

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER
STUDIES BILL 1989**

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation

**PART 2—INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER
STUDIES**

4. Institute of Aboriginal and Torres Strait Islander Studies

PART 3—FUNCTIONS OF INSTITUTE

5. Functions of Institute
6. Powers of Institute

PART 4—MEMBERS OF INSTITUTE

7. Members of Institute
8. Period of membership
9. Resignation
10. Register of members
11. Rights of members

TABLE OF PROVISIONS—*continued*

Section

PART 5—COUNCIL OF INSTITUTE

Division 1—Constitution of Council

- 12. Constitution of Council
- 13. Responsibilities of Council
- 14. Chairperson and Deputy Chairperson of Council

Division 2—Administrative provisions

- 15. Term of office
- 16. Remuneration and allowances
- 17. Leave of absence
- 18. Acting appointments
- 19. Disclosure of interests
- 20. Resignation
- 21. Termination of membership of Council
- 22. Other terms and conditions

Division 3—Operations of Council

- 23. Meetings of Council

PART 6—PRINCIPAL

- 24. Principal
- 25. Period of appointment
- 26. Remuneration and allowances
- 27. Resignation
- 28. Other terms and conditions

PART 7—STAFF

- 29. Staff
- 30. Consultants

PART 8—RESEARCH ADVISORY COMMITTEE

- 31. Research Advisory Committee
- 32. Functions of Research Advisory Committee
- 33. Remuneration and allowances
- 34. Resignation
- 35. Other terms and conditions

PART 9—FINANCE

- 36. Application of money held by Institute
- 37. Exemption from taxation
- 38. Application of Audit Act

PART 10—MISCELLANEOUS

- 39. Minister and Commission to be informed concerning general conduct of Institute
- 40. Minister or Commission may ask for advice
- 41. Commission to be given copies of annual reports etc.
- 42. Delegation to Principal or staff
- 43. Remuneration and allowances
- 44. Offences relating to grants
- 45. Conduct of directors, servants and agents
- 46. Rules
- 47. Regulations

TABLE OF PROVISIONS—*continued*

Section

PART 11—CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

Division 1—Preliminary

48. Interpretation

Division 2—Repeal

49. Repeal

Division 3—Transitional provisions

- 50. Election of Councillors where Institute rules have not been made
- 51. First Principal of the Institute
- 52. Transfer of assets and liabilities of old Institute
- 53. Old Institute instruments
- 54. Pending proceedings
- 55. Annual report and financial statements
- 56. Certificates with respect to assets, liabilities and instruments
- 57. State or Territory officer may act on certificate
- 58. Transfer of appropriated money
- 59. Contracts of employment not preserved
- 60. Transfer of staff to Australian Public Service
- 61. Exemption from taxation

Division 4—Consequential amendments of other Acts

- 62. Public Service Act
- 63. Remuneration Tribunal Act
- 64. Sales Tax (Exemptions and Classifications) Act

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 4 May 1989

(Minister for Aboriginal Affairs)

A BILL

FOR

An Act to establish an Institute of Aboriginal and Torres Strait Islander Studies, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Institute of Aboriginal and Torres Strait Islander Studies Act 1989*.

Commencement

2. This Act commences on the commencement of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

MR

Interpretation

3. In this Act, unless the contrary intention appears:

“Aboriginal and Torres Strait Islander studies” means research and study in relation to aspects of the culture, history and society of Aboriginal persons or Torres Strait Islanders; 5

“Aboriginal person” means a person of the Aboriginal race of Australia;

“Advisory Board” means the Torres Strait Islander Advisory Board established by section 81 of the Commission Act;

“appointed Councillor” means a Councillor referred to in paragraph 12 (1) (b) or (c); 10

“Chief Executive Officer” means the Chief Executive Officer of the Commission referred to in section 44 of the Commission Act;

“Commission” means the Aboriginal and Torres Strait Islander Commission established by section 6 of the Commission Act;

