

ABORIGINES ACT.

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 7, 1969.

An Act to make provisions with respect to matters concerning Aborigines; to repeal the Aborigines Protection Act, 1909, and certain other Acts; to amend the Attachment of Wages Limitation Act, 1957; and for purposes connected therewith. [Assented to, 20th March, 1969.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Aborigines Act, 1969".
- (2) Short title, citation and commencement.

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(2) The provisions of this Act shall commence upon such day or days as may be appointed and notified under subsection three of this section.

(3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the day upon which any provision of this Act specified in the proclamation shall commence and may appoint different days for different provisions, and the provision specified in the proclamation shall commence accordingly.

Interpretation.

2. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Aboriginal” means a person who is a descendant of an aboriginal native of Australia; and “Aborigines” has a corresponding meaning;

“appointed day” means the day on which section three of this Act commences;

“Australia” means the area comprised within the States of the Commonwealth of Australia, the Australian Capital Territory and the Northern Territory;

“Board” means the Aborigines Welfare Board constituted under the Acts repealed by this Act;

“building” includes any structure and any part thereof;

“Council” means the Aborigines Advisory Council constituted under this Act;

“descendant” includes a person who, but for his illegitimacy or that of an ancestor, would be a descendant;

“Director” means the Director of Aboriginal Welfare appointed under section five of this Act;

“land” includes any estate or interest in land;

“member” means a member of the Council;

“prescribed” means prescribed by this Act or the regulations;

“regulations” means regulations made under this Act;

“reserve”

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“reserve” means an area of land that is land reserved **No. 7, 1969**
under the Crown Lands Acts for the use of
Aborigines;

“the corporation” means the corporation sole constituted
by section six of this Act.

(2) In this Act, section twenty-four and the Schedule
excepted, a reference to an Act includes all amendments of
that Act, whether by subsequent Acts or otherwise, and an
Act passed in substitution for the Act referred to, or incor-
porating any of its provisions.

3. The Acts specified in the Schedule to this Act are Repeals.
hereby repealed.

4. The Board is hereby dissolved and a person who, **Dissolution**
immediately before the appointed day, held office as a mem- **of Board.**
ber of the Board shall, on and from that day, cease to hold
that office.

5. The Governor may, under and subject to the Public **Appoint-**
Service Act, 1902, appoint and employ a Director of **ment of**
Aboriginal Welfare and such other officers and employees as **Director,**
etc. may be necessary for bringing into operation, and
administering, this Act.

6. (1) There is hereby constituted under the corporate **Minister**
name of “The Minister, Aborigines Act, 1969” a corporation **to be**
sole which shall represent the Crown and shall be the **corpora-**
Minister **tion sole.**
for the time being administering this Act.

(2) The corporation constituted by subsection one of
this section shall have perpetual succession and an official seal
and shall be capable in its corporate name of suing and being
sued and, subject to this Act, of purchasing, holding, granting,
demising,

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No. 7, 1969 demising, disposing of and alienating real and personal property and doing and suffering all such other things as a body corporate may by law do and suffer.

(3) The official seal of the corporation constituted by subsection one of this section shall not be affixed to any instrument or writing except in the presence of the Minister in person, and he shall attest by his signature the fact and date of the official seal being so affixed.

Transfer
of assets,
liabilities,
&c., of the
Board.

7. (1) Subject to this Act, on and from the appointed day—

- (a) all lands (other than reserves within the meaning of this Act) that, immediately before that day, were vested in the Board shall be divested from the Board and, to the extent that they were vested in the Board, shall vest in the corporation;
- (b) all reserves shall, to the extent that, immediately before that day, they were vested in the Board, be divested from the Board and shall be Crown lands within the meaning of the Crown Lands Consolidation Act, 1913, reserved from sale or lease generally for the use of Aborigines, and all leases of reserves (being reserves within the meaning of the Acts repealed by this Act) granted by the Board and in force immediately before that day shall be deemed to be leases granted by the corporation under the powers conferred upon it by this Act;
- (c) all personal property and all right and interest therein, and all management and control of any land or thing that, immediately before that day, was or were vested in or belonged to the Board shall vest in and belong to the corporation;
- (d) all moneys, or liquidated or unliquidated claims that, immediately before that day, were payable to or recoverable by the Board shall be moneys, liquidated and unliquidated claims payable to or recoverable by the corporation;

