



ANNO VICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 3 of 1979

**An Act to amend the Aborigines Act 1971–1975 and the
Torres Strait Islanders Act 1971–1975 each in certain
particulars**

[ASSENTED TO 9TH APRIL, 1979]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Aborigines and Islanders Acts Amendment Act 1979*.
2. **Arrangement of Act.** This Act is divided into Parts as follows:—
 - PART I—PRELIMINARY (ss. 1–2);
 - PART II—AMENDMENT OF ABORIGINES ACT 1971–1975 (ss. 3–14);
 - PART III—AMENDMENT OF TORRES STRAIT ISLANDERS ACT 1971–1975 (ss. 15–25).

PART II—AMENDMENT OF ABORIGINES ACT 1971–1975

3. Citation. (1) In this Part the *Aborigines Act 1971–1975* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Aborigines Act 1971–1979*.

4. New Part IIA. The Principal Act is amended by inserting after section 14 the following heading and sections:—

“ PART IIA—COMMISSION

14A. Constitution of Commission. (1) There shall be established and maintained a Commission to be called the Aboriginal and Islander Commission.

(2) The members of the Commission shall be appointed by the Governor in Council by Order in Council, on the recommendation of the Minister, and shall consist of—

- (a) an Aborigine who usually resides on a reserve;
- (b) an Islander within the meaning of the *Torres Strait Islanders Act 1971–1975* who usually resides on a reserve within the meaning of that Act;
- (c) an Aborigine who does not usually reside on a reserve;
- (d) a person who, in the Minister’s opinion, is a Pacific Islander; and
- (e) such number of persons, of one or more of the descriptions aforesaid or any other description, as the Minister from time to time determines.

(3) In the instrument whereby he appoints the whole number of members of the Commission or, if at any time there is a vacancy in the office of chairman of the Commission, by a subsequent Order in Council the Governor in Council shall, on the recommendation of the Minister, appoint a member of the Commission to be its chairman.

14B. Functions of Commission. (1) The functions of the Commission shall be—

- (a) to consider, advise and recommend to the Minister in relation to matters that affect or are likely to affect the formulation of policy or a change in policy with respect to the cultural, social or economic welfare of Aborigines or Islanders within the meaning of the *Torres Strait Islanders Act 1971–1975* or members of the race, Pacific Islanders, who reside in the State;
- (b) to consider, advise and recommend to the Minister on such matters as are referred to the Commission by the Minister.

(2) In the performance of the Commission’s functions the members thereof shall have regard to and shall act in accordance with such guidelines as are given to them by the Minister.

14C. Term of appointment. (1) A member of the Commission shall be appointed for the term specified in the instrument of his appointment, which shall not in any case exceed three years.

(2) A member of the Commission—

(a) may at any time resign his appointment by writing under his hand given to the Minister;

(b) may at any time be removed from office by the Governor in Council, by Order in Council.

14D. Conditions of appointment. (1) Members of the Commission shall be entitled to fees for attending at meetings and to expenses incurred by them, or allowances for such expenses, in such amounts or at such rates as are determined by the Governor in Council from time to time.

This subsection does not apply in respect of any member who is also a member of the Public Service of the State.

(2) Save as is prescribed by subsection (1) the terms and conditions of appointment of members of the Commission shall be such as the Minister may determine from time to time.

14E. Business of Commission. (1) The members of the Commission shall meet at such times and places as the Minister approves and may meet at such other times and places as are necessary for the proper performance of the Commission's functions.

(2) At each meeting of the Commission at which he is present the chairman shall preside and if he is not present at a meeting the members present may elect one of their number to preside at the meeting.

The person who presides at a meeting shall be entitled to a deliberative vote and, in the event of an equality of votes, shall be entitled to a casting vote.

(3) The quorum of the Commission shall consist of half the number of members of the Commission for the time being plus one and the business of the Commission shall be conducted on the majority vote of its members present (being a quorum)."

5. Amendment of s. 3. Section 3 of the Principal Act is amended by inserting after the reference "PART II—ADMINISTRATION (ss. 7–14);" the following reference:—

"PART IIA—COMMISSION (ss. 14A–14E);".

6. Amendment of s. 5. Section 5 of the Principal Act is amended by inserting after the definition "child" the following definition:—

" "Commission" means the Aboriginal and Islander Commission established and maintained pursuant to this Act;".