“Commission Act” means the *Aboriginal and Torres Strait Islander Commission Act 1989*; 15

“Commissioner” means a member of the Commission;

“Council” means the Council of the Institute referred to in section 12;

“Council Chairperson” means the Chairperson of the Council appointed under subsection 14 (1); 20

“Councillor” means a member of the Council;

“elected Councillor” means a Councillor referred to in paragraph 12 (1) (a);

“Institute” means the Institute of Aboriginal and Torres Strait Islander Studies established by section 4; 25

“Institute rules” means rules made by the Council under section 46;

“Principal” means the Principal of the Institute referred to in section 24;

“Research Advisory Committee” means the Research Advisory Committee of the Institute referred to in section 31; 30

“Torres Strait Islander” means a descendant of an indigenous inhabitant of the Torres Strait Islands.

PART 2—INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Institute of Aboriginal and Torres Strait Islander Studies

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4. (1) An Institute of Aboriginal and Torres Strait Islander Studies is established.

(2) The Institute:

(a) is a body corporate;

(b) shall have a seal; 40

- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued.

(3) The seal of the Institute shall be kept in such custody as the Council directs and shall not be used except as authorised by the Council.

- 5 (4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Institute appearing on a document and shall presume that it was duly affixed.

PART 3—FUNCTIONS OF INSTITUTE

Functions of Institute

- 10 5. The Institute has the following functions:
- (a) to undertake and promote Aboriginal and Torres Strait Islander studies;
 - (b) to publish the results of Aboriginal and Torres Strait Islander studies and to assist in the publication of the results of such studies;
 - 15 (c) to conduct research in fields relevant to Aboriginal and Torres Strait Islander studies and to encourage other persons or bodies to conduct such research;
 - (d) to assist in training persons, particularly Aboriginal persons and Torres Strait Islanders, as research workers in fields relevant to
 - 20 Aboriginal and Torres Strait Islander studies;
 - (e) to establish and maintain a cultural resource collection consisting of materials relating to Aboriginal and Torres Strait Islander studies;
 - (f) to encourage understanding, in the general community, of Aboriginal and Torres Strait Islander societies;
 - 25 (g) such other functions as are conferred on the Institute by this Act;
 - (h) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

Powers of Institute

- 30 6. (1) The Institute has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

(2) In spite of anything contained in this Act, any money or other property held by the Institute on trust shall be dealt with in accordance with the powers and duties of the Institute as trustee.

PART 4—MEMBERS OF INSTITUTE

Members of Institute

35 7. (1) The following persons are, subject to this Part, members of the Institute:

- (a) all persons who, immediately before the commencement of this section, were members of the Australian Institute of Aboriginal Studies;
- (b) all persons who, immediately before that commencement, were listed in a register maintained by the Australian Institute of Aboriginal Studies as associate members or corresponding members of that Institute; 5
- (c) such other persons as are appointed by the Council to be members of the Institute.

(2) The Council shall not appoint a person to be a member of the Institute unless: 10

- (a) the person has applied for membership of the Institute in accordance with the Institute rules;
- (b) the person has a demonstrated interest in Aboriginal and Torres Strait Islander studies; 15
- (c) the Research Advisory Committee has advised the Council whether or not the Committee considers the person should be appointed; and
- (d) the Council has considered the advice of the Committee.

Period of membership 20

8. (1) A person who becomes a member of the Institute because of paragraph 7 (1) (a), or because of an appointment under paragraph 7 (1) (c), continues to be a member because of that paragraph or appointment for a period of 5 years.

(2) A person who becomes a member of the Institute because of paragraph 7 (1) (b) continues to be a member because of that paragraph: 25

- (a) in the case of a person listed as an associate member of the Australian Institute of Aboriginal Studies—for a period equal to so much of the person’s term as an associate member as remained unexpired at the commencement of this section; and 30
- (b) in the case of a person listed as a corresponding member of the Australian Institute of Aboriginal Studies—for a period of 5 years.

