

ABORIGINES (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 35, 1973.

An Act to reconstitute the Aborigines Advisory Council; to constitute The Aboriginal Lands Trust and to define its powers, authorities, duties and functions; for these and other purposes to amend the Aborigines Act, 1969, the Trustees Audit Act, 1912, the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 8th May, 1973.]

BE

Aborigines (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 35, 1973 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 Short title. (Amendment) Act, 1973".

(2) The Aborigines Act, 1969, is in this Act referred to as the Principal Act.

2. (1) This section and section 1 commence on the date of assent to this Act. Commence-
ment.

(2) Section 4 commences as provided by section 4 (2) and section 4 (3).

(3) Subject to subsections (1) and (2), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Principal Act is amended—

Amendment
of Act No.
7, 1969.

(a) (i) by inserting in section 2 (1) next after the definition of "Council" the following new definitions :— Sec. 2.
(Interpre-
tation.)

"Crown lands" means lands vested in Her Majesty and not permanently dedicated to any public purpose or granted or lawfully contracted to be granted in fee simple under the Crown Lands Acts;

"Crown Lands Acts" has the meaning ascribed to that expression in the Crown Lands Consolidation Act, 1913;

(ii) by omitting from section 2 (1) the definition of "member";

(iii)

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(iii) by omitting from the definition of "the corporation" in section 2 (1) the words "by section six of this Act." and by inserting instead the words "by section 6;"

(iv) by inserting at the end of section 2 (1) the following new definition :—

"the Trust" means the corporation constituted by section 10A.

Sec. 6.
(Minister
to be
corporation
sole.)

(b) by inserting at the end of section 6 the following new subsection :—

(4) All courts and persons acting judicially—

(a) shall take judicial notice of the seal of the corporation that has been affixed to any instrument or document; and

(b) shall, until the contrary is proved, presume that the seal was properly affixed.

Further
amendment
of Act No.
7, 1969.

4. (1) The Principal Act is further amended—

Sec. 8.
(Aborigines
Advisory
Council.)

(a) (i) by omitting section 8 (1) and by inserting instead the following subsection :—

(1) There shall be an Aborigines Advisory Council consisting of nine Aborigines appointed by the Governor, being the persons named in the later or latest certificate given pursuant to subsection (3) of section 10 or appointed pursuant to subsection (7) to fill a vacancy in the office of a member of the Council so named.

(ii) by omitting section 8 (2);

(iii) by omitting from section 8 (3) the words "member referred to in paragraph (b) of subsection one of this section" and by inserting instead the words "member of the Council";

(iv) by omitting from section 8 (4) the words "member referred to in paragraph (b) of subsection

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subsection one of this section” and by inserting instead the words “member of the Council”;

- (v) by omitting from section 8 (5) the words “member referred to in paragraph (b) of subsection one of this section” and by inserting instead the words “member of the Council”;
- (vi) by omitting from section 8 (6) the words “if being the Director, he ceases to hold office as Director or, in the case of any other member.”;
- (vii) by omitting section 8 (6) (d) and by inserting instead the following paragraph:—
- (d) becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his fees or allowances as a member of the Council or the Trust, or of his estate, for their benefit;
- (viii) by omitting section 8 (6) (e) and by inserting instead the following new paragraph:—
- (e) becomes a temporary patient or a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (ix) by omitting from section 8 (7) the words “member referred to in paragraph (b) of subsection one of this section” and by inserting instead the words “member of the Council”;
- (x) by omitting from section 8 (7) the words “A male person shall not be nominated for appointment under this subsection unless the Council, as constituted immediately before his nomination, includes a woman.”;

(xi)

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(xi) by omitting from section 8 (9) the words
“(other than the Director)”;

(xii) by omitting section 8 (11) and by inserting
instead the following subsections :—

(11) At the first meeting of the Council
held after—

(a) any appointment of a member thereof;
or

(b) the vacation by the Chairman of his
office as a member of the Council,

the members of the Council present at the
meeting shall elect one of their number to be
the Chairman of the Council until the occur-
rence of an event referred to in paragraph (a)
or (b).