(e)

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- (e) all suits, actions and proceedings pending, No. 7, 1969 immediately before that day, at the suit of the Board or against the Board at the suit of any person shall respectively be suits, actions and proceedings pending at the suit of the corporation, or at the suit of that other person against the corporation;
- (f) all contracts, agreements and undertakings entered into with the Board and in force immediately before that day, and all securities lawfully given to or by the Board and so in force shall respectively be deemed to be contracts, agreements and undertakings entered into with, and securities lawfully given to or by, the corporation;
- (g) the corporation may, in addition to pursuing any other remedies, or exercising any other powers, that may be available to it, pursue the same remedies for the recovery of moneys and claims referred to in this subsection, and for the prosecution of suits, actions and proceedings so referred to, as the Board might have done but for the repeals effected by this Act;
- (h) the corporation may enforce and realise any security or charge existing, immediately before that day, in favour of the Board, and may exercise any powers thereby conferred on the Board, as if the security or charge were a security or charge in favour of the corporation;
- (i) all debts, moneys and claims, liquidated or unliquidated, that, immediately before that day were due or payable by or recoverable against, the Board shall be debts due and moneys payable by, and claims recoverable against, the corporation;
- (j) all liquidated and unliquidated claims for which the Board would, but for the repeals effected by this Act, have been liable shall be liquidated and unliquidated claims for which the corporation shall be liable;

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- (k) all wards under the Acts repealed by this Act shall be wards admitted to State control by the Minister for the time being administering the Child Welfare Act, 1939;
- (l) a ward under the Acts repealed by this Act who, immediately before that day, was a ward placed-out, or placed as an adopted boarder, with a foster-parent under those Acts shall be a ward boarded-out or, as the case may require, placed as an adopted boarder, with that foster-parent under the Child Welfare Act, 1939;
- (m) a ward under the Acts repealed by this Act who, immediately before that day was a ward placed for employment with an employer under the Acts repealed by this Act shall be a ward placed-out with that employer under the Child Welfare Act, 1939;
- (n) an agreement relating to a ward under the Acts repealed by this Act, being an agreement entered into under those Acts and in force immediately before that day, shall be an agreement entered into under the Child Welfare Act, 1939;
- (o) a home constituted and established under the Acts repealed by this Act for the reception, maintenance, education and training of wards shall, until the Minister for the time being administering the Child Welfare Act, 1939—
 - (i) is of the opinion that other arrangements for the care of wards therein can be made;
and
 - (ii) has removed the wards therefrom,
be deemed to be a depot duly established under section twenty-one of the Child Welfare Act, 1939;
- (p) the liabilities imposed upon a near relative of a ward under the Acts repealed by this Act shall be liabilities imposed upon him or her under the Child Welfare Act, 1939;

(q)

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- (q) a reference to the Board in any other Act, or in any by-law, regulation or other statutory instrument, or in any testamentary instrument, or in any other document whatsoever, shall be read and construed as a reference to the corporation. **No. 7, 1969**

(2) No attornment to the corporation by any lessee from the Board shall be required.

8. (1) There shall be an Aborigines Advisory Council consisting of ten members who shall be— **Aborigines
Advisory
Council.**

- (a) the Director; and
(b) nine Aborigines appointed by the Governor, being persons resident in New South Wales.

(2) Of the members appointed by the Governor—

- (a) three, of whom one shall be a woman, shall be nominated by the Minister;
(b) six shall be the persons named in the certificate given under section ten of this Act as the persons elected as prescribed.

(3) The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment by the Governor of a member referred to in paragraph (b) of subsection one of this section and any such member so appointed shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

(4) The term of office of a member referred to in paragraph (b) of subsection one of this section shall be three years and, on the expiration of his term of office he shall, subject to this section, be eligible for reappointment.

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(5) A member referred to in paragraph (b) of subsection one of this section shall, in respect of his services as a member, be paid such fees and allowances as the Governor may from time to time determine.

