* in the new Institute;

as if:

- (c) the person's employer was in each case the same body; and
- (d) the continuity of the person's employment was not affected by the abolition of the old Institute and the establishment of the new Institute.

- (2) In this section:

related law means any law of the Commonwealth, to the extent that it relates to the superannuation benefits covered by the Superannuation Act.

Superannuation Act means the *Superannuation Benefit (Interim Arrangement) Act 1988*.

65 Exemption from taxation

An instrument is not subject to stamp duty or any other tax under a law of the Commonwealth or of a State or Territory if an authorised officer certifies, in writing, that the instrument was made or given because of, or for a purpose connected with, this Division.

Division 4—Consequential amendments of other Acts

Sections 66 and 67

Note:

The amendments made by sections 66 and 67 are incorporated in the compilations on ComLaw.

Remuneration Tribunal Act 1973

Sales Tax (Exemptions and Classifications) Act 1992.

[repealed by Act No. 101, 2006, Sch. 5]

For access to the wording of the amendments made by this Division, *see* Act No. 149, 1989.

Table of Acts

Notes to the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989*

Note 1

The *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* as shown in this compilation comprises Act No. 149, 1989 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 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>Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989</i>	149, 1989	27 Nov 1989	5 Mar 1990 (see s. 2 and <i>Gazette</i> 1990, No. S48)	
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)
<i>Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993</i>	1, 1994	14 Jan 1994	S. 80: 1 July 1994 (a)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 316–323: 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (b)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 192–194): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (c)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (item 34): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (d)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<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]
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch 1 (item 97) [see Table A]
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 2005</i>	32, 2005	22 Mar 2005	Schedule 4 (items 12–22): 24 Mar 2005	Sch. 4 (item 18) [see Table A]
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 5 (item 21) and Schedule 6 (items 5–11): Royal Assent	Sch. 6 (items 5–11) [see Table A]
<i>Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010</i>	4, 2010	19 Feb 2010	Schedule 10 (item 4): 20 Feb 2010	—

Act Notes

- (a) The *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* was amended by section 80 only of the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993*, paragraph 2(3)(b) of which provides as follows:
- (3) The following provisions commence on 1 July 1994:
- (b) Part 28 (other than Subdivision A of Division 2) and Schedules 2 and 3.
- (b) The *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* was amended by Schedule 2 (items 316–323) 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*.
- (c) The *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* was amended by Schedule 2 (items 192–194) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (d) The *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* was amended by Schedule 10 (item 34) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.

Table of Amendments

Table of Amendments

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

Provision affected	How affected
Part 1	
Note to s. 2.....	ad. No. 32, 2005
S. 3.....	am. No. 1, 1994; No. 32, 2005
S. 3A	ad. No. 112, 2001
Part 2	
Note to s. 4(2)	ad. No. 152, 1997
Part 5	
Division 1	
S. 12.....	am. No. 32, 2005
Division 2	
S. 19.....	rep. No. 152, 1997
S. 21.....	am. No. 152, 1997; No. 156, 1999
Part 6	
S. 25	am. No. 159, 2001
S. 26A	ad. No. 122, 1991
Part 7	
S. 29.....	am. No. 146, 1999
Part 9	
S. 37.....	rep. No. 152, 1997
S. 38.....	am. No. 152, 1997
S. 39.....	am. No. 101, 2006
S. 40.....	rep. No. 152, 1997
Part 10	
Heading to s. 42.....	am. No. 152, 1997; No. 32, 2005
S. 42.....	am. No. 1, 1994; No. 152, 1997; No. 32, 2005
Heading to s. 43.....	am. No. 32, 2005
S. 43.....	am. No. 1, 1994; No. 32, 2005
S. 45A	ad. No. 122, 1991 am. No. 146, 1999
S. 46.....	rep. No. 137, 2000
S. 47.....	am. No. 137, 2000; No. 112, 2001; No. 4, 2010
Part 11	
Division 3	
S. 58.....	rep. No. 152, 1997

Table A

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
-

Table A

*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.

*Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001
(No. 159, 2001)*

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

*Aboriginal and Torres Strait Islander Commission Amendment Act 2005
(No. 32, 2005)*

Schedule 4

18 Saving provision

A person appointed by the Minister under paragraph 12(1)(b) of the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* as in force immediately before the day Schedules 1 and 2 to this Act commence continues to hold office, on and after that day, for the balance of the term of the person's appointment, as if the person had been appointed by the Minister under that paragraph of the *Australian*

Table A

Institute of Aboriginal and Torres Strait Islander Studies Act 1989 as amended by this Act.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

5 Application of Schedule 5 amendments

The repeals and amendments made by Schedule 5 apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

Table A

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

Table A

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.
