



Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978

Act No. 11 of 1978 as amended

This compilation was prepared on 15 October 2001
taking into account amendments up to Act No. 112 of 2001

The text of any of those amendments not in force
on that date is appended in the Notes section

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An Act to empower Aboriginals and Torres Strait Islanders who live on reserves in Queensland to manage and control their own affairs

1 Short title [see Note 1]

This Act may be cited as the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978*.

2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

In this Act, unless the contrary intention appears:

Aboriginal means a person who is a member of the Aboriginal race of Australia.

Aboriginal Community means a community for Aborigines established, or deemed to have been established, under or by the Aborigines Act.

Aboriginal Community to which this Act applies means an Aboriginal Community in respect of which a declaration under subsection 5(3) is in force.

Aboriginal Reserve means any land that is a reserve for the purposes of the Aborigines Act.

Aboriginal Reserve to which this Act applies means an Aboriginal Reserve in respect of which a declaration under subsection 5(1) is in force.

Aborigines Act means:

- (a) the *Aborigines Act* 1971 of Queensland or that Act as amended and in force at any relevant time; or

- (b) if that Act ceases to be in force and another Act is substituted for that Act—the substituted Act or that Act as amended and in force at any relevant time;

and includes:

- (c) any regulations and other instruments (including by-laws) as in force at any relevant time under or by virtue of the *Aborigines Act 1971* or that Act as amended and in force at any relevant time, or under or by virtue of the substituted Act or that Act as amended and in force at any relevant time; and
- (d) any instruments (including any by-laws) as in force at any relevant time under or by virtue of those regulations as in force at any relevant time.

Community means an Aboriginal Community or an Islander Community.

Community to which this Act applies means an Aboriginal Community to which this Act applies or an Islander Community to which this Act applies.

Council, in relation to a Reserve or Community, means:

- (a) except in a case where paragraph (b) applies—the Aboriginal Council for the Reserve or Community or the Island Council for the Reserve or Community, as the case may be, established or continued in existence under or by the *Aborigines Act* or the *Torres Strait Islanders Act*, as the case may be; or
- (b) if a declaration under subsection 6(1) is in force at the relevant time in relation to the Reserve or Community—the body specified in that declaration.

Islander means a person who is a member of the race to which Torres Strait Islanders belong.

Islander Community means a community for Islanders established, or deemed to have been established, under or by the *Torres Strait Islanders Act*.

Islander Community to which this Act applies means an Islander Community in respect of which a declaration under subsection 5 (4) is in force.

Islander Reserve means any land that is a reserve for the purposes of the Torres Strait Islanders Act.

Islander Reserve to which this Act applies means an Islander Reserve in respect of which a declaration under subsection 5(2) is in force.

Reserve means an Aboriginal Reserve or an Islander Reserve.

Reserve to which this Act applies means an Aboriginal Reserve to which this Act applies or an Islander Reserve to which this Act applies.

Torres Strait Islanders Act means:

- (a) the *Torres Strait Islanders Act* 1971 of Queensland or that Act as amended and in force at any relevant time; or
- (b) if that Act ceases to be in force and another Act is substituted for that Act—the substituted Act or that Act as amended and in force at any relevant time;

and includes:

- (c) any regulations and other instruments (including by-laws) as in force at any relevant time under or by virtue of the *Torres Strait Islanders Act* 1971 or that Act as amended and in force at any relevant time, or under or by virtue of the substituted Act or that Act as amended and in force at any relevant time; and
- (d) any instruments (including any by-laws) as in force at any relevant time under or by virtue of those regulations as in force at any relevant time.

4 Act binds Commonwealth and Queensland

This Act binds the Crown in right of the Commonwealth and the Crown in right of the State of Queensland.

4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

5 Declaration of Reserves and Communities as Reserves and Communities to which this Act applies

(1) Where:

- (a) the Council for an Aboriginal Reserve requests the Minister to make a declaration under this subsection; or
- (b) the Minister is satisfied that a substantial majority of the adult Aboriginals resident on an Aboriginal Reserve wish to manage and control their own affairs in the manner provided for by this Act;

the Minister may, by notice published in the *Gazette*, declare the reserve to be an Aboriginal Reserve to which this Act applies.