(6) A member of the Council shall be deemed to have vacated his office as a member if, being the Director, he ceases to hold office as Director or, in the case of any other member, if he—

- (a) dies;
- (b) resigns his office by writing under his hand directed to the Minister;
- (c) ceases to reside in New South Wales;
- (d) becomes bankrupt, compounds with his creditors or makes an assignment of any salary, remuneration or allowance payable to him, or of his estate, for their benefit;
- (e) becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;
- (f) is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be a felony or a misdemeanour which is punishable as aforesaid;
- (g) absents himself, without leave of the Council, from three consecutive ordinary meetings of the Council;
- (h) is removed from office by the Governor.

(7) If the office of a member referred to in paragraph (b) of subsection one of this section is vacated otherwise than by reason of the expiration of his term of office, the Governor may, on the nomination of the Minister appoint an Aboriginal resident in New South Wales to the vacant office for the residue

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residue of the term of office of his predecessor and, on the expiration of his term of office, a person so appointed shall, subject to this section, be eligible for reappointment. No. 7, 1969

A male person shall not be nominated for appointment under this subsection unless the Council, as constituted immediately before his nomination, includes a woman.

(8) No act or proceeding of the Council shall be invalidated or prejudiced by reason only of the fact that at the time the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member of the Council.

(9) Five members of the Council (other than the Director) shall constitute a quorum and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Council.

(10) At any duly convened meeting of the Council at which a quorum is present a decision of the majority of those present and entitled to vote shall be the decision of the Council.

(11) The Director or, during the absence or illness of the Director, the person for the time being acting in that office, shall be the Chairman of the Council and shall preside at all meetings of the Council but, at a meeting of the Council, shall have neither a deliberative nor a casting vote.

9. The Council shall—

- (a) report to the Minister on such matters relating to Aborigines as may be referred to it by him;
- (b) advise the Minister on matters relating to Aborigines.

Duties and
functions
of Council.

10. (1) In this section "prescribed person" means the person for the time being holding the office of Electoral Commissioner for New South Wales under the Parliamentary Electorates and Elections Act, 1912. or his nominee. Election of
Aboriginal
members.

(2)

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(2) The prescribed person shall, at the prescribed times and in the prescribed manner, conduct elections by prescribed electors for the purpose of electing from candidates qualified as prescribed six persons for appointment as the members of the Council referred to in paragraph (b) of subsection two of section eight of this Act.

(3) The prescribed person shall, as soon as practicable after an election has been conducted under subsection two of this section, certify to the Minister the names of the six persons elected at that election.

Acquisition
of property
by
corporation.

11. (1) For the purposes of this Act, the corporation may acquire property by purchase, exchange, gift inter vivos, devise or bequest and may take land on lease.

(2) A gift, devise or bequest to the Minister in his ministerial capacity shall be deemed to be a gift, devise or bequest to the corporation.

(3) The corporation may agree to the condition of any gift, devise or bequest to it, and the rule of law relating to perpetuities shall not apply to any condition to which the corporation has agreed under this subsection.

(4) Any property acquired by the corporation subject to a condition to which the corporation has agreed shall not be dealt with by the corporation except in accordance with the condition.

Sale and
lease of
land.

12. (1) The corporation may, subject to this Act, cause a building to be erected and may sell or lease land and any buildings thereon to an Aboriginal and may lease land for the benefit of Aborigines.

(2)

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(2) The terms and conditions of any sale or lease under subsection one of this section shall be as determined by the Minister and, in the case of a sale, may provide for the payment of any balance of purchase money to be made by instalments or to be secured by a mortgage of the land sold. No. 7, 1969

(3) This section does not apply to or in respect of land that is a reserve or part of a reserve.

13. (1) This section shall have effect notwithstanding the terms of any reservation of land. Leasing
of reserves.

(2) The corporation may lease a reserve, or part thereof, to an Aboriginal or, as prescribed, for the benefit of Aborigines.

(3) For the purpose only of exercising the powers conferred by subsection two of this section and of exercising or enforcing any powers, rights or remedies conferred by, or arising out of, a lease granted under this section, the corporation shall be deemed to have an estate in fee simple in the land comprising a reserve.

(4) The corporation may authorise, and vary or revoke the authority of, the person for the time being holding or acting in an office specified in the authority to approve on its behalf the granting under this section or section twelve of this Act of all leases, or any specified class of lease, or all leases other than leases of a specified class and to execute on its behalf any such lease, and any lease executed by virtue of such an authority shall be deemed to have been duly executed by the corporation.