(12) At a meeting of the Council the
Chairman shall preside and, in the absence
of the Chairman, the members of the Council
present at the meeting shall elect one of their
number to preside at that meeting.

(13) At a meeting of the Council the
Chairman or, in his absence, the member of
the Council presiding at the meeting shall, in
the event of an equality of votes, have a
casting vote in addition to his deliberative
vote.

Sec. 10.
(Election of
members
of Council.)

(b) (i) by omitting from section 10 (2) the words
“candidates qualified as prescribed six persons
for appointment as the members of the Coun-
cil referred to in paragraph (b) of subsection
two of section eight of this Act” and by insert-
ing instead the words “candidates who are
Aborigines resident in New South Wales
and otherwise qualified as prescribed nine
persons for appointment as the members of
the Council”;

(ii) by omitting from section 10 (3) the word
“six” and by inserting instead the word
“nine”;

(2)

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(2) For the purposes only of the reconstitution of the Aborigines Advisory Council and of any matters relating to, or incidental to, that reconstitution, the amendments made by subsection (1) take effect, subject to subsection (3), on the date of assent to this Act. No. 35, 1973

(3) Upon the expiration of the term of office for which members of the Aborigines Advisory Council holding office pursuant to section 8 (2) (b) of the Principal Act as in force immediately before the date of assent to this Act were appointed—

- (a) the other members of the Council vacate their offices as members of the Council;
- (b) the members of the Council first appointed pursuant to section 8 (1) of the Principal Act, as amended by this Act, assume office as members of the Council; and
- (c) the amendments made by subsection (1) take effect for all purposes.

5. The Principal Act is further amended—

- (a) by inserting next after section 10 the following new sections :—

10A. (1) There is hereby constituted a corporation with the corporate name "The Aboriginal Lands Trust".

(2) The members of the Trust shall be the members for the time being of the Council named in the later or latest certificate given pursuant to subsection (3) of section 10 or appointed pursuant to subsection (7) of section 8 to fill a vacancy in the office of a member so named.

Further amendment of Act No. 7, 1969.

New secs. 10A-10K.

Incorporation of The Aboriginal Lands Trust.

(3)

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(3) A member of the Trust vacates his office as such a member when he ceases to be a member of the Council.

(4) No act or proceeding of the Trust is invalidated or prejudiced by reason 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 Trust or that, at that time, a member of the Trust was disqualified from acting or that, at that time, the appointment of a member of the Council was defective.

(5) Until the commencement of section 4 of the Aborigines (Amendment) Act, 1973, four members of the Trust, and on and after that commencement, five members of the Trust, constitute a quorum and any duly convened meeting of the Trust at which a quorum is present is competent to transact any business of the Trust.

(6) At a duly convened meeting of the Trust at which a quorum is present, a decision of the majority of those present and entitled to vote is the decision of the Trust.

(7) At the first meeting of the Trust held after the commencement of this section and thereafter at the first meeting of the Trust held after—

- (a) any appointment of a member of the Council; or
- (b) the vacation by the Chairman of his office as a member of the Council,

the members of the Trust present at the meeting shall elect one of their number to be Chairman of the Trust until the occurrence of an event referred to in paragraph (a) or (b).

(8) At a meeting of the Trust the Chairman shall preside and, in the absence of the Chairman, the members of the Trust present at the meeting shall elect one of their number to preside at that meeting.

(9)

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(9) At a meeting of the Trust the Chairman or, in his absence, the member of the Trust presiding at the meeting shall, in the event of an equality of votes, have a casting vote in addition to a deliberative vote. No. 35, 1973

(10) The procedure for the calling of meetings of the Trust and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Trust.

(11) The Trust shall cause full and accurate minutes to be kept of its proceedings at meetings.