(2) Where:

- (a) the Council for an Islander Reserve requests the Minister to make a declaration under this subsection; or
- (b) the Minister is satisfied that a substantial majority of the adult Islanders resident on an Islander Reserve wish to manage and control their own affairs in the manner provided for by this Act;

the Minister may, by notice published in the *Gazette*, declare the reserve to be an Islander Reserve to which this Act applies.

(3) Where:

- (a) the Council for an Aboriginal Community requests the Minister to make a declaration under this subsection; or

- (b) the Minister is satisfied that a substantial majority of the adult Aboriginals who are the members of an Aboriginal Community wish to manage and control their own affairs in the manner provided for by this Act;
- the Minister may, by notice published in the *Gazette*, declare the Community to be an Aboriginal Community to which this Act applies.
- (4) Where:
- (a) the Council for an Islander Community requests the Minister to make a declaration under this subsection; or
- (b) the Minister is satisfied that a substantial majority of the adult Islanders who are the members of an Islander Community wish to manage and control their own affairs in the manner provided for by this Act;
- the Minister may, by notice published in the *Gazette*, declare the Community to be an Islander Community to which this Act applies.

6 Declaration of Aboriginal Councils or Island Councils for the purposes of this Act

- (1) If, at any time:
- (a) there is not in existence for a Reserve to which this Act applies, or for a Community to which this Act applies, a Council of a kind referred to in paragraph (a) of the definition of **Council** in section 3; or
- (b) there is in existence for a Reserve to which this Act applies, or for a Community to which this Act applies, a Council of that kind, but the Minister is of the opinion that he or she should exercise his or her powers under this section to declare another body to be the Council for the Reserve or the Community;
- the Minister may, by notice published in the *Gazette*, declare a body specified in the declaration to be the Council for the Reserve or for the Community, as the case may be, for the purpose of this Act.

- (2) A declaration under subsection (1) does not cease to have effect by reason that, after the making of the declaration, another body is established, or purports to be established, under or by the Aborigines Act or the Torres Strait Islanders Act as the Aboriginal Council for the Reserve or Community, or the Island Council for the Reserve or Community, as the case may be, to which the declaration relates.
- (3) A body specified in a declaration made by the Minister under subsection (1) may be a body constituted, for the purposes of this section, under or by the regulations.

7 Functions of Councils for Reserves and Communities to which this Act applies

- (1) The Council for an Aboriginal Reserve to which this Act applies, or for an Islander Reserve to which this Act applies, shall manage and control the affairs of the Aboriginal community or the Islander community, as the case may be, residing on the Reserve.
- (2) The Council for a Reserve to which this Act applies has such other functions as are conferred on it by the regulations, being functions in relation to Aboriginals and Islanders who reside on the Reserve or are on the Reserve.
- (3) The Council for an Aboriginal Community to which this Act applies, or for an Islander Community to which this Act applies, shall manage and control the affairs of that Aboriginal Community or that Islander Community, as the case may be.
- (4) The Council for a Community to which this Act applies has such other functions as are conferred on it by the regulations, being functions in relation to Aboriginals or Islanders who are members of that Community or are on that part of the Reserve on which the Community is established that is appropriated for the use of the Community.

8 Councils responsible to communities

- (1) The Council for an Aboriginal Reserve to which this Act applies, or for an Islander Reserve to which this Act applies, shall be
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responsible to, and only to, the Aboriginal community or the Islander community, as the case may be, residing on the Reserve for the conduct, discipline and well-being of the members of the Aboriginal community or the Islander community, as the case may be.

- (2) The Council for an Aboriginal Community to which this Act applies, or for an Islander Community to which this Act applies, shall be responsible to, and only to, that Aboriginal Community or that Islander Community, as the case may be, for the conduct, discipline and well-being of the members of that Community.