(3) Nothing in this section prevents the Council from appointing as a member of the Institute a person who has previously been a member of the Institute. 35

Resignation

9. A member of the Institute may resign by writing signed by him or her and sent to the Principal.

Register of members

10. The Principal shall establish and maintain a register of the members of the Institute. 40

Rights of members

11. Membership of the Institute does not confer any rights or powers other than those expressly conferred by this Act or by the Institute rules.

PART 5—COUNCIL OF INSTITUTE

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Division 1—Constitution of Council

Constitution of Council

12. (1) There shall be a Council of the Institute consisting of the following members:

- 10 (a) 4 persons elected by the members of the Institute in accordance with the Institute rules, being persons who are themselves members of the Institute;
- (b) one person appointed by the Minister, being a person who is a Torres Strait Islander and whose appointment has been recommended by the Advisory Board;
- 15 (c) 4 other persons appointed by the Minister, being persons who are Aboriginal persons or Torres Strait Islanders.

(2) At least 3 of the Councillors appointed under paragraph (1) (c) shall be Commissioners.

(3) All the Councillors hold office on a part-time basis.

20 **Responsibilities of Council**

13. It is the responsibility of the Council to ensure the proper and efficient performance of the functions of the Institute and to determine the policy of the Institute with respect to any matter.

Chairperson and Deputy Chairperson of Council

25 14. (1) The Minister shall appoint a Chairperson and a Deputy Chairperson of the Council from among the Councillors.

(2) The Councillor who is the Chairperson or the Deputy Chairperson of the Council ceases to be the Chairperson or the Deputy Chairperson of the Council, as the case may be, if he or she ceases to be a Councillor.

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Division 2—Administrative provisions

Term of office

15. (1) An appointed Councillor holds office for such period, not exceeding 4 years, as is specified in the instrument of appointment.

35 (2) An elected Councillor holds office for such period, not exceeding 4 years, as is determined in accordance with the Institute rules.

Remuneration and allowances

16. A Councillor is entitled to remuneration and allowances in accordance with section 43.

Leave of absence

17. (1) The Minister may grant a Councillor leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Minister determines in writing. 5

(2) The Minister may delegate, to the Council Chairperson, the power under subsection (1) to grant leave of absence to the other Councillors.

Acting appointments 10

18. (1) The Deputy Chairperson of the Council shall act as the Council Chairperson:

- (a) during a vacancy in the office of Council Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Council Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office. 15

(2) The Minister may appoint a person to act in the office of an appointed Councillor:

- (a) during a vacancy in that office, whether or not an appointment has previously been made to the office; or 20
- (b) during any period, or during all periods, when the appointed Councillor is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(3) A person appointed to act during a vacancy in the office of an appointed Councillor under subsection (2): 25

- (a) shall not continue so to act for more than 6 months; and
- (b) shall not be re-appointed to act during that vacancy for a period that would be continuous with the period of 6 months from the date when the person first started acting during that vacancy. 30

(4) The Minister shall not appoint a person to act in an office of appointed Councillor unless, having regard to section 12, the person could be appointed to that office.

(5) The Minister may appoint a member of the Institute to act in the office of an elected Councillor during any period, or during all periods, when the elected Councillor is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office. 35

(6) The appointment of a person to act in the office of a Councillor who is also the Chairperson or Deputy Chairperson of the Council does not

constitute an appointment of the person to act as the Chairperson or Deputy Chairperson, as the case may be.

5 (7) Anything done by or in relation to a person purporting to act under an appointment made under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

10 **Disclosure of interests**

19. (1) A Councillor who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to the Councillor's knowledge, disclose the nature of the interest at a meeting of the Council.

15 (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Council and the Councillor shall not:

- (a) be present during any deliberation of the Council with respect to that matter; or
- (b) take part in any decision of the Council with respect to that matter.

20 **Resignation**

20. A Councillor may resign by writing signed by him or her and sent to the Minister.

Termination of membership of Council

25 21. (1) The Minister may terminate a person's membership of the Council because of misbehaviour or physical or mental incapacity.

