



New South Wales

# Aboriginal Languages Act 2017 No 51

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## WHEREAS

- (a) The languages of the first peoples of the land comprising New South Wales are an integral part of the world's oldest living culture and connect Aboriginal people to each other and to their land:
- (b) As a result of past Government decisions Aboriginal languages were almost lost, but they were spoken in secret and passed on through Aboriginal families and communities:
- (c) Aboriginal people will be reconnected with their culture and heritage by the reawakening, growing and nurturing of Aboriginal languages:
- (d) Aboriginal languages are part of the cultural heritage of New South Wales:
- (e) It is acknowledged that Aboriginal people are the custodians of Aboriginal languages and have the right to control their growth and nurturing:

The Legislature of New South Wales therefore enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Aboriginal Languages Act 2017*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

- (1) In this Act:

**Aboriginal language** means a language, or dialect of a language, of the traditional custodians of the land comprising New South Wales.

**Aboriginal language activity** means an activity intended to reawaken, grow, nurture, promote or raise awareness of Aboriginal languages.

**Aboriginal languages strategic plan** means the plan for the growth and nurturing of Aboriginal languages prepared and approved under section 13 (as amended under section 14).

**Aboriginal person** has the same meaning as in the *Aboriginal Land Rights Act 1983*.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**Trust** means the Aboriginal Languages Trust constituted by this Act.

**Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.

## Part 2 Aboriginal Languages Trust

### 4 Constitution of Trust

- (1) There is constituted by this Act a body corporate with the corporate name of the Aboriginal Languages Trust.
- (2) The Trust is a NSW Government agency.  
**Note.** See section 13A of the *Interpretation Act 1987*.
- (3) The affairs of the Trust are to be conducted on a not-for-profit basis.

### 5 Objective of Trust

The objective of the Trust is to provide a focused, coordinated and sustained effort in relation to Aboriginal language activities at local, regional and State levels.

### 6 Functions of Trust

- (1) The Trust has the following functions:
  - (a) to bring together persons with relevant professional qualifications in languages and persons with knowledge of Aboriginal languages to provide advice and direction for Aboriginal language activities,
  - (b) to promote effective Aboriginal language activities,
  - (c) to identify priorities for Aboriginal language activities,
  - (d) to manage the funding for, coordination of and investment in Aboriginal language activities at local, regional and State levels,
  - (e) to promote education and employment opportunities in Aboriginal language activities,
  - (f) to develop resources to support Aboriginal language activities,
  - (g) to provide guidance to the Government and its agencies on Aboriginal languages,
  - (h) to liaise with the Geographical Names Board on the use of Aboriginal languages in the naming of geographical places,
  - (i) to encourage the wider use and appreciation of Aboriginal languages,
  - (j) such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) The Trust has power to do all things that are necessary or convenient to be done for or in connection with the exercise of its functions or that are supplemental or incidental to, or consequential on, the exercise of its functions.

### 7 Board of Trust

- (1) There is to be a Board of the Trust.
- (2) The affairs of the Trust are to be managed by the Board.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is taken to have been done by the Trust.
- (4) Schedule 1 contains provisions relating to the members and procedure of the Board.

### 8 Members of Board of Trust

- (1) The Board of the Trust is to consist of not less than 5 members and not more than 11 members appointed by the Minister.

- (2) A person is eligible to be appointed as a member of the Board if the person:
  - (a) is an Aboriginal person, and
  - (b) has skills, expertise or experience relevant to the functions of the Trust, and
  - (c) has appropriate standing in the Aboriginal community.
- (3) The regulations may make further provision with respect to the qualification of persons for appointment to the Board.

#### **9 Trust to conduct activities in accordance with strategic plan and any directions of Minister**

- (1) The Trust must conduct its activities, as far as is practicable, in accordance with the Aboriginal languages strategic plan and any directions given by the Minister.
- (2) The Trust is to publish, on a publicly accessible website, any directions given to the Trust by the Minister.
- (3) To the extent of any inconsistency between the Aboriginal languages strategic plan and a direction given by the Minister, the Trust must conduct its activities in accordance with the Aboriginal languages strategic plan.

#### **10 Staff of Trust**

Persons may be employed in the Public Service to enable the Trust to exercise its functions.

**Note.** Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Trust makes use of) may be referred to as officers or employees, or members of staff, of the Trust. Section 47A of the *Constitution Act 1902* precludes the Trust from employing staff.