(12) No matter or thing done, and no contract entered into, by the Trust and no matter or thing done by any member of the Trust or by any person acting as a delegate of, or under the direction of, the Trust shall, if the matter or thing was done or the contract was entered into, bona fide for the purpose of executing this Act, subject the member, or that person, personally to any action, liability, claim or demand.

(13) Nothing in subsection (12) exempts any member of the Trust or other person from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General in the accounts of the Trust and which the member or other person authorised or joined in authorising.

(14) The Chairman and other members of the Trust shall, in respect of their services in those offices, be paid from the funds of the Trust such fees and allowances as the Governor from time to time determines.

10B. The Trust is not for any purpose the Crown or an instrumentality of the Crown. Trust is not the Crown.

10c.

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Powers, etc.,
of Trust.

10C. The Trust shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon it by or under this or any other Act.

Officers and
employees.

10D. The Trust may appoint and employ such officers and employees as are necessary to enable the Trust to exercise and discharge its powers, authorities, duties and functions.

Delegation
of powers.

10E. (1) The Trust may, by instrument in writing, delegate to a member of the Trust, or to an officer or employee of the Trust, or to a prescribed person or the holder of a prescribed office, the exercise or performance of such of the powers (other than this power of delegation) authorities, duties and functions conferred or imposed on the Trust by or under this or any other Act as are specified in the instrument of delegation and may, in like manner, revoke wholly or in part any such delegation.

(2) Notwithstanding any delegation made under this section, the Trust may continue to exercise and perform all or any of its powers, authorities, duties or functions delegated.

(3) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section has the same force and effect as if it had been done or suffered by the Trust and shall be deemed to have been done or suffered by the Trust.

Accounts
and audit.

10F. (1) The Trust shall cause to be kept proper books of account in relation to all its operations and shall, as soon as practicable after the thirtieth day of June in each year, prepare and transmit to the Minister for presentation to Parliament a statement of accounts in a form approved

by

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by the Auditor-General exhibiting a true and correct view of the financial position and transactions of the Trust. No. 35, 1973

(2) The Minister shall, in relation to the accounts of the Trust, be deemed to have made, on the commencement of section 5 of the *Aborigines (Amendment) Act, 1973*, and on the first day of July in each year thereafter, the request referred to in section 4 of the *Trustees Audit Act, 1912*.

10G. (1) The Trust shall open and maintain in the name of the Trust an account or accounts at a bank carrying on business in New South Wales. Trust to open bank account.

(2) The Trust may arrange with a bank for loans by way of overdraft or otherwise.

(3) The Minister may, out of moneys provided by Parliament, pay to the Trust such amounts as he thinks fit.

(4) The Trust shall pay into a bank account referred to in subsection (1) all moneys received by it from any source.

(5) The Trust may, from a bank account referred to in subsection (1), pay all moneys it is required or empowered to expend in the exercise or performance of the powers, authorities, duties and functions conferred or imposed upon it by or under this or any other Act.

10H. (1) The Trust may acquire property by grant from the Crown or by purchase, exchange, gift, devise or bequest. Acquisition of property by the Trust.

(2) The Trust may agree to the condition of any gift, devise or bequest to it, and the rule of law relating to perpetuities does not apply to any condition to which the Trust has agreed under this section.

(3)

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(3) Property acquired by the Trust subject to a condition to which the Trust has agreed shall not be dealt with by the Trust except in accordance with the condition.

Powers of Trust with respect to property.

10I. (1) Subject to this section, the Trust may do or suffer in relation to its property any act or thing that it could lawfully do or suffer if it were a natural person having, in the case of land, the same estate or interest in the property as the Trust and, in particular, but without prejudice to the generality of the foregoing, it may do or suffer any such act or thing to enable it to—

- (a) sell, exchange, lease, mortgage or otherwise deal with its property;
- (b) improve, or cause to be improved, any land vested in it; or
- (c) explore for and exploit, or cause to be explored for or exploited, mineral resources, or other natural resources, vested in it.