(2) If a member of the Council:

- (a) is absent, except on leave granted under section 17, from 3 consecutive meetings of the Council; or
- (b) fails, without reasonable excuse, to comply with section 19;

30 the Minister shall terminate the person's membership of the Council.

(3) A Councillor who:

- (a) was appointed under paragraph 12 (1) (c); and
- (b) was, at the time of his or her appointment, a Commissioner;

ceases to be a Councillor if he or she ceases to be a Commissioner.

35 (4) An elected Councillor ceases to be a Councillor if he or she ceases to be a member of the Institute.

Other terms and conditions

22. A Councillor holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice in writing published in the *Gazette*.

Division 3—Operations of Council

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Meetings of Council

23. (1) The Council Chairperson shall convene such meetings of the Council as, in the Chairperson's opinion, are necessary for the efficient performance of the Council's responsibilities.

(2) The Minister may, at any time, convene a meeting of the Council. 10

(3) The Council Chairperson shall convene a meeting of the Council upon receipt of a written request for a meeting signed by at least 4 Councillors.

(4) At a meeting of the Council, a quorum is constituted by 5 Councillors including at least one Commissioner. 15

(5) Where:

(a) a Councillor who is present at a meeting is required by section 19 not to be present during the deliberations, or to take part in any decision, of the Council with respect to a particular matter; and

(b) when the Councillor leaves the meeting there is no longer a quorum present; 20

the Councillors remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

(6) The Council Chairperson shall preside at all meetings of the Council at which he or she is present. 25

(7) If the Council Chairperson is not present at a meeting of the Council:

(a) if the Deputy Chairperson of the Council is present, the Deputy Chairperson of the Council shall preside at the meeting; and 30

(b) in any other case, the Councillors present shall elect one of their number to preside at the meeting.

(8) Questions arising at a meeting of the Council shall be determined by a majority of the votes of the Councillors present and voting.

(9) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote. 35

(10) The Council Chairperson shall, when he or she convenes a meeting, notify the Chief Executive Officer of the time and place fixed for the meeting.

(11) The Chief Executive Officer or a representative of the Chief Executive Officer is entitled to be present at meetings of the Council but is not entitled to vote at any such meeting.

5 (12) The Council may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

PART 6—PRINCIPAL

Principal

24. (1) There shall be a Principal of the Institute who shall be appointed by the Council.

10 (2) The Principal shall, subject to subsection (3), manage the day-to-day administration of the Institute.

(3) The Principal shall, in managing the administration of the Institute and in exercising any powers conferred on the Principal by this Act, act in accordance with any policies determined, and any directions given, by the
15 Council in writing.

Period of appointment

25. (1) The Principal holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment.

20 (2) A person who has attained the age of 65 years shall not be appointed as Principal and a person shall not be appointed as Principal for a period that extends beyond the day on which the person will attain the age of 65 years.

Remuneration and allowances

25 26. The Principal is entitled to remuneration and allowances in accordance with section 43.

Resignation

27. The Principal may resign by writing signed by him or her and sent to the Council.

Other terms and conditions

30 28. The Principal holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Council by notice in writing published in the *Gazette*.

PART 7—STAFF

Staff

35 29. (1) Subject to section 30, the staff required to assist the Institute in the performance of its functions shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Principal has all the powers of, or exercisable by, a Secretary of a Department of the Australian Public Service under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.

5

Consultants

30. (1) The Principal may, on behalf of the Institute, engage as consultants to the Institute persons having suitable qualifications and experience.

(2) The terms and conditions on which consultants are engaged shall be as determined by the Council by notice published in the *Gazette*.

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PART 8—RESEARCH ADVISORY COMMITTEE

Research Advisory Committee

31. (1) There shall be a Research Advisory Committee of the Institute consisting of the following members:

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- (a) 3 members of the Council appointed by the Council;
- (b) 8 members of the Institute elected by the members of the Institute in accordance with the Institute rules;
- (c) the Principal.

