



Council for Aboriginal Reconciliation Act 1991

No. 127 of 1991

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Council for Aboriginal Reconciliation Act 1991

No. 127 of 1991

An Act to establish a Council for Aboriginal Reconciliation

[Assented to 2 September 1991]

Because:

- (a) Australia was occupied by Aborigines and Torres Strait Islanders who had settled for thousands of years, before British settlement at Sydney Cove on 26 January 1788; and
- (b) many Aborigines and Torres Strait Islanders suffered dispossession and dispersal from their traditional lands by the British Crown; and
- (c) to date, there has been no formal process of reconciliation between Aborigines and Torres Strait Islanders and other Australians; and
- (d) by the year 2001, the centenary of Federation, it is most desirable that there be such a reconciliation; and
- (e) as a part of the reconciliation process, the Commonwealth will seek an ongoing national commitment from governments at all levels to co-operate and to co-ordinate with the Aboriginal and Torres Strait Islander Commission as appropriate to address progressively Aboriginal disadvantage and aspirations in relation

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to land, housing, law and justice, cultural heritage, education, employment, health, infrastructure, economic development and any other relevant matters in the decade leading to the centenary of Federation, 2001:

The Parliament of Australia therefore enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Council for Aboriginal Reconciliation Act 1991*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears:
“**Aborigine**” means a person of the Aboriginal race of Australia;
“**annual report**” means a report by the Council under section 30;
“**appointed member**” means a member of the Council appointed under subsection 14 (2);
“**Chairperson**” means the Chairperson of the Council;
“**committee**” means a committee established under subsection 17 (1);
“**Council**” means the Council for Aboriginal Reconciliation established by section 4;
“**Deputy Chairperson**” means the Deputy Chairperson of the Council;
“**ex officio member**” means a member referred to in paragraph 14 (1) (f) or (g);
“**member**” means a member of the Council;
“**strategic plan**” means a strategic plan within the meaning of section 10;
“**Torres Strait Islander**” means a descendant of an indigenous inhabitant of the Torres Strait Islands.

PART 2—ESTABLISHMENT, OBJECT, FUNCTIONS AND POWERS OF COUNCIL

Establishment

4. A Council for Aboriginal Reconciliation is established by this section.

Object

5. The object of the establishment of the Council is to promote a process of reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community, based on an appreciation by the Australian community as a whole of Aboriginal and Torres Strait Islander cultures and achievements and of the unique position of Aborigines and Torres Strait Islanders as the indigenous peoples of Australia, and by means that include the fostering of an ongoing national commitment to co-operate to address Aboriginal and Torres Strait Islander disadvantage.

Functions

6. (1) The functions of the Council are:

- (a) to undertake initiatives for the purpose of promoting reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community, focusing in particular on the local community level; and
- (b) to promote, by leadership, education and discussion, a deeper understanding by all Australians of the history, cultures, past dispossession and continuing disadvantage of Aborigines and Torres Strait Islanders and of the need to redress that disadvantage; and
- (c) to foster an ongoing national commitment to co-operate to address Aboriginal and Torres Strait Islander disadvantage; and
- (d) to provide a forum for discussion by all Australians of issues relating to reconciliation with Aborigines and Torres Strait Islanders and of policies to be adopted by Commonwealth, State, Territory and local governments to promote reconciliation; and
- (e) to advise the Minister on policies to promote reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community; and
- (f) to provide information and advice to the Minister in accordance with section 8; and
- (g) to consult Aborigines and Torres Strait Islanders and the wider Australian community on whether reconciliation would be advanced by a formal document or formal documents of reconciliation; and
- (h) after that consultation, to report to the Minister on the views of Aborigines and Torres Strait Islanders and of the wider Australian community as to whether such a document or documents would benefit the Australian community as a whole, and if the Council considers there would be such a benefit, to make recommendations to the Minister on the nature and content of, and manner of giving effect to, such a document or documents; and