#### **11 Committees**

- (1) The Trust may establish committees to assist the Trust in connection with any of its functions.
- (2) A committee established by the Trust may, but need not, include a member of the Board of the Trust.
- (3) The procedure for calling meetings of a committee of the Trust and for the conduct of business at those meetings is to be as determined by the Trust or (subject to any determination of the Trust) by the committee.

#### **12 Delegation**

- (1) The Trust may delegate to an authorised person the exercise of any function of the Trust under this Act, other than this power of delegation.
- (2) In this section, **authorised person** means any of the following:
  - (a) a member of the Board of the Trust,
  - (b) a committee of the Trust,
  - (c) any member of staff of the Trust,
  - (d) any other person, or person of a class, prescribed by the regulations.

## **Part 3 Aboriginal languages strategic plan**

### **13 Strategic plan for growth and nurturing of Aboriginal languages**

- (1) The Trust must, no later than 2 years after the commencement of this Act and at least every 5 years thereafter, prepare and submit to the Minister a draft strategic plan for the growth and nurturing of Aboriginal languages.
- (2) The Minister may approve a draft strategic plan submitted by the Trust, with such modifications (if any) as the Minister considers appropriate.
- (3) The Minister is to consult with the Trust about any modification that the Minister proposes to make to a draft strategic plan submitted by the Trust.
- (4) As soon as practicable after the Minister has approved the strategic plan, the Trust is to cause a copy of the Aboriginal languages strategic plan to be published on a publicly accessible website.
- (5) The regulations may make provision with respect to the preparation, approval and publication of an Aboriginal languages strategic plan.

### **14 Amendment of Aboriginal languages strategic plan**

- (1) The Minister may at any time, at the request of the Trust or on the Minister's own initiative, approve of amendments to the Aboriginal languages strategic plan.
- (2) Any proposed amendment that is to be made on the Minister's own initiative requires the approval of the Trust.
- (3) As soon as practicable after the Minister approves any proposed amendment, the Trust is to cause a copy of the Aboriginal languages strategic plan, as amended, to be published on a publicly accessible website.

### **15 Review of implementation of Aboriginal languages strategic plan**

- (1) The Trust is to conduct an annual review of the implementation of the Aboriginal languages strategic plan and to prepare, and submit to the Minister, a report on the review.
- (2) The Minister is to table the report or cause it to be tabled in both Houses of Parliament as soon as practicable after the report is forwarded to the Minister.

## **Part 4 Miscellaneous**

### **16 Acquisition of property by gift**

- (1) The Trust may acquire property by gift (whether on trust or otherwise) for the purposes of this Act and may agree to, and carry out, the conditions of any such gift, but only if the carrying out of any such condition is not inconsistent with the functions of the Trust.
- (2) The rule of law against remoteness of vesting does not apply to any condition of a gift to which the Trust has agreed under this section.
- (3) The *Duties Act 1997* does not apply to or in respect of any gift made or to be made to the Trust.
- (4) In this section, *gift* includes a devise or bequest.

### **17 Annual report**

An annual report of the activities of the Trust, including its financial statements, may be included in the annual report of the Public Service agency in which the staff of the Trust are employed.

### **18 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.



## Schedule 1 Members and procedure of Board

(Section 7 (4))

### Part 1 General

#### 1 Definitions

In this Schedule:

**Board** means the Board of the Trust.

**Chairperson** means the Chairperson of the Board.

**Deputy Chairperson** means the Deputy Chairperson of the Board.

**member** means any member of the Board.

### Part 2 Members

#### 2 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### 3 Part-time appointments

A member holds office on a part-time basis.

#### 4 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### 5 Deputies

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson or Deputy Chairperson the member's functions as Chairperson or Deputy Chairperson.

#### 6 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or

- (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any 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
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

#### **7 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **8 Chairperson and Deputy Chairperson**

- (1) The Minister may, in a member's instrument of appointment or by subsequent instrument, appoint a member to be Chairperson or Deputy Chairperson.
- (2) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if he or she:
  - (a) is removed from that office by the Minister under this clause, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member of the Board.
- (3) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

#### **9 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause applies to a member of a committee of the Trust and the committee in the same way as it applies to a member of the Board and the Board.

#### **10 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

#### **11 Personal liability**

A matter or thing done or omitted to be done by the Board, a member of the Board, a committee of the Trust or a person acting under the direction of the Board does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

### **Part 3 Procedure**

#### **12 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

#### **13 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being.

#### **14 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**15 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**16 Transaction of business outside meetings or by telephone etc**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board made at a meeting of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

**17 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

[Second reading speech made in—  
Legislative Council on 11 October 2017  
Legislative Assembly on 18 October 2017]