(2) At least one of the members appointed under paragraph (1) (a) shall be a Commissioner.

20

(3) A member who was appointed under paragraph (1) (a) and who was, at the time of his or her appointment, a Commissioner, ceases to be a member if he or she ceases to be a Commissioner.

(4) A member who was appointed under paragraph (1) (a) ceases to be a member if he or she ceases to be a Councillor.

25

(5) A person elected as a member as mentioned in paragraph (1) (b) ceases to be a member of the Research Advisory Committee if he or she ceases to be a member of the Institute.

Functions of Research Advisory Committee

30

32. The Research Advisory Committee has the following functions:

- (a) to assess applications for research grants made to the Institute and to make recommendations to the Council in relation to such applications;
- (b) to advise the Council in relation to research matters;
- (c) to advise the Council in relation to applications for membership of the Institute.

35

Remuneration and allowances

33. A member of the Research Advisory Committee is entitled to remuneration and allowances in accordance with section 43.

Resignation

5 34. A member of the Research Advisory Committee may resign by writing signed by him or her and sent to the Council.

Other terms and conditions

10 35. A member of the Research Advisory Committee holds office for such period, and on such terms and conditions in respect of matters not provided for by this Act, as are determined by the Council by notice published in the *Gazette*.

PART 9—FINANCE

Application of money held by Institute

36. Money held by the Institute shall be applied only:

- 15 (a) in payment or discharge of the costs, expenses and other obligations incurred by the Institute in the performance of its functions and the exercise of its powers;
- (b) in payment of any remuneration and allowances payable to any person under this Act or any other Act; and
- 20 (c) in making any other payments which the Institute is authorised or required to make under this Act.

Exemption from taxation

25 37. The Institute is not subject to taxation (including taxation under the *Debts Tax Act 1982*) under any law of the Commonwealth or of a State or Territory.

Application of Audit Act

38. (1) It is hereby declared that the Institute is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

30 (2) The *Audit Act 1901* applies in relation to the Institute as if the Institute were not a Department for the purposes of Part VII of that Act.

PART 10—MISCELLANEOUS

Minister and Commission to be informed concerning general conduct of Institute

39. The Council shall:

- 35 (a) from time to time inform the Minister and the Commission about the general conduct of the activities of the Institute; and

- (b) give to the Minister or the Commission such information about the activities of the Institute as the Minister or the Commission, as the case may be, from time to time requires.

Minister or Commission may ask for advice

40. (1) The Minister or the Commission may, from time to time, ask the Council to provide advice on aspects of the culture, history and society of Aboriginal persons and Torres Strait Islanders. 5

(2) On receipt of a request under subsection (1), the Council shall, at the option of the Council:

- (a) prepare its advice having regard only to any relevant information that is already in the possession of the Institute; or 10
- (b) if the Council considers it appropriate to do so—arrange for the conduct of research into the matter to which the request relates by or on behalf of the Institute, and prepare its advice having regard to that research and to any other relevant information that is otherwise in the possession of the Institute. 15

(3) The Council is not required, in its advice in response to a request under subsection (1), to disclose:

- (a) any matters known to the Council to be held sacred by Aboriginal persons or Torres Strait Islanders or by a particular community or group of Aboriginal persons or Torres Strait Islanders; or 20
- (b) information relating to a particular person in a way that enables the identification of the person.

Commission to be given copies of annual reports etc.

41. The Council shall ensure that copies of all documents prepared in relation to the Institute in compliance with section 63M of the *Audit Act 1901* are given to the Commission as soon as practicable after their preparation. 25

Delegation to Principal or staff

42. The Institute may, by writing under its seal, delegate any or all of its functions and powers to the Principal or to a member of the staff of the Institute. 30

Remuneration and allowances

43. (1) The following provisions apply in relation to the holder of an office who is, by a provision of this Act, entitled to remuneration and allowances in accordance with this section: 35

- (a) the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal;
- (b) if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined, in writing, by the Minister; 40

(c) the holder of the office shall be paid such allowances as are determined, in writing, by the Minister.