- (i) to report, in the Council's annual report, on progress towards reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community; and
 - (j) in accordance with Part 3, to develop strategic plans that include a statement of the Council's goals and objectives in the promotion of the process of reconciliation and of its strategies for achieving them, together with indicators and targets for measuring the Council's performance in relation to those goals and objectives.
- (2) In carrying out its functions, the Council must:
- (a) have regard to the fact that the Aboriginal and Torres Strait Islander Commission has, under the *Aboriginal and Torres Strait Islander Commission Act 1989*, specific functions and responsibilities in relation to matters involving Aborigines and Torres Strait Islanders; and
 - (b) make use of the Aboriginal and Torres Strait Islander Commission and Regional Councils established under the *Aboriginal and Torres Strait Islander Commission Act 1989* as the principal means of facilitating consultation with Aborigines and Torres Strait Islanders; and
 - (c) co-operate with and consult Commonwealth, State, Territory and local government bodies and other bodies and organisations, including Aboriginal and Torres Strait Islander community-based organisations; and
 - (d) focus on the need to promote, at the local community level, the process of reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community.
- (3) The Minister is to cause a copy of any recommendations made by the Council in performing its function under paragraph (1) (h) to be laid before each House of the Parliament within 15 sitting days of that House after they are made to the Minister.

Powers

7. (1) The Council 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 Council under subsection (1) include, but are not limited to, the following powers:

- (a) to invite submissions;
- (b) to hold inquiries;
- (c) to organise conferences;
- (d) to undertake research and statistical surveys;
- (e) to organise public education activities.

(3) The Council does not have power to enter into contracts.

Requests by Minister for information or advice

8. The Council must provide the Minister with information or advice on any matter within its functions when requested to do so in writing by the Minister.

Directions by Minister

9. (1) The Minister may give general directions to the Council as to the performance of its functions and the exercise of its powers.

(2) The directions must not relate to the content of any information or advice provided by the Council to any person.

(3) The Minister is not to give the directions unless the Minister has consulted with the Chairperson regarding their content.

(4) The Council must comply with the directions.

(5) The Minister is to cause a copy of the directions to be laid before each House of the Parliament within 15 sitting days of that House after the Minister gives the directions.

PART 3—STRATEGIC PLANS

Strategic plans

10. (1) The Council must develop, and prepare in writing, strategic plans in accordance with this section.

(2) The first strategic plan is to be prepared in respect of a period of 3 years commencing on a day occurring within 12 months after this Act commences.

(3) Subsequent strategic plans are to be prepared in respect of each successive period of 3 years beginning at the end of the period to which the immediately preceding plan relates.

(4) Each strategic plan must set out, for each financial year or part of a financial year within the period of 3 years covered by the plan:

- (a)** a statement of the Council's goals and objectives and its strategies for achieving those goals and objectives; and
- (b)** a description of the Council's proposed programs; and
- (c)** an estimate of the cost of those programs; and
- (d)** such performance indicators and targets as the Council considers appropriate.

(5) The Minister is to cause a copy of each strategic plan to be laid before each House of the Parliament within 15 sitting days of that House after approval by the Minister of the plan.

Approval and commencement of strategic plans

- 11. (1)** A strategic plan prepared under section 10:
- (a) must be submitted to the Minister for approval not less than 3 months (or such lesser period as the Minister in special circumstances allows) before the day of commencement of the period to which the strategic plan relates; and
 - (b) is to come into force on the later of:
 - (i) the day on which it is approved by the Minister; or
 - (ii) the day of commencement of the period to which it relates.

(2) Before approving a strategic plan, the Minister is to consult with the Leader of the Opposition in the House of Representatives.

Variation of strategic plans

12. (1) The Council must from time to time, during the period in respect of which a strategic plan prepared under section 10 is in force, consider whether a variation of the strategic plan is necessary.

(2) Where the Council considers that a variation of a strategic plan is necessary, the Council may, with the approval of the Minister, vary the strategic plan.

(3) Before approving a variation of a strategic plan, the Minister is to consult with the Leader of the Opposition in the House of Representatives.

