



# **Aboriginal Land Grant and Management (Jervis Bay Territory) Legislation Amendment Act 1995**

**No. 103 of 1995**

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# **Aboriginal Land Grant and Management (Jervis Bay Territory) Legislation Amendment Act 1995**

No. 103 of 1995

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***An Act to amend the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* to enable land within the Jervis Bay National Park and the Jervis Bay Botanic Gardens to be granted to the Wreck Bay Aboriginal Community Council, to amend the *National Parks and Wildlife Conservation Act 1975* to enable the Council to participate in the management of the Park and the Gardens, and to amend the *Commonwealth Grants Commission Act 1973* to enable the Commission to inquire into, and report on, the granting of financial assistance to, or the financing of works and services in, certain Territories, and for related purposes***

*[Assented to 29 September 1995]*

*Aboriginal Land Grant and Management (Jervis Bay Territory) Legislation Amendment No. 103, 1995*

The Parliament of Australia enacts:

**Short title**

1. This Act may be cited as the *Aboriginal Land Grant and Management (Jervis Bay Territory) Legislation Amendment Act 1995*.

**Commencement**

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

**Schedule**

3. The Acts specified in the Schedules to this Act are amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms.

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**SCHEDULE 1**

Section 3

**AMENDMENTS OF THE  
ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) ACT 1986**

**1. Objects**

The objects of this Schedule are:

- (a) to enable land within the Jervis Bay National Park and the Jervis Bay Botanic Gardens to be granted to the Wreck Bay Aboriginal Community Council; and
- (b) to provide for any land so granted to be leased back to the Director of National Parks and Wildlife.

**2. Subsection 2(1):**

Insert:

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

Note: The Director is an Authority within the meaning of the definition of *Authority*.

*Jervis Bay Botanic Gardens* means the part of the Australian National Botanic Gardens that is in the Jervis Bay Territory.

*Jervis Bay National Park* means the area of the Jervis Bay Territory declared to be a park, and to which that name was assigned, by Proclamation under subsection 7(2) of the *National Parks and Wildlife Conservation Act 1975*.  
*land*, unless the contrary intention appears, includes any seabed or any subsoil.”.

**3. After paragraph 6(c):**

Insert:

- “(ca) in consultation with the Minister, to consider and, where practicable, take action for the benefit of the Community in relation to the housing, social welfare, education, training or health needs of the members of the Community;
- (cb) to provide community services to members of the Community;
- (cc) to protect and conserve natural and cultural sites on Aboriginal Land;
- (cd) to engage in land use planning in relation to Aboriginal Land;
- (ce) to manage and maintain Aboriginal Land; and
- (cf) to conduct business enterprises for the economic or social benefit of the Community;”.

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**SCHEDULE 1—continued**

**4. Subsection 7(3):**

Omit “\$1,000”, substitute “\$100,000”.

**5. After section 9:**

Insert:

**Grants of land within Jervis Bay National Park etc. to Council**

“9A.(1) The Minister may declare in writing that land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens is Aboriginal Land if he or she is satisfied that:

- (a) the land is of significance to the Aboriginals who are members of the Community; and
- (b) it would be appropriate to grant the land to the Council.

“(2) The Minister may not make a declaration under subsection (1) unless the Council and the Director have entered into an agreement under which the Council agrees to grant to the Director a lease of all land that is to become Aboriginal Land under the declaration. The terms and conditions of the lease are to be set out in the agreement.

“(3) If the Minister proposes to make a declaration under subsection (1), the Minister must publish a notice in the *Gazette*:

- (a) stating his or her intention to do so; and
- (b) describing the land that would become Aboriginal Land under the declaration.

“(4) The Minister’s declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”

**6. Section 10:**

Omit “or 9”, substitute “, 9 or 9A”.

**7. Subsection 25(4):**

Omit “At a general meeting”, substitute “Subject to section 26A, at a general meeting”.

**8. Subsection 26(1):**

Omit “Subject to subsection (2)”, substitute “Subject to subsection (2) and section 26A”.

**9. After section 26:**

Insert in Division 3:

**SCHEDULE 1—continued**

**Quorum at AGM**

“26A.(1) Where an annual general meeting fails because a quorum has not formed within 60 minutes of the notified time of the meeting:

- (a) the Chairperson must reconvene the meeting in the same manner, for the same time, in the same place and for the same day of the following week, as the failed meeting; and
- (b) at the reconvened meeting, a quorum is constituted by 40% of the registered members.

