

Aboriginal Land (Coranderrk Cemetery) Bill

No.

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SCHEDULE

LEGISLATIVE ASSEMBLY

Read 1° 8 April 1987

(Brought in by Mr Cathie and Mr Fordham)

A BILL

to provide for a Grant of Lands in the Parish of Gracedale to
Aborigines and for other purposes.

Aboriginal Land (Coranderrk Cemetery) Act 1987

5 WHEREAS the land shown hatched on the plan in the Schedule was originally Aboriginal land and was temporarily reserved under section 4 of the *Crown Land (Reserves) Act 1978* as a Site for Public purposes (Protection of Aborigines' Graves) by Order of the Governor in Council of 27 November 1962:

And whereas that land was traditionally owned, occupied, used and enjoyed by Aborigines in accordance with Aboriginal laws, customs, traditions and practices:

10 And whereas the traditional Aboriginal rights of ownership, occupation, use and enjoyment concerning that land are deemed never to have been extinguished:

And whereas that land has been taken by force from the Yarra Yarra Tribe without consideration as to compensation under Common Law or without regard to Yarra Yarra Law:

15 And whereas the land is of spiritual, social, historical, cultural and economic importance to the Yarra Yarra Tribe and to local and other Aborigines:

20 And whereas it is expedient to acknowledge, recognize and assert the traditional rights of Aborigines to that land and the continuous association they have with the land:

And whereas it is desirable to grant that land to the Healesville and District Aboriginal Co-operative Ltd:

The Parliament of Victoria therefore enacts as follows:

Purpose.

1. The purpose of this Act is to grant the land to the Healesville and District Aboriginal Co-operative Ltd and to make provision for the management of the land. 5

Commencement.

2. This Act comes into operation on the day on which it receives the Royal Assent. 10

Definitions.

3. In this Act—

“**Aborigine**” means a person who—

- (a) is descended from an Aborigine; and
- (b) identifies as an Aborigine; and 15
- (c) is accepted as an Aborigine by the Board of Directors on behalf of the Yarra Yarra Tribe.

“**Board of Directors**” means the Board of Directors of the Healesville and District Aboriginal Co-operative Ltd.

“**The land**” means the land shown hatched on the plan in the Schedule. 20

“**Day of the grant**” means the date on which the land is granted to the Healesville and District Aboriginal Co-operative Ltd under section 4.

“**Healesville and District Aboriginal Co-operative Ltd.**” means the body known as the Healesville and District Aboriginal Co-operative Ltd which is incorporated under the *Co-operation Act* 1981. 25

Grant of land.

4. (1) The Governor in Council is to make a grant of the land to the Healesville and District Aboriginal Co-operative Ltd as soon as possible after the commencement of this Act. 30

(2) From the day of the grant—

- (a) the reservation of the land under the *Crown Land (Reserves) Act* 1978 is revoked; and 35
- (b) the members of the body known as the Committee of Management of Coranderrk Cemetery Reserve go out of office.

Conditions of use of the land.

5. (1) The grant of the land gives to the Healesville and District Aboriginal Co-operative Ltd the following powers and is subject to the following limitations:

- 5 (a) The full power of management, control and enjoyment of the land is to be granted;
- (b) The power to transfer its interest in the land only to another Aboriginal group which is incorporated under the law of Victoria is to be granted.

10 (2) The Healesville and District Aboriginal Co-operative Ltd must not transfer its interest in the land to another Aboriginal group if there is an objection from any one of the Board of Directors or of the Co-operative's adult members.

By-laws.

15 6. (1) The Healesville and District Aboriginal Co-operative Ltd may make by-laws, not inconsistent with any law of the Commonwealth or the State, for or with respect to—

- (a) cultural activities on the land; and
- 20 (b) the management, access, conservation, fire protection, development and use of the land; and
- (c) the declaration of sacred or significant sites or other areas of significance to Aboriginal people on the land; and
- (d) the activities to be permitted in or on the land or any part of it; and
- 25 (e) protection and conservation of flora or fauna found in or on the land; and
- (f) control of visitors on and charging fees for entrance to the land; and
- (g) the imposition of penalties for a breach of a by-law.