7. Amendment of s. 10. Section 10 of the Principal Act is amended by, in subsection (3)—

(a) omitting from paragraph (b) the words "the person" and substituting the words "a person";

(b) inserting in paragraph (b) before the words "district officer" the word "a".

8. Amendment of s. 17. Section 17 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) A person shall not be on a reserve—

(a) if, being an Aborigine, his presence on the reserve is contrary to a direction given to him by or on behalf of the Aboriginal Council established under this Act in respect of the reserve; or

(b) unless, being a person other than an Aborigine, he is entitled under this Act to be on the reserve.

Penalty: \$200.”.

9. Amendment of s. 31. Section 31 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:—

“(3) In respect of the reserve or community for which it is established an Aboriginal Council—

(a) shall have and may exercise such functions, duties and powers of local government as are prescribed; and

(b) shall have and may exercise the power of directing that an Aborigine shall not enter, reside on, visit or be on the reserve or in the community if in the council's opinion his presence on the reserve or in the community would be detrimental to the reserve or community or to any of the residents therein.”.

10. New s. 31A. The Principal Act is amended by inserting after section 31 the following section:—

“**31A. Incorporation of Aboriginal Councils.** (1) Every Aboriginal Council existing at the date of passing of the *Aborigines and Islanders Acts Amendment Act 1979* is hereby constituted a body corporate and shall continue as such until it is dissolved as prescribed.

(2) Every Aboriginal Council duly established after the date of passing of the *Aborigines and Islanders Acts Amendment Act 1979* shall, upon its establishment, be a body corporate and shall continue as such until it is dissolved as prescribed.

(3) Each body corporate incorporated by subsection (1) or (2) shall have perpetual succession and a common seal which shall be judicially noticed and shall, under its name—(name of reserve or community) Aboriginal Council—, be capable in law of suing and being sued, of acquiring, holding, letting, leasing and otherwise dealing with property, real and personal, and of doing and suffering all such other acts and things as bodies corporate may in law do and suffer.

(4) The persons who, at the date of passing of the *Aborigines and Islanders Acts Amendment Act 1979*, make up an Aboriginal Council incorporated by subsection (1) shall continue to constitute that council as a body corporate until their successors are duly appointed as prescribed.”.

11. New ss. 32A, 32B and 32C. The Principal Act is amended by inserting after section 32 the following sections:—

“ 32A. Appeals concerning Aboriginal Court decisions. (1) A person aggrieved by a decision of an Aboriginal Court or of a district officer made on appeal from an Aboriginal Court may institute an appeal from the decision as follows:—

- (a) where the decision is that of an Aboriginal Court, to a district officer in relation to the district in which is situated the reserve or community in respect of which such court is established;
- (b) where the decision is that of a district officer, to the Visiting Justice in relation to the reserve or community in respect of which is established the Aboriginal Court from whose decision the appeal to the district officer was instituted.

(2) An appeal shall be instituted within 28 days after pronouncement of the decision that aggrieves by—

- (a) where the appeal is from a decision of an Aboriginal Court, giving notice in writing to the district officer to whom the appeal is to be made and to every other party to the proceedings in which the decision was pronounced;
- (b) where the appeal is from a decision of a district officer, giving him notice (written or oral) that the person aggrieved requires him to submit the matter to the Visiting Justice.

(3) In addition to all other rights of appeal had by him a person convicted of an offence by an Aboriginal Court and aggrieved by such conviction shall have the same right of appeal against or review of such conviction as if he had been convicted of the offence by a Magistrates Court, and the provisions of the *Justices Act 1886-1978* shall, with all necessary adaptations, apply in relation to such right and the exercise thereof.

32B. Determination of appeal. Save where the person who hears an appeal referred to in subsection 32A (1) orders that additional evidence shall be taken, such an appeal shall be by way of rehearing upon the evidence and proceedings before the Aboriginal Court that pronounced the material decision in the first instance and upon hearing the appellant and the respondent and a representative of such Aboriginal Court, or such of them as desires to be heard, the district officer or, as the case may be, Visiting Justice may—

- (a) pronounce the decision that, in his opinion, the Aboriginal Court should have pronounced at first instance, whereupon that decision shall be deemed to be the decision of the Aboriginal Court, and shall have force and effect accordingly; or
- (b) dismiss the appeal.

Where more than one appeal is duly instituted the decision last so pronounced on appeal shall be so deemed in lieu of any decision previously pronounced on appeal, and shall have force and effect accordingly.