5 (2) A determination by the Minister for the purposes of paragraph (1) (b) or (c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Offences relating to grants

10 44. A person shall not, in connection with, or with an application for, a grant or loan from the Institute:

(a) make a statement that the person knows to be false or misleading in a material particular; or

(b) present a document that, to the person's knowledge, contains information that is false or misleading in a material particular.

15 Penalty: \$1,000 or imprisonment for 6 months.

Conduct of directors, servants and agents

45. (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

20 (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

25 (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

30 (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and

35 (b) that the servant or agent had the state of mind.

40 (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-

mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against this Act includes a reference to:

- (a) an offence created by the regulations; and
- (b) an offence created by section 5, 6, 7, 7A, 29C or 29D, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that relates to this Act or the regulations.

Rules

46. (1) The Council may make rules, not inconsistent with this Act or the regulations, prescribing matters:

- (a) required or permitted by this Act to be prescribed by the Institute rules; or
- (b) necessary or convenient to be prescribed by the Institute rules in connection with the conduct of the affairs of the Institute.

(2) Rules made under this section are not statutory rules within the meaning of the *Statutory Rules Publication Act 1903*.

Regulations

47. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may:

(a) prescribe fees payable in respect of any matter under this Act; and

(b) provide penalties for breaches of the regulations not exceeding:

5 (i) in the case of a natural person—\$1,000; or

(ii) in the case of a body corporate—\$5,000.

PART 11—CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

Division 1—Preliminary

Interpretation

10 **48.** In this Part, unless the contrary intention appears:

“assets” means property of every kind, and, without limiting the generality of the foregoing, includes:

(a) choses in action; and

15 (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

20 “authorised officer” means the Minister, the Principal or a member of the staff of the new Institute authorised by the Minister in writing for the purposes of this Part;

“commencement” means the commencement of this Act;

25 “liabilities” means liabilities of every kind, and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

“new Institute” means the Institute of Aboriginal and Torres Strait Islander Studies;

“old Institute” means the Australian Institute of Aboriginal Studies;

30 “old Institute instrument” means an instrument:

(a) to which the old Institute was a party;

(b) that was given to or in favour of the old Institute;

(c) in which a reference is made to the old Institute; or

35 (d) under which money is, or may become, payable, or any other property is to be, or may become liable to be, transferred, to or by the old Institute;

being an instrument subsisting immediately before the commencement.

Division 2—Repeal

Repeal

49. The *Australian Institute of Aboriginal Studies Act 1964* is repealed.

Division 3—Transitional provisions

Election of Councillors where Institute rules have not been made

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50. Until the Council makes Institute rules relating to the conduct of elections for the purposes of paragraph 12 (1) (a), the reference in that paragraph to the Institute rules shall be read as a reference to procedures for the conduct of elections determined, in writing, by the Minister for the purposes of that paragraph.

10

First Principal of the Institute

51. The following provisions apply in relation to the first Principal of the Institute in spite of anything to the contrary in Part 6:

(a) the first Principal shall be the person who, immediately before the commencement, held the office of Principal of the Australian Institute of Aboriginal Studies;

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(b) that person commences to hold the office of Principal at the commencement as if he or she had been appointed to that office by the Council for a period (in this section called the “notional appointment period”) equal to so much of the person’s term as Principal of the Australian Institute of Aboriginal Studies as remained unexpired immediately before the commencement;

20

(c) that person is, as holder of the office of Principal during the notional appointment period, entitled to remuneration and allowances in accordance with section 43;

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(d) except as provided by paragraph (c), the terms and conditions applicable to that person as holder of the office of Principal during the notional appointment period are the same as the terms and conditions that were applicable to the person as holder of the office of Principal of the Australian Institute of Aboriginal Studies immediately before the commencement.