“(2) Where an annual general meeting convened under subsection (1) fails because a quorum has not formed within 60 minutes of the notified time of the meeting:

- (a) the Chairperson must reconvene the meeting in the same manner, for the same time, in the same place and for the same day of the following week, as the failed meeting; and
- (b) at the reconvened meeting, a quorum is constituted by 25% of the registered members.

“(3) Where it would be unreasonable or impracticable for a meeting to be reconvened at or on the time, day or place referred to in subsection (1) or (2) (as the case may be), the Chairperson may specify another time, day or place, provided the time and day specified are not earlier than the seventh day after the failed meeting, and the place is at, or in the proximity of the place referred to in subsection (1) or (2).

“(4) A reference in subsection (1) or (2) to ‘the same manner’ means the manner in which the annual general meeting would normally be convened, except that notice of the meeting is to be given at least 6 days before the day of the meeting provided for in subsection (1), (2) or (3) (as the case may be).

“(5) This section does not affect the operation of subsections 26(2) to (4).”.

**10. Subsection 29(4):**

Omit the subsection, substitute:

“(4) Subject to this Act, an executive member holds his or her office from the time at which he or she is declared to have been elected to the office at an annual general meeting until the time, at the first or second annual general meeting, as the case may be, after that meeting, at which a person is declared to have been elected to that office.”.

**11. Subsection 38(2):**

After “Aboriginal Land” insert “(other than land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens)”.

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**SCHEDULE 1—continued**

**12. Subsection 38(4):**

Add at the end “(other than land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens)”.

**13. Subsection 38(5):**

After “Authority” insert “under this section”.

**14. After section 38:**

Insert:

**Agreement to lease land within Jervis Bay National Park etc. to Director**

“38A. If a notice is published in the *Gazette* under subsection 9A(3), the Council and the Director must, as soon as practicable after the notice is published, enter into an agreement under which the Council agrees to grant to the Director a lease of the land described in the notice so as to enable the Director to hold the land for the purposes of the *National Parks and Wildlife Conservation Act 1975*.

**Lease of Jervis Bay National Park etc. to Director**

“38B.(1) As soon as practicable after a declaration by the Minister under subsection 9A(1) has come into force, the Council must grant to the Director a lease of the land that has become Aboriginal Land under the declaration.

“(2) The terms and conditions of the lease are those set out in the agreement between the Council and the Director under section 38A.

“(3) Except with the consent of the Minister, the term of a lease must not be more than 99 years.

**Minister may grant lease**

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

**15. After section 52:**

Insert:

**By-laws**

“52A.(1) In this section ‘Aboriginal Land’ does not include land declared under section 9A.



**SCHEDULE 1—continued**

“(2) The Council may make by-laws for or with respect to:

- (a) economic enterprise on Aboriginal Land;
- (b) cultural activities on Aboriginal Land;
- (c) the management, access, conservation, fire protection, development and use of Aboriginal Land;
- (d) the declaration of sacred or significant sites or other areas of significance to Aboriginal people on Aboriginal Land;
- (e) the activities to be permitted on Aboriginal Land or any part of it;
- (f) protection and conservation of flora or fauna found on Aboriginal Land;
- (g) in relation to Aboriginal Land, the cutting, removal and sale of timber, the granting of revocable licences and the payment of royalties for timber to the Council;
- (h) hunting, shooting and fishing on Aboriginal Land;
- (i) control of visitors in, and charging fees (to be paid to the Council) for entrance to, Aboriginal Land;
- (j) the regulation and control of motor traffic and parking on Aboriginal Land;
- (k) the appointment of persons to enforce the by-laws, and the powers and duties of those persons.

“(3) The by-laws may apply any regulation made under the *National Parks and Wildlife Conservation Act 1975* to Aboriginal Land, with whatever changes are needed for that purpose.

“(4) A by-law, in applying a regulation referred to in subsection (3) relating to an offence, must not change the penalty for that offence.

“(5) A by-law must not be inconsistent with a law of the Commonwealth or a law in force in the Territory, but a regulation referred to in subsection (3) may, in its application to Aboriginal Land, be inconsistent with a law in force in the Territory.

“(6) The by-laws may provide that a contravention of a by-law is an offence.