- (4)** Where a variation of a strategic plan is approved by the Minister:
- (a) the plan as so varied is to continue in force on and after the day on which the variation is so approved as if the plan had originally been approved by the Minister as so varied; and
 - (b) the Minister is to cause a copy of the plan as so varied to be laid before each House of the Parliament within 15 sitting days of that House after approval of the variation.

Compliance with strategic plans

13. To the extent that it is practicable to do so, and within the limits of the resources made available for its purposes, the Council must perform its functions and exercise its powers in a manner that is consistent with, and is designed to give effect to, any strategic plan that is in force.

PART 4—CONSTITUTION, MEETINGS AND COMMITTEES

Division 1—Constitution of Council

Constitution of Council

- 14. (1)** The Council consists of the following members:
- (a) a Chairperson, who must be an Aborigine;

- (b) a Deputy Chairperson;
- (c) a person nominated by the Minister;
- (d) a person nominated by the Leader of the Opposition in the House of Representatives;
- (e) a person nominated by the leader of any non-Government party in the Parliament of at least 5 members that is not part of the Opposition;
- (f) the Chairperson of the Aboriginal and Torres Strait Islander Commission;
- (g) the Deputy Chairperson of the Aboriginal and Torres Strait Islander Commission;
- (h) other members, provided that:
 - (i) the total number of members of the Council must not be fewer than 15 nor more than 25; and
 - (ii) at least 12 members of the Council must be Aborigines and at least 2 must be Torres Strait Islanders.

(2) The Chairperson, Deputy Chairperson and the members referred to in paragraph (1) (h) are to be appointed by the Governor-General.

(3) Any advice to the Governor-General regarding such appointments is only to be given after the Minister has consulted:

- (a) the Leader of the Opposition in the House of Representatives and
- (b) the leader of any non-Government party in the Parliament of at least 5 members that is not part of the Opposition; and
- (c) the Aboriginal and Torres Strait Islander Commission.

(4) The Chairperson may be appointed to hold office on a full-time or part-time basis.

(5) A member, other than the Chairperson, holds office on a part-time basis.

Validation of appointments

15. The appointment of a member is not invalid merely because of a defect or irregularity in connection with his or her appointment.

Division 2—Council meetings and committees

Meetings

16. (1) The Chairperson is to convene at least 4 meetings of the Council in each financial year, and such other meetings of the Council as, in the Chairperson's opinion, are necessary for the efficient performance of the Council's functions.

(2) The Minister may at any time convene a meeting of the Council.

(3) The Chairperson must convene a meeting of the Council on receipt of a written request for a meeting signed by a majority of members.

(4) The Chairperson is to preside at all meetings of the Council at which the Chairperson is present.

(5) If the Chairperson is not present at a meeting:

(a) if the Deputy Chairperson is present—the Deputy Chairperson is to preside at the meeting; and

(b) if paragraph (a) does not apply and a member nominated in writing by the Chairperson to preside at the meeting is present—that member is to preside at the meeting; and

(c) in any other case—the members present are to appoint one of their number to preside at the meeting.

(6) At a meeting of the Council:

(a) a majority of the members constitutes a quorum for the purpose of any deliberation or any decision on a question arising; and

(b) questions arising are to be decided by a majority of the votes of the members present and voting; and

(c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) Where, because of subsection 23 (2), a member is not present at a meeting of the Council during a deliberation of the Council with respect to a matter, but there would be a quorum if that member were present, the remaining members present constitute a quorum for the purpose of any deliberation or decision of the Council at the meeting with respect to that matter.

(8) If the Council so determines, a member may participate in, and form part of a quorum at, a meeting of the Council by means of any of the following methods of communication:

(a) telephone;

(b) closed-circuit television;

(c) any other method of communication determined by the Council.

(9) A determination of the Council under subsection (8) may be made in respect of a particular meeting, or in respect of all meetings, of the Council.

(10) A member who participates in a meeting as provided by subsection (8) is taken for the purposes of this Part to be present at the meeting.

(11) The Council may regulate the conduct of proceedings at its meetings as it thinks fit and is to keep minutes of those proceedings.