30

Transfer of assets and liabilities of old Institute

52. (1) At the commencement, the assets and liabilities of the old Institute become assets and liabilities of the new Institute.

(2) The following provisions apply to assets and liabilities that have become assets and liabilities of the new Institute because of subsection (1):

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(a) an asset that was, immediately before the commencement, held by the old Institute on trust shall, after the commencement, be held by the new Institute on trust and subject to the terms of the trust on which the asset was so held by the old Institute;

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- (b) liabilities of the old Institute to make payments shall, after the commencement, be taken to be liabilities incurred by the new Institute in the performance of its functions and the exercise of its powers.

5 **Old Institute instruments**

10 **53.** An old Institute instrument continues to have effect after the commencement but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring after the commencement, has effect as if a reference in the instrument to the old Institute were a reference to the new Institute.

Pending proceedings

15 **54.** Where, immediately before the commencement, proceedings to which the old Institute was a party were pending in any court, the new Institute is, after the commencement, substituted for the old Institute as a party to the proceedings and has the same rights in the proceedings as the old Institute had.

Annual report and financial statements

20 **55.** Division 3 of Part XI of the *Audit Act 1901* applies in relation to the year ending on the first 30 June after the commencement as if the old Institute were the same body as the new Institute, subject to the following qualifications:

- 25 (a) the accounts and records to which section 63L of that Act applies are the accounts and records of the new Institute and such of the accounts and records of the old Institute as are in the possession of the new Institute;
- 30 (b) the new Institute and the Auditor-General may, in discharging their obligations under section 63M of that Act, rely on accounts and records of the old Institute that are in the possession of the new Institute or to which the new Institute is allowed access and on any other information provided to the new Institute by any person who was a member of the Council, or of the staff, of the old Institute;
- (c) for the purposes of paragraph 63M (2) (c) of that Act, the old Institute and the new Institute shall be treated as having been established by their respective establishing enactments.

35 **Certificates with respect to assets, liabilities and instruments**

56. (1) An authorised officer may, by writing, certify that:

- 40 (a) an asset or liability specified or described in the certificate became, because of section 52, an asset or liability of the new Institute; or
- (b) an instrument specified or described in the certificate is an old Institute instrument.

(2) A certificate under subsection (1) is, in all courts and for all purposes, evidence of the matter stated in the certificate.

(3) Where a document purports to be a certificate under subsection (1) signed by a person purporting to be an authorised officer, judicial notice shall be taken of the signature of the person and of the fact that the person is or was an authorised officer.

State or Territory officer may act on certificate 5

57. Where:

(a) under section 52, an estate or interest in land becomes an asset of the new Institute; and

(b) a certificate that:

(i) identifies the land and the estate or interest; 10

(ii) states that the estate or interest has, because of that section, become an asset of the new Institute; and

(iii) is signed by an officer of the Attorney-General’s Department authorised by the Secretary to that Department to give such certificates; 15

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated; the officer with whom the certificate is lodged may deal with and give effect to the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the estate or interest to the new Institute duly executed under the laws in force in that State or Territory. 20

Transfer of appropriated money

58. (1) The following provisions have effect for the purposes of the operation of an Appropriation Act after the commencement:

(a) references in the Act to the old Institute shall be read as references to the new Institute; 25

(b) references in the Act to the *Australian Institute of Aboriginal Studies Act 1964* shall be read as references to this Act.

(2) In this section:

“Appropriation Act” means an Act appropriating money for expenditure in respect of a financial year and includes an Act appropriating money, by way of interim provision, for such expenditure. 30

Contracts of employment not preserved

59. Nothing in this Part preserves a contract of employment entered into by the old Institute. 35

Transfer of staff to Australian Public Service

60. Section 81B of the *Public Service Act 1922* has effect in relation to any person who, immediately before the commencement:

(a) was employed by the old Institute; and

(b) was an unattached officer for the purposes of the *Public Service Act 1922*;

as if the person had ceased to be an officer of the Australian Public Service immediately before the commencement.