9 Provision of services by Councils for Reserves and Communities to which this Act applies

- (1) Without limiting the services that, in the performance of its functions, may be provided or made available by the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, or that such a Council may arrange to be provided or made available, for the Aboriginals or Islanders who reside on the Reserve or are members of that Community, as the case may be, such a Council may provide or make available, or arrange to be provided or made available, for such Aboriginals or Islanders services relating to all or any of the following matters:
- (a) housing;
 - (b) health;
 - (c) sewerage;
 - (d) water supply;
 - (e) electricity supply;
 - (f) communications;
 - (g) education or training;
 - (h) relief work for unemployed persons;
 - (j) roads and associated works;
 - (k) garbage collection and disposal;
 - (m) welfare;
 - (n) community amenities.

- (2) Subsection (1) shall not be construed as preventing any body, authority or person other than the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, from providing or making available for the Aboriginals or Islanders who reside on the Reserve or who are members of that Community, as the case may be, any services, including services relating to all or any of the matters specified in subsection (1).

10 Power of Councils for Reserves and Communities to which this Act applies to make by-laws

- (1) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may make by-laws for purposes connected with its functions, including by-laws amending or varying by-laws as in force from time to time under this section.
- (2) By-laws made under subsection (1) may fix charges for services provided or made available by the Council for Aboriginals or Islanders, and may make provision with respect to the payment of such charges.
- (3) The amount of a charge referred to in subsection (2) may, if unpaid, be recovered by the Council by action in a court of competent jurisdiction from an Aboriginal or an Islander to whom the service to which the charge relates has been provided or made available.
- (4) A by-law has no effect unless it has been approved by the Minister.
- (5) Where the Minister approves any by-laws, he or she 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 the giving of the Minister's approval.
- (5A) By-laws made under this section 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 the date specified.

- (6) If a copy of any by-laws is not laid before each House of the Parliament in accordance with subsection (5), the by-laws shall be void and of no effect.
- (7) Where a copy of any by-laws has been laid before a House of the Parliament in accordance with subsection (5) of 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 those by-laws as if references in those provisions to regulations were references to by-laws.
- (8) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, shall use its best endeavours to ensure that the by-laws of the Council are made known to Aboriginals or Islanders who reside on the Reserve or are members of the Community.
- (9) A by-law does not apply in relation to a person who is not an Aboriginal or an Islander.
- (10) The by-laws may provide that any contravention of a by-law is an offence punishable, upon conviction, by a fine not exceeding \$20.
- (11) In proceedings for an offence referred to in subsection (10), it is a defence if the person was not aware of the by-law to which the offence relates.

Note: A defendant bears an evidential burden in relation to the matter in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

11 Powers of Councils for Reserves and Communities to which this Act applies

- (1) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may do all things that are necessary or convenient to be done for or in connexion with the performance of its functions.
- (2) Subject to the regulations, the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may, in the performance of its functions, receive and disburse moneys.

12 Entry to Reserves or Communities

- (1) Where:
 - (a) there is not in force under the Aborigines Act or Torres Strait Islanders Act in respect of a person a permit authorizing the person to reside on, or visit, a Reserve to which this Act applies, being a person who is not otherwise entitled to reside on, or visit, the Reserve; and
 - (b) the Council for the Reserve is satisfied that it would be for the benefit of the Aboriginal community or the Islander community, as the case may be, residing on the Reserve to permit the person to reside on, or visit, the Reserve;the Council may authorize the person to reside on, or visit, the Reserve.
- (2) A person in respect of whom there is in force an authority under subsection (1) to reside on, or visit, a Reserve shall not be prevented from entering and residing on, or visiting, as the case may be, and shall not be ejected from, the Reserve by reason that a permit authorizing the person to reside on, or visit, the Reserve is not in force in respect of the person under the Aborigines Act or the Torres Strait Islanders Act, and it shall not, for that reason, be unlawful for the person to be on the Reserve.
- (3) Where:
 - (a) there is not in force under the Aborigines Act or Torres Strait Islanders Act in respect of a person a permit authorizing the person to reside on, or visit, a Reserve to which this Act applies, being a person who is not otherwise entitled to reside on, or visit, the Reserve; and
 - (b) the Council for a Community to which this Act applies, being a Community which is established on the Reserve, is satisfied that it would be for the benefit of that Community to permit the person to reside on, or visit, that part of the Reserve appropriated for the use of that Community;the Council may authorize the person to reside on, or visit, that part of the Reserve.
- (4) A person in respect of whom there is in force an authority under subsection (3) to reside on, or visit, a part of a Reserve shall not be