“(7) The regulations may provide, in respect of an offence against the by-laws, for the imposition of:

- (a) if the offender is a natural person—a fine not exceeding 5 penalty units; or
- (b) if the offender is a corporation—a fine not exceeding 25 penalty units.

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**SCHEDULE 1—continued**

“(8) The regulations may make provision for and in relation to enabling a person who is alleged to have committed an offence against the by-laws to pay to the Commonwealth, as an alternative to prosecution, a penalty not exceeding:

- (a) in the case of a natural person—1 penalty unit; or
- (b) in the case of a corporation—5 penalty units.

“(9) Subsections (7) and (8) do not apply in relation to an offence against a regulation referred to in subsection (3) in its application to Aboriginal Land.

“(10) If the Council makes a by-law, it shall, within 7 days after making it, give a copy of the by-law to the Minister.

“(11) Where the Minister receives a copy of any by-laws, the Minister shall:

- (a) cause the by-laws to be notified in the *Gazette*; and
- (b) cause a copy of the by-laws to be laid before each House of the Parliament within 15 sitting days of that House after receipt by the Minister.

“(12) By-laws take effect from the day on which they are notified in the *Gazette*, or, where a later date is specified in the by-laws, from that later date.

“(13) If a copy of any by-laws is not laid before a House of the Parliament within 15 sitting days of that House after receipt by the Minister, the by-laws cease to have effect at the end of that period.

“(14) Where a copy of a by-law has been laid before a House of the Parliament under this section, the provisions of section 48 (other than subsections (1), (2) and (3)) and sections 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to the by-laws as if, in those provisions, references to regulations were references to by-laws and references to repeal were references to revocation.”.

**SCHEDULE 2**

Section 3

**AMENDMENTS OF THE NATIONAL PARKS AND WILDLIFE CONSERVATION ACT 1975**

**PART 1—AMENDMENTS RELATING TO THE MANAGEMENT OF JERVIS BAY NATIONAL PARK AND JERVIS BAY BOTANIC GARDENS**

**1. Object**

The object of this Schedule is to enable the Wreck Bay Aboriginal Community Council to participate in the management of:

- (a) the Jervis Bay National Park; and
- (b) the part of the Australian National Botanic Gardens that is in the Jervis Bay Territory;

if the Park and that part of the Gardens are declared to be Aboriginal Land under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.

**2. Subsection 3(1) (paragraph (a) of the definition of “prescribed park or reserve”):**

After the paragraph insert:

- “(ab) the Jervis Bay National Park; and
- (ac) the Jervis Bay Botanic Gardens; and”.

**3. Subsection 3(1) (definition of “Aboriginal land”):**

Omit the definition, substitute:

**“Aboriginal land means:**

- (a) land situated in the Region, and in which an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976* holds an estate in fee simple; or
- (b) if the Jervis Bay National Park has been declared to be Aboriginal Land under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*—the Jervis Bay National Park; or
- (c) if the Jervis Bay Botanic Gardens have been declared to be Aboriginal Land under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*—the Jervis Bay Botanic Gardens.”.

**4. Subsection 3(1) (definition of “traditional Aboriginal owners”):**

Omit the definition, substitute:

**“traditional Aboriginal owners:**

- (a) in relation to Aboriginal land in the Region—has the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976*; or

**SCHEDULE 2—continued**

(b) in relation to the Jervis Bay National Park or the Jervis Bay Botanic Gardens—means the members of the Wreck Bay Aboriginal Community Council.”.

**5. Subsection 3(1):**

Insert:

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

***Jervis Bay Botanic Gardens* means the part of the Australian National Botanic Gardens that is in the Jervis Bay Territory.**

***Jervis Bay National Park* means the part of the Jervis Bay Territory declared to be a park, and to which that name was assigned, by Proclamation under subsection 7(2).**

***Wreck Bay Aboriginal Community Council* means the council established by section 4 of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.”.**

**6. Subsection 11(3):**

Omit “Commission and” (first occurring), substitute “Commission,”.

**7. Subsection 11(3):**

After “1976” insert “or the Chairperson of the Wreck Bay Aboriginal Community Council”.

**8. After paragraph 11(8)(ba):**

Insert:

**“(bb) in the case of the Jervis Bay National Park or the Jervis Bay Botanic Gardens—the interests of the traditional Aboriginal owners of the land;”.**

**9. Subsection 11(10):**

Omit all the words after paragraph (d).