14. (1) Except to the extent that a reserve is leased under section thirteen of this Act— Control of
reserves.

(a) the corporation shall be deemed to have been duly appointed under section two of the Public Trusts Act, 1897, as trustee of the reserve; and

(b)

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- (b) the reserve shall, for the purposes of the Police Offences Act, 1901, and of any other Act, be deemed to be a public place.

(2) Sections four to 4E, both inclusive, and section five, of the Public Trusts Act, 1897, shall not apply to or in respect of the corporation.

(3) The powers conferred on the corporation by subsection two of section twenty-six of the Crown Lands Consolidation Act, 1913, as a trustee shall be deemed not to include powers exercisable by virtue of paragraphs (c), (d), (e), (f), (m), (o), (q) and (r) of that subsection.

Buildings
on reserves.

15. (1) The corporation may cause a building to be erected on a reserve.

(2) No person shall, without the approval of the corporation and, where such an approval is given, except in accordance with the terms and conditions of the approval—

- (a) erect a building on a reserve or cause a building to be so erected; or
- (b) alter a building that is on a reserve or cause such a building to be altered.

(3) Where a building is erected or altered in contravention of this section and the reservation of the land on which it stands, and any lease thereof at the time of the contravention, has not been revoked or terminated, the corporation shall, subject to subsection four of this section, have the same powers, rights and obligations in relation thereto as are conferred or imposed upon a council under subsections (1A), two, three and four of section 317B of the Local Government Act, 1919, where a building within its area is erected or altered without its approval.

(4)

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(4) For the purposes of subsection three of this section, section 317B of the Local Government Act, 1919, shall be read and construed as if—

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- (a) references in subsections (1A) and four of that section to the owner of the building were references, where the land on which the building stands is leased, to the lessee at the time it was erected or altered;
- (b) the reference in subsection (1A) of that section to the Act and ordinances were a reference to the requirements of the corporation; and
- (c) the words “, but without prejudice to the owner’s right to recover the same from any lessee or other person liable for the expenses of repairs” in subsection four of that section had been omitted therefrom.

16. (1) The Minister may make a grant of moneys for the benefit of Aborigines.

Grants
and loans.

(2) Subject to this section, the corporation may make a loan to an Aboriginal—

- (a) to purchase or erect a home in New South Wales;
- (b) to make additions, alterations or renovations to a home in New South Wales; or
- (c) to acquire furniture for a home in New South Wales.

(3) A loan made under subsection two of this section shall be secured—

- (a) in the case of a loan referred to in paragraph (a) or (b) of that subsection, by mortgage of land; and
- (b) in the case of a loan referred to in paragraph (c) of that subsection, by bill of sale over the furniture acquired.

(4)

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(4) Grants and loans made under this section shall be made out of moneys provided by Parliament and shall be subject to such terms and conditions as the Minister may, either generally or in a particular case, determine.

(5) The corporation may authorise, and vary or revoke the authority of, the person for the time being holding or acting in an office specified in the authority to approve on its behalf the making under this section of all loans, or any specified class of loans, or all loans other than loans of a specified class and to execute on its behalf any instrument required to be executed by the corporation in connection therewith, and any instrument executed by virtue of such an authority shall be deemed to have been duly executed by the corporation.

Disposal of reserves.

17. (1) The Minister may arrange with the Minister administering the Crown Lands Acts the terms and conditions upon which and the cases in which, it is desirable to grant, or otherwise dispose of, a reserve, or part of a reserve, to an Aboriginal or, as prescribed, for the benefit of Aborigines and, upon revocation of the reservation, the land to which the arrangements relate may be granted or disposed of in accordance with those arrangements.

(2) Where the granting or disposal of land in accordance with arrangements made under subsection one of this section would not, but for this subsection, be authorised by the Crown Lands Acts, the granting or disposal of the land in accordance with those arrangements shall be deemed to have been so authorised.

(3) In the application of this section to and in respect of a particular reserve or part of a reserve, the expression "the Minister administering the Crown Lands Acts" means the Minister for the time being administering the provisions of those Acts under which the granting or disposal of the reserve or part thereof would, upon revocation of the reservation, be authorised.