(2) To the extent to which an Act provides for a person to explore for or exploit mineral resources, or other natural resources, vested in another person, the Act does not apply to or in respect of mineral resources, or other natural resources, vested in the Trust.

Annual report.

10J. (1) The Trust shall, on or before the first day of October in each year, submit a report to the Minister on the working of the Trust during the year that ended on the next preceding thirtieth day of June.

(2) The Minister shall cause a copy of a report submitted to him under subsection (1) to be laid before both Houses of Parliament.

10K.

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10K. (1) Where, in the opinion of the Minister, No. 35, 1973
the Trust has wilfully failed or neglected to exercise Failure of
or discharge any of its powers, authorities, duties Trust to
or functions in a material respect, the Governor function.
may, by order published in the Gazette, declare
that the Trust has ceased to function.

(2) An order under subsection (1) may be limited in its operation according to time, place or circumstance.

(3) To the extent to which the Trust has, by an order in force under subsection (1), been declared to have ceased to function—

- (a) section 7 operates in respect of the Trust and the corporation in the same way as it operates in respect of the Board and the corporation; and
- (b) the corporation shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon the Trust by or under this or any other Act.

(4) Where, by the operation of subsection (3), the corporation receives any moneys, it may pay the moneys or any part thereof to the Aborigines Assistance Fund established under section 20.

- (b) (i) by inserting next after section 17 (1) the following new subsections :— Sec. 17.
(Disposal of reserves.)

(1A) The Minister may—

- (a) with the consent of the Trust and of the lessee, if any, of a reserve or part thereof, arrange with the Minister administering the Crown Lands Acts

for

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for the revocation of the reservation and the grant to the Trust of the land comprised in the reserve subject to—

- (i) any easements or rights in the nature of easements existing immediately before the grant;
- (ii) any lease subsisting immediately before the grant; and
- (iii) such conditions, covenants, provisions, exceptions and reservations (other than exceptions or reservations of minerals) as the Governor may deem expedient; or

(b) arrange with the Minister administering the Crown Lands Acts the terms and conditions upon which Crown lands other than reserves may be granted or otherwise disposed of to the Trust.

(1B) Nothing in or done under subsection (1A) operates to abridge or control the prerogative rights and powers of the Crown with respect to gold mines and silver mines.

(1C) No attornment to the Trust by a lessee of a reserve or part thereof from the corporation is necessary.

(ii) by omitting from section 17 (2) the words “subsection one of this section” and by inserting instead the words “subsection (1) or (1A)”;

Sec. 19.
(Services of
officers of
Government
Depart-
ments,
&c.)

(c) by inserting in section 19 after the word “corporation” the words “and the Trust”.

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6. The Principal Act is further amended—

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Further
amendment
of Act No.
7, 1969.

- (a) by omitting from section 12 (1) the words “Aboriginal and may lease land” and by inserting instead the words “Aboriginal or to Aborigines and may, in prescribed circumstances, sell or lease land to any person”; Sec. 12.
(Sale and lease of land.)
- (b) by omitting from section 14 (1) the words “section thirteen of this Act” and by inserting instead the words “section 13 and except in respect of a part of a reserve on which stands a building or structure occupied by an Aboriginal”; Sec. 14.
(Control of reserves.)
- (c) by inserting in section 16 (2) (a) after the word “home” the words “, or to discharge a mortgage over land.”; Sec. 16.
(Grants and loans.)
- (d) by inserting next after section 22 the following new section :— New sec.
22A.

22A. (1) The corporation may, by instrument in writing, delegate to the Director, or to an officer or employee referred to in section 5, or to a prescribed person, or to the holder of a prescribed office, the exercise or performance of such of the powers (other than this power of delegation) authorities, duties and functions conferred or imposed upon the corporation by or under this or any other Act as are specified in the instrument of delegation and may, in like manner, revoke wholly or in part any such delegation. Delegation of powers.