**10. After subsection 11(10):**

Insert:

**“(10A) If the plan of management mentioned in subsection (10) is in respect of a park or reserve wholly or partly within the Northern Territory, the Minister must, at least 14 days before the date of publication of the notice in the *Gazette*, serve a copy of the plan and notice:**

**SCHEDULE 2—continued**

- (a) on the Conservation Commission; and
- (b) if the park or reserve is also wholly or partly within a prescribed area—on the relevant Chairperson.

“(10B) If the plan of management mentioned in subsection (10) is in respect of the Jervis Bay National Park or the Jervis Bay Botanic Gardens, the Minister must, at least 14 days before the date of publication of the notice in the *Gazette*, serve a copy of the plan and notice on the Chairperson of the Wreck Bay Aboriginal Community Council.”.

**11. Subsection 11(11):**

Omit “Commission and” (first occurring), substitute “Commission,”.

**12. Subsection 11(11):**

After “1976” insert “or the Chairperson of the Wreck Bay Aboriginal Community Council”.

**13. After subsection 11(14):**

Insert:

“(14A) If, under subsection (13), the Minister refers to the Director a plan of management in respect of the Jervis Bay National Park or the Jervis Bay Botanic Gardens, the Minister must serve on the Chairperson of the Wreck Bay Aboriginal Community Council a copy of the suggestions that he or she referred to the Director with the plan. The Chairperson may, within 14 days after receiving a copy of the suggestions, make representations to the Director in relation to the suggestions.”.

**14. Paragraph 11(21)(b):**

Omit all the words after “Director”, substitute:

“and:

- (i) in the case of a plan of management in respect of a park or reserve wholly or partly within the Northern Territory:
  - (A) by the Conservation Commission; and
  - (B) if the park or reserve is also wholly or partly within a prescribed area—by the relevant Chairperson; and
- (ii) in the case of a plan of management in respect of the Jervis Bay National Park or the Jervis Bay Botanic Gardens—by the Chairperson of the Wreck Bay Aboriginal Community Council.”.

**SCHEDULE 2—continued**

**15. Subsection 11(22):**

Omit the subsection, substitute:

“(22) In this section:

*prescribed area* means:

- (a) an area situated wholly or partly within the Region, and for which an Aboriginal Land Council has been established under the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
- (b) the Jervis Bay National Park or the Jervis Bay Botanic Gardens.

*relevant Chairperson* means:

- (a) in relation to a prescribed area wholly or partly within the Region—the Chairperson of the Aboriginal Land Council for the area; or
- (b) in relation to the Jervis Bay National Park or the Jervis Bay Botanic Gardens—the Chairperson of the Wreck Bay Aboriginal Community Council.”.

**16. After subsection 14(2):**

Insert:

“(2A) If, in respect of the Jervis Bay National Park or the Jervis Bay Botanic Gardens, a difference of opinion arises between the Chairperson of the Wreck Bay Aboriginal Community Council and the Director as to whether the Director is performing functions or exercising powers in accordance with a plan of management, the Minister must appoint a person (whom the Minister considers to be suitably qualified and in a position to deal with the matter impartially) to inquire into the matter.”.

**17. Section 14B (definition of “relevant Land Council”):**

Omit the definition.

**18. Section 14B:**

Insert:

“*relevant Council* means:

- (a) in relation to Aboriginal land in the Region—the Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* for the area in which the land is situated; or
- (b) in relation to the Jervis Bay National Park or the Jervis Bay Botanic Gardens—the Wreck Bay Aboriginal Community Council.”.

**19. Paragraph 14C(1)(b):**

Omit “relevant Land Council”, substitute “relevant Council”.

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**SCHEDULE 2—continued**

**20. Subsection 14C(6):**

Omit “relevant Land Council”, substitute “relevant Council”.

**21. After subsection 16(4):**

Insert:

“(4A) When performing functions and exercising powers with respect to the Jervis Bay National Park or the Jervis Bay Botanic Gardens, the Director must, from time to time, consult with, and have regard to the views of, the Chairperson of the Wreck Bay Aboriginal Community Council.”.

**22. Subsection 36(5):**

Omit the subsection, substitute:

“(5) An arrangement under this section must not be inconsistent with:

(a) any law; or

(b) any agreement between the Commonwealth and an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* or between the Director and any such Land Council; or

(c) any agreement between the Commonwealth and the Wreck Bay Aboriginal Community Council or between the Director and the Council.”.