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18. (1) The Minister may arrange with the Minister for the time being administering the Housing Act, 1941, the terms and conditions upon which, and the cases in which, The Housing Commission of New South Wales shall acquire land for purposes relating to the housing of Aborigines. No. 7, 1969
Acquisition
of land
for housing
Aborigines.

(2) Where the acquisition of land in accordance with arrangements made under subsection one of this section would not, but for this subsection, be authorised by the Housing Act, 1912, and the Housing Act, 1941, such an acquisition shall be deemed to have been so authorised.

19. The Minister and the corporation may make use of the facilities, or of the services of the officers or employees, of a Government Department or statutory authority in the exercise or discharge of the powers, authorities, duties or functions conferred or imposed upon him or it by this Act or otherwise in relation to Aborigines, subject to agreement between the Minister and the Minister for the time being administering that Department or, as the case may require, the Act that constituted the statutory authority, as to the terms and conditions upon which, and the circumstances in which, those facilities or services may be used. Services of
officers of
Government
Depart-
ments, &c.

20. (1) There shall be established and kept in the Special Deposits Account at the Treasury an account called the "Aborigines Assistance Fund" into which shall be paid— Aborigines
Assistance
Fund.

- (a) all moneys acquired by the corporation, by gift inter vivos or bequest, for the benefit of Aborigines; and
- (b) the income from all investments acquired by the corporation, by gift inter vivos, devise or bequest, for the benefit of Aborigines or made by the corporation under this section.

(2) Where any moneys in the Aborigines Assistance Fund were received subject to a condition to which the corporation or the Board has agreed, the moneys shall be carried

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No. 7, 1969 carried to a separate account in the Aborigines Assistance Fund and shall be applied in accordance with the condition.

(3) Subject to subsection two of this section, moneys in the Aborigines Assistance Fund may be applied for the benefit of Aborigines in such manner as the Minister may from time to time direct either generally or in a particular case.

(4) Pending application under subsection three of this section, or in accordance with any condition agreed to by the corporation or the Board, such part of the Aborigines Assistance Fund as the Minister may from time to time direct may be invested in the name of the corporation with the Treasurer or in any manner authorised by law for the investment of trust funds.

(5) The Aborigines Assistance Fund is hereby exempted from registration under the Charitable Collections Act, 1934.

Minister to report to Parliament. **21.** (1) The Minister shall, in every year, furnish a report to Parliament on the working of this Act.

(2) The report under subsection one of this section may be included by the Minister in any other report required to be submitted by him to Parliament in connection with his administration.

Legal proceedings. **22.** (1) Any legal proceeding that might be instituted or prosecuted by the corporation may be instituted or prosecuted in the name of the corporation by a person authorised by the corporation for the purpose.

(2) An authority given under subsection one of this section may be in respect of all legal proceedings, or all legal proceedings of a specified class, or all legal proceedings other than legal proceedings of a specified class.

23.

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23. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular and without prejudice to the generality of the foregoing, may make regulations for and with respect to—

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Regulations.

- (a) the procedure for the calling of meetings of the Council, the conduct of business at those meetings and the duties of the Council generally;
- (b) the election of persons to be appointed as members of the Council including the constitution of electorates and the election of different numbers of persons in different electorates.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified therein;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session and, if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before the House, disallowing a regulation or part thereof, that regulation or part shall thereupon cease to have effect.

24. (1) The Attachment of Wages Limitation Act, 1957, as subsequently amended, is amended by omitting from the Schedule the words "Aborigines Welfare Board."
Amendment of Act No. 28, 1957.
(Schedule.)

(2) The Attachment of Wages Limitation Act, as subsequently amended and as amended by this Act, may be cited as the Attachment of Wages Limitation Act, 1957-1969.

SCHEDULE.

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SCHEDULE.

Sec. 3.

Number and year of Act.	Short title.
No. 25, 1909.	Aborigines Protection Act, 1909.
No. 2, 1915.	Aborigines Protection Amending Act, 1915.
No. 7, 1918.	Aborigines Protection (Amendment) Act, 1918.
No. 32, 1936.	Aborigines Protection (Amendment) Act, 1936.
No. 12, 1940.	Aborigines Protection (Amendment) Act, 1940.
No. 13, 1943.	Aborigines Protection (Amendment) Act, 1943.
No. 7, 1963.	Aborigines Protection (Amendment) Act, 1963.

CREDIT