(12) The Council may invite any person to attend a meeting.

Committees

17. (1) The Council may, with the approval of the Minister, establish committees to assist it in the performance of its functions and the exercise of its powers.

(2) Before approving the establishment of a committee, the Minister is to consult the Leader of the Opposition in the House of Representatives.

(3) A committee may be constituted wholly by members of the Council or partly by members of the Council and partly by other persons.

(4) The Council must appoint a member of a committee who is also a member of the Council to be the Chairperson of the committee.

(5) The Council may, by resolution, determine:

- (a)** the manner in which a committee is to perform its functions; and
- (b)** the procedure to be followed at or in relation to meetings of a committee, including matters with respect to:
 - (i)** the convening of meetings of the committee; and
 - (ii)** the quorum for meetings of the committee (including requirements that particular members be present); and
 - (iii)** the member of the committee to preside at meetings of the committee at which the Chairperson of the committee is not present; and
 - (iv)** the manner in which questions arising at a meeting of the committee are to be decided; and
 - (v)** the keeping of minutes; and
 - (vi)** the inviting of persons to attend meetings of the committee.

(6) Except in relation to matters determined by the Council under subsection (5), and subject to section 23, a committee may determine the procedure to be followed at or in relation to its meetings.

(7) Where a member of a committee disagrees with a finding or recommendation to be included in a report of the committee, the report must:

- (a)** identify the member; and
- (b)** include a statement of the views of the member in relation to the finding or recommendation.

(8) A committee is not to publish any report unless the Council has approved its publication.

Division 3—Administrative provisions

Term of office

18. (1) An appointed member holds office for such period, not exceeding 4 years, as is specified in the member's instrument of appointment, but is eligible for re-appointment.

(2) A member nominated under paragraph 14 (1) (c) holds office until the Minister otherwise directs.

(3) A member nominated under paragraph 14 (1) (d) holds office until the Leader of the Opposition in the House of Representatives otherwise directs.

(4) A member nominated under paragraph 14 (1) (e) holds office until the leader of the non-Government party referred to in that paragraph otherwise directs.

Remuneration and allowances

19. (1) This section applies to a person (other than an ex officio member of the Council) who is a member of the Council or a member of a committee, or who is both.

(2) A person to whom this section applies is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, the person is to be paid such remuneration as is prescribed.

(3) A person to whom this section applies is to be paid such allowances as are prescribed.

(4) Subsections (2) and (3) have effect subject to the *Remuneration Tribunal Act 1973*.

(5) Where:

(a) a person to whom this section applies is a member of, or a candidate for election to, the Parliament of a State; and

(b) under the law of the State, the person would not be eligible to remain, or to be elected, as a member of that Parliament if the person were entitled to remuneration or allowances under this Act;

the person is not to be paid remuneration or allowances under this Act, but is to be reimbursed, out of the Consolidated Revenue Fund, the expenses that the person reasonably incurs in performing duties under this Act.

(6) The Consolidated Revenue Fund is appropriated for the purposes of subsection (5).

(7) Where:

(a) a person to whom this section applies:

- (i) is a member of the Parliament of a State, but subsection (5) does not apply in relation to the person; or
 - (ii) is in the service or employment of a State, or an authority of a State, on a full-time basis; or
 - (iii) holds or performs the duties of an office or position established by or under a law of a State on a full-time basis; and
- (b) the person's remuneration in respect of that membership, service, employment, office or position is not reduced because of the person's entitlements under this Act;
- the person must pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to the amount of remuneration.

(8) An amount payable under subsection (7) to a State by a person is a debt due to the State, and the State may recover the amount by action against the person in a court of competent jurisdiction.

(9) In this section:

“Parliament” means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly for the Australian Capital Territory; and
- (b) in relation to the Northern Territory—the Legislative Assembly of the Northern Territory;

“State” includes the Australian Capital Territory and the Northern Territory.