prevented from entering and residing on, or visiting, as the case may be, and shall not be ejected from, that part of the Reserve, by reason that a permit authorizing the person to reside on, or visit, the Reserve is not in force in respect of the person under the Aborigines Act or the Torres Strait Islanders Act, and it shall not, for that reason, be unlawful for the person to be on that part of the Reserve.

13 Directions given under Aborigines Act or Torres Strait Islanders Act

- (1) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, is not subject to control under the Aborigines Act or the Torres Strait Islanders Act, and, in particular, is not required to comply with any directions given to it under or by virtue of the Aborigines Act or the Torres Strait Islanders Act.
- (2) An Aboriginal or Islander who is residing on a Reserve to which this Act applies, or an Aboriginal or Islander who is a member of a Community to which this Act applies or a person who is residing on, or visiting, a Reserve or part of a Reserve in pursuance of an authority that is in force in respect of him or her under section 12, is not required to comply with any directions given to him or her under or by virtue of the Aborigines Act or the Torres Strait Islanders Act.
- (3) In this section, *directions* means directions in any form, including directions in the form of instructions.

14 By-laws under Aborigines Act or Torres Strait Islanders Act

By-laws in force under the Aborigines Act or the Torres Strait Islanders Act do not apply in or in relation to a Reserve to which this Act applies or a Community to which this Act applies.

15 Commonwealth may make land available to Councils for carrying out functions

- (1) The Commonwealth may make available to the Council for a Reserve to which this Act applies, or for a Community to which

this Act applies, for the purpose of enabling the Council to perform its functions, any interest in land acquired by or otherwise vested in the Commonwealth.

- (2) In this section, *interest*, in relation to land, has the same meaning as in the *Lands Acquisition Act 1989*.

16 This Act not to derogate from the *Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975*

The provisions of this Act are in addition to, and shall not be taken as being in derogation of, the provisions of the *Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975*.

17 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for and in relation to:

- (a) the constituting of bodies for the purposes of section 6;
- (b) the election of persons to such bodies; and
- (c) the incorporation of any such bodies.

Table of Acts

Notes to the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978*

Note 1

The *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978* as shown in this compilation comprises Act No. 11, 1978 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 17 September 2001 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978</i>	11, 1978	10 April 1978	10 April 1978	
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part II (ss. 3 and 4): 20 Oct 1982 (a)	—
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Lands Acquisition (Repeal and Consequential Provisions) Act 1989</i>	21, 1989	20 April 1989	9 June 1989 (see s. 2 and <i>Gazette</i> 1989, No. S185)	Ss. 5-13
<i>Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Act 2001</i>	112, 2001	17 Sept 2001	15 Oct 2001	S. 4 [see Table A]

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 4A.....	ad. No. 112, 2001
S. 6.....	am. No. 112, 2001
S. 10.....	am. No. 80, 1982; No. 99, 1988; No. 112, 2001
Note to s. 10(11).....	ad. No. 112, 2001
Ss. 12, 13.....	am. No. 112, 2001
S. 15.....	am. No. 21, 1989

Table A

Table A

Application, saving or transitional provisions

*Reconciliation and Aboriginal and Torres Strait Islander Affairs
Legislation Amendment (Application of Criminal Code) Act 2001
(No. 112, 2001)*

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.