(2) Notwithstanding any delegation made under this section, the corporation may continue to exercise and perform all or any of its powers, authorities, duties or functions delegated.

(3) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section has the same force and effect

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effect as if it had been done or suffered by the corporation and shall be deemed to have been done or suffered by the corporation.

Sec. 23.
(Regulations.)

(e) (i) by omitting from section 23 (1) (b) the word "electorates." and by inserting instead the following word and new paragraph :—

electorates;

(c) the procedure for the calling of meetings of the Trust, the conduct of business at those meetings and the duties of the Trust generally.

(ii) by omitting section 23 (2) and by inserting instead the following subsection :—

(2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(iii) by omitting section 23 (3).

Amendment
of Act No.
21, 1912.
Sch. 2.

7. The Trustees Audit Act, 1912, is amended by inserting at the end of Schedule Two the following new matter :—

The accounts of The Aboriginal Lands Trust.

Amendment
of Act No.
41, 1919.

8. The Local Government Act, 1919, is amended—

Sec. 132.
(Definition
of ratable
land.)

(a) by omitting from section 132 (1) (k) the words "private purposes." and by inserting instead the following words and new paragraph :—

private purposes; and

(1)

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- (1) land vested in The Aboriginal Lands Trust constituted under the Aborigines Act, 1969, not being—
- (i) land held under a lease from the Trust for private purposes;
- (ii) land occupied and used by the Trust for the purpose of carrying on a business.
- (b) by inserting next after section 379 (4B) the following new heading and subsection :—

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Sec. 379.
(Land supplied with water.)*Exemptions—The Aboriginal Lands Trust.*

(4C) Water and sewerage local rates shall not be levied upon land vested in The Aboriginal Lands Trust constituted under the Aborigines Act, 1969, except—

- (a) land held under a lease from the Trust for private purposes;
- (b) land occupied and used by the Trust for the purpose of carrying on a business.

9. The Metropolitan Water, Sewerage, and Drainage Act, 1924, is amended by omitting from section 88 (1) (1) the word "thereof." and by inserting instead the following word and new paragraph :—

Amendment of Act No. 50, 1924.
Sec. 88.
(Lands exempted from rates.)

- thereof;
- (m) land vested in The Aboriginal Lands Trust constituted under the Aborigines Act, 1969, not being—
- (i) land held under a lease from the Trust for private purposes;

(ii)

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- (ii) land occupied and used by the Trust for the purpose of carrying on a business.

Amendment
of Act No.
11, 1938.
Sec. 91.
(Lands
exempted
from
rates.)

10. The Hunter District Water, Sewerage and Drainage Act, 1938, is amended by omitting from section 91 (1) (m) the word "thereof." and by inserting instead the following word and new paragraph :—

thereof;

- (n) land vested in The Aboriginal Lands Trust constituted under the Aborigines Act, 1969, not being—

(i) land held under a lease from the Trust for private purposes;

(ii) land occupied and used by the Trust for the purpose of carrying on a business.

Amendment
of Act No.
20, 1938.
Sec. 76.
(Lands
exempted
from
rates.)

11. The Broken Hill Water and Sewerage Act, 1938, is amended by omitting from section 76 (1) (j) the word "Act." and by inserting instead the following word and new paragraph :—

Act:

- (k) land vested in The Aboriginal Lands Trust constituted under the Aborigines Act, 1969, not being—

(i) land held under a lease from the Trust for private purposes;

(ii) land occupied and used by the Trust for the purpose of carrying on a business.

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12. The Land Tax Management Act, 1956, is amended by inserting next after section 10 (1) (f) the following new paragraph :—

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Amendment
of Act No.
26, 1956.

(f1) land owned by The Aboriginal Lands Trust constituted under the Aborigines Act, 1969 ;.

Sec. 10.
(Land
exempted
from tax.)