32C. Effect of appeal. The due institution of an appeal referred to in subsection 32A (1) shall take effect as a stay of proceedings on the Aboriginal Court's decision, the subject of the appeal, until the appeal is determined.”.

12. Amendment of s. 37. Section 37 of the Principal Act is amended by omitting from subsection (2) the words “the district officer” and substituting the words “a district officer”.

13. Repeal of ss. 48 and 49. The Principal Act is amended by repealing sections 48 and 49.

14. Amendment of s. 50. Section 50 of the Principal Act is amended by omitting the words “the district officer” and substituting the words “a district officer”.

PART III—AMENDMENT OF TORRES STRAIT ISLANDERS ACT

15. Citation. (1) In this Part the *Torres Strait Islanders Act 1971–1975* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Torres Strait Islanders Act 1971–1979*.

16. Amendment of s. 3. Section 3 of the Principal Act is amended by inserting after the reference “PART II—ADMINISTRATION (ss. 7–14);” the following reference:—

“PART IIA—COMMISSION (s. 14A);”.

17. Amendment of s. 5. Section 5 of the Principal Act is amended by inserting after the definition “child” the following definition:—

““Commission” means the Aboriginal and Islander Commission established and maintained pursuant to Part IIA of the *Aborigines Act 1971–1979*;”.

18. Amendment of s. 10. Section 10 of the Principal Act is amended by, in subsection (3)—

(a) omitting from paragraph (b) the words “the person” and substituting the words “a person”;

(b) inserting in paragraph (b) before the words “district officer” the word “a”.

19. New Part IIA. The Principal Act is amended by inserting after section 14 the following heading and section:—

“PART IIA—COMMISSION

14A. Performance of Commission's functions. The Commission established under Part IIA of the *Aborigines Act 1971–1979* and called the Aboriginal and Islander Commission, as constituted from time to time under that Part, shall perform its functions provided for by that Act with respect to matters concerning Islanders as if it were established and constituted under this Act.”.

20. Amendment of s. 17. Section 17 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) A person shall not be on a reserve—

(a) if, being an Islander, his presence on the reserve is contrary to a direction given to him by or on behalf of the Island Council established under this Act in respect of the reserve; or

(b) unless, being a person other than an Islander, he is entitled under this Act to be on the reserve.

Penalty: \$500.”.

21. New s. 35A. The Principal Act is amended by inserting after section 35, the following section:—

“**35A. Incorporation of Island Councils.** (1) Every Island Council existing at the date of passing of the *Aborigines and Islanders Acts Amendment Act 1979* is hereby constituted a body corporate and shall continue as such until it is dissolved as prescribed.

(2) Every Island Council duly established after the date of passing of the *Aborigines and Islanders Acts Amendment Act 1979* shall, upon its establishment, be a body corporate and shall continue as such until it is dissolved as prescribed.

(3) Each body corporate incorporated by subsection (1) or (2) shall have perpetual succession and a common seal which shall be judicially noticed and shall, under its name—(name of reserve or community) Island Council—, be capable in law of suing and being sued, of acquiring, holding, letting, leasing and otherwise dealing with property, real and personal, and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

(4) The persons who, at the date of passing of the *Aborigines and Islanders Acts Amendment Act 1979*, make up an Island Council incorporated by subsection (1) shall continue to constitute that council as a body corporate until their successors are duly appointed as prescribed.”.

22. Amendment of s. 36. Section 36 of the Principal Act is amended by, in subsection (2), adding at the end thereof the following paragraph:—

“In respect of the reserve or community for which it is established an Island Council shall have and may exercise the power of directing that an Islander shall not enter, reside on, visit or be on the reserve or in the community if in the council's opinion his presence on the reserve or in the community would be detrimental to the reserve or community or to any of the residents therein.”.

23. Amendment of s. 43. Section 43 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(3) In addition to all other rights of appeal had by him a person convicted of an offence by an Island Court and aggrieved by such conviction shall have the same right of appeal against or review of such conviction as if he had been convicted of the

offence by a Magistrates Court, and the provisions of the *Justices Act 1886-1978* shall, with all necessary adaptations, apply in relation to such right and the exercise thereof.

Sections 44 and 45 do not apply in relation to an appeal instituted pursuant to the right conferred by this subsection.”.

24. Amendment of s. 61. Section 61 of the Principal Act is amended by omitting from subsection (2) the words “the district officer” and substituting the words “a district officer”.

25. Amendment of s. 72. Section 72 of the Principal Act is amended by omitting the words “the district officer” and substituting the words “a district officer”.