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**SCHEDULE 2—continued**

**PART 2—AMENDMENTS SUBSTITUTING “CHAIRPERSON”  
FOR “CHAIRMAN”**

**23. Substitution of “Chairperson” for “Chairman”**

Omit “Chairman” (wherever occurring) from each of the following provisions and substitute “Chairperson”:

paragraph 8D(3)(b)

subsections 11(2A), (3) and (11)

paragraph 11(13)(a)

subsections 11(14), (16) and (17)

subsection 14(2)

subsection 16(4).

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**SCHEDULE 3**

Section 3

**AMENDMENTS OF THE COMMONWEALTH GRANTS COMMISSION ACT 1973**

**PART 1—AMENDMENTS RELATING TO THE FUNCTIONS OF THE COMMISSION**

**1. Object**

The object of this Schedule is to extend the functions of the Commission to include inquiring into, and reporting to the Minister upon, matters relating to:

- (a) grants of financial assistance by the Commonwealth to Norfolk Island; and
- (b) the financing of works and services in respect of the Jervis Bay Territory and certain external Territories.

**2. Section 4:**

Insert the following definition:

*“special assistance* has the meaning given by section 5.”.

**3. Section 5:**

Add at the end:

*“(3) References in this Act to the grant of special assistance to the Territory of Norfolk Island are references to the grant of financial assistance to that Territory for the purpose of making it possible for that Territory, by reasonable effort, to function, in respect of matters for which the Ministers of that Territory have executive authority, at standards not appreciably below the standards of the States.”.*

**4. Section 6:**

Repeal the section, substitute:

**Extension of Act to external Territories**

*“6. This Act extends to:*

- (a) the Territory of Heard Island and McDonald Islands; and
- (b) the Territory of Norfolk Island; and
- (c) each of the other external Territories.”.

**5. Section 16C:**

Repeal the section, substitute:

**SCHEDULE 3—continued**

**Inquiries relating to Jervis Bay Territory**

“16B. The Commission must inquire into and report to the Minister upon any matters, being matters relating to the financing of works and services provided by the Commonwealth or an authority of the Commonwealth in respect of the Jervis Bay Territory, that are referred to the Commission by the Minister.

**Inquiries relating to Norfolk Island**

“16C. The Commission must inquire into and report to the Minister upon:

- (a) any application made by the Territory of Norfolk Island to the Commission for a grant of special assistance to that Territory; and
- (b) any matters, being matters relating to a grant of financial assistance made by the Commonwealth to the Territory of Norfolk Island, that are referred to the Commission by the Minister; and
- (c) any matters, being matters relating to the making of a grant of financial assistance by the Commonwealth to the Territory of Norfolk Island, that are referred to the Commission by the Minister.

**Inquiries relating to other external Territories**

“16D. The Commission must inquire into and report to the Minister upon any matters, being matters relating to the financing of works and services provided by the Commonwealth or an authority of the Commonwealth in respect of a particular external Territory (other than the Territory of Norfolk Island), that are referred to the Commission by the Minister.”.

**6. Subsection 25(1):**

After “16C” insert “, 16D”.

**7. Subsection 25(2):**

Omit “16C”, substitute “16AA, 16B, 16C, 16D”.

**8. Title**

Omit all the words after “States”, substitute “**and autonomous Territories and the financing of works and services in respect of the other Territories**”.

**SCHEDULE 3—continued**

**PART 2—AMENDMENTS SUBSTITUTING “CHAIRPERSON”  
FOR “CHAIRMAN”**

**9. Substitution of “Chairperson” for “Chairman”:**

Omit “Chairman” (wherever occurring) from each of the following provisions and substitute “Chairperson”:

section 4

subsection 8(1)

paragraph 8(6)(a)

subsection 8(6A)

section 9

subsections 13(1) and (1A)

paragraphs 13(2)(a) and (b)

subsections 14(2), (3), (5), (6), (8) and (9)

subsections 15(1) and (2)

subsections 19(1), (2), (3), (5) and (7).

Note: The heading to section 15 is replaced by the heading “Duties of Chairperson”.

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*[Minister's second reading speech made in—*

*Senate on 29 June 1995*

*House of Representatives on 27 September 1995]*