5 Exemption from taxation

61. An instrument is not subject to stamp duty or any other tax under a law of the Commonwealth or of a State or Territory if an authorised officer certifies, in writing, that the instrument was made or given because of, or for a purpose connected with, this Division.

10 Division 4—Consequential amendments of other Acts

Public Service Act

62. Section 87 of the *Public Service Act 1922*¹ is amended by inserting before paragraph (2) (g) the following paragraph:

15 “(fb) employment as Principal of the Institute of Aboriginal and Torres Strait Islander Studies;”.

Remuneration Tribunal Act

63. Section 7 of the *Remuneration Tribunal Act 1973*² is amended by inserting before paragraph (9) (ad) the following paragraph:

20 “(acb) in the case of remuneration or allowances payable to a person who holds an office or appointment under the *Institute of Aboriginal and Torres Strait Islander Studies Act 1989*—be paid in accordance with the determination out of money of the Institute of Aboriginal and Torres Strait Islander Studies that is lawfully available to pay the remuneration or allowances;”.

25 Sales Tax (Exemptions and Classifications) Act

64. The First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1953*³ is amended by omitting from item 75 “the Australian Institute of Aboriginal Studies” and substituting “the Institute of Aboriginal and Torres Strait Islander Studies”.

NOTES

1. No. 21, 1922, as amended. For previous amendments, see No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947; Nos. 35 and 75, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; No. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; No. 59, 1974; No. 40, 1975; Nos. 193 and 194, 1976; Nos. 6 and 80, 1977; Nos. 36 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 61, 1981; Nos. 26 and 80, 1982; No. 111, 1982 (as amended by No. 39, 1983); Nos. 39, 56 and 92, 1983; No. 63, 1984 (as amended by No. 165,

NOTES—continued

- 1984); No. 165, 1984; Nos. 65, 166 and 187, 1985; Nos. 28, 29, 76 and 153, 1986; Nos. 92, 99 and 141, 1987; and Nos. 75, 87, 99 and 109, 1988.
2. No. 215, 1973, as amended. For previous amendments, see No. 80, 1974; No. 96, 1975; Nos. 60 and 178, 1978; Nos. 26, 108, 136 and 155, 1979; No. 160, 1980; Nos. 61, 74 and 176, 1981; Nos. 78 and 111, 1982; Nos. 39 and 128, 1983; Nos. 63, 73 and 164, 1984; Nos. 65 and 187, 1985; and Nos. 87, 109 and 123, 1988.
3. No. 60, 1935, as amended. For previous amendments, see No. 41, 1936; No. 78, 1938; No. 32, 1939; Nos. 29 and 76, 1940; No. 32, 1941; No. 6, 1942; Nos. 35 and 44, 1943; No. 31, 1944; No. 36, 1945; Nos. 12 and 67, 1946; No. 65, 1947; No. 42, 1948; No. 54, 1949; No. 37, 1950; No. 42, 1951; No. 44, 1952; No. 53, 1953; No. 45, 1954; No. 5, 1956; No. 71, 1957; No. 17 and 92, 1959; Nos. 65 and 88, 1960; Nos. 1 and 76, 1961; No. 4, 1962; No. 44, 1963; No. 30, 1965; Nos. 26 and 62, 1966; Nos. 21, 29 and 80, 1967; No. 78, 1970; Nos. 67 and 87, 1972; Nos. 17, 181 and 216, 1973; No. 24, 1975; No. 175, 1976; No. 107, 1978; Nos. 3, 94 and 157, 1979; No. 142, 1981; Nos. 64, 93 and 115, 1982; Nos. 63, 84 and 136, 1983; Nos. 81, 123 and 165, 1984; Nos. 65 and 67, 1985; Nos. 28, 76 and 98, 1986; Nos. 42, 135 and 140, 1987; and Nos. 78, 89 and 152, 1988.