Leave of absence

20. (1) Subject to section 87E of the *Public Service Act 1922*, a full-time Chairperson has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may:

- (a) grant a full-time Chairperson leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing; and
- (b) grant a part-time Chairperson leave to be absent from a meeting or meetings of the Council.

(3) The Chairperson may grant any other member leave to be absent from a meeting or meetings of the Council.

Acting appointments

21. (1) The Deputy Chairperson or a person acting as Deputy Chairperson under subsection (2) is to act as the Chairperson:

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or

- (b) during any period, or during all periods, when the 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 member to act as the Deputy Chairperson:
 - (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (3) A person acting under this section during a vacancy is not to continue to act for more than 12 months.
- (4) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that:
 - (a) the occasion for the person's appointment had not arisen; or
 - (b) there is a defect or irregularity in connection with the person's appointment; or
 - (c) the person's appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

Resignation

22. An appointed member may resign by writing signed and sent to the Governor-General.

Disclosure of interests

23. (1) Where a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Council, the member must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the Council and the member must not, unless the Minister or Council otherwise determines:

- (a) be present during any deliberation of the Council with respect to that matter; or
- (b) take part in any decision of the Council with respect to that matter.

(3) For the purpose of the Council making such a determination in relation to a member who has made a disclosure, a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Council for the purpose of making the determination; or

(b) take part in making the determination.

(4) This section applies in relation to members of committees and committee meetings in the same way as it applies in relation to members of the Council and Council meetings.

Termination of appointment

24. (1) The Governor-General may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(2) If an appointed member:

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b) without reasonable excuse, contravenes subsection 19 (6), section 23 or section 27; or
- (c) is absent, except with leave of absence, from 3 consecutive meetings of the Council;

the Governor-General is to terminate the member's appointment.

Terms and conditions not provided for by Act

25. A member 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.

PART 5—MISCELLANEOUS

Council secretariat

26. The Council's secretariat is to consist of persons appointed or employed under the *Public Service Act 1922*.

Confidential information not to be disclosed

27. Where information or other matter has been given to the Council or to a committee on the condition that access to it is to be restricted, the members of the Council or of the committee, as the case may be, must not disclose that information or other matter except in accordance with that condition.

Reports etc. to identify dissenting views

28. Where a member disagrees with any finding, recommendation, information or advice that is to be included in any report or other document given to the Minister, the report or document must:

- (a) identify the member; and
- (b) include a statement of the views of the member in relation to the finding, recommendation, information or advice.

Delegation by Council

29. (1) The Council may, by resolution, either generally or as otherwise provided by the resolution, delegate all or any of its powers under this Act to:

- (a) a member; or
 - (b) a committee; or
 - (c) a person who holds, or performs the duties of, a Senior Executive Service office (within the meaning of the *Public Service Act 1922*).
- (2)** A delegation of a power under subsection (1):
- (a) may be revoked by resolution of the Council (whether or not constituted by the persons who constituted the Council at the time when the power was delegated); and
 - (b) continues in force notwithstanding a change in the membership of the Council.

Annual report

30. (1) The Council must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of its operations during that year.

- (2)** The Council must include in the report:
- (a) its report in accordance with paragraph 6 (1) (i); and
 - (b) particulars of any directions given by the Minister under section 9; and
 - (c) an assessment of its performance for the year against the performance indicators and targets set out in the strategic plan in relation to the year.

(3) The Minister is to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(4) After a copy of the report has been laid before each House of the Parliament, the Chairperson is to refer a copy of the report to the Chairperson of the committee of the House of Representatives that deals with matters relating to Aborigines and Torres Strait Islanders.

(5) If this Act does not commence at the beginning of a financial year, this section has effect in relation to the period commencing on the commencement of this Act and ending on the next 30 June as if:

- (a) in a case where the period is less than 6 months—the period were included in the next financial year; or
- (b) in any other case—the period were a financial year.

Regulations

31. 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.

Act ceases to be in force on 1 January 2001

32. This Act ceases to be in force on 1 January 2001.

*[Minister's second reading speech made in—
House of Representatives on 31 May 1991 a.m.
Senate on 15 August 1991]*