30 (2) The Co-operative may appoint a person to enforce any of the by-laws it has made.

(3) A by-law may provide that a contravention of a by-law is an offence.

(4) A by-law may—

- 35 (a) prescribe a penalty not exceeding 5 penalty units in the case of an offender who is a natural person; and
- (b) prescribe a penalty not exceeding 25 penalty units in the case of an offender who is a corporation; and
- 40 (c) provide that an expense incurred by the Healesville and District Aboriginal Co-operative Ltd in consequence of a contravention of a by-law by a person may be recovered in whole or in part from that person as a debt due and payable

by that person to the Healesville and District Aboriginal Co-operative Ltd.

(5) If a by-law does not expressly prescribe a penalty for an offence against the by-law, the court before which proceedings are brought may impose a penalty not exceeding 2 penalty units. 5

(6) A by-law may provide for a person to be served with an infringement notice specifying a fixed penalty for an offence against the by-law as an alternative to a prosecution for the offence.

(7) The by-law must specify—

(a) the amount of the fixed penalty; and 10

(b) the form of the notice of infringement; and

(c) the person or class of persons who may issue a notice of infringement; and

(d) the person to whom payment of the fixed penalty may be made; and 15

(e) the period within which the fixed penalty must be paid in order to avoid prosecution.

(8) A notice of infringement must specify—

(a) the name of the alleged offender; and

(b) the nature of the offence alleged to have been committed in general terms; and 20

(c) the date, time and place of the alleged offence; and

(d) the amount of the fixed penalty; and

(e) the period within which and the place where the fixed penalty may be paid; and 25

(f) that the alleged offender is entitled to disregard the infringement notice and defend the prosecution for the offence in court.

(9) A by-law is a subordinate instrument for the purposes of the *Interpretation of Legislation Act 1984*. 30

(10) Before the Healesville and District Aboriginal Co-operative Ltd makes a by-law it must comply with the following procedure.

(11) The Healesville and District Aboriginal Co-operative Ltd must give a public notice in a local newspaper stating—

(a) the purpose and general purport of the proposed by-law; and 35

(b) that a copy of the proposed by-law can be obtained from the office of the Healesville and District Aboriginal Co-operative Ltd; and

(c) that any person affected by the proposed by-law may make a submission relating to the proposed by-law. 40

(12) After a by-law has been made, the Healesville and District Aboriginal Co-operative Ltd must give public notice in a local newspaper of the by-law specifying—

(a) the title of the by-law; and

5 (b) the purpose and general purport of the by-law; and

(c) that a copy of the by-law may be inspected without charge at the office of the Healesville and District Aboriginal Co-operative Ltd.

10 (13) The Healesville and District Aboriginal Co-operative Ltd must print copies of every by-law which is in force and must ensure that a copy of every such by-law—

(a) is available for inspection without charge at the office of the Healesville and District Aboriginal Co-operative Ltd; or

(b) can be purchased on demand at that office.

15 (14) Even though a by-law has come into operation—

(a) a person cannot be convicted of an offence against the by-law if it is proved that at the time of the alleged offence a copy of the by-law could not be purchased or inspected at the office of the Healesville and District Aboriginal Co-operative Ltd; and

20 (b) a person cannot be prejudicially affected or made subject to any liability by the by-law if it is proved that at the relevant time a copy of the by-law could not be purchased or inspected at the office of the Healesville and District Aboriginal Co-operative Ltd.

25 (15) A by-law or a provision of a by-law comes into operation at the beginning of the day on which the by-law is made or at the beginning of such later day as is expressed by the by-law as the day on which the by-law or provision comes into operation.

30 (16) Even though a by-law has come into operation a person cannot be convicted of an offence against the by-law or prejudicially affected or made subject to any liability by the by-law if it is proved that at the relevant time the Healesville and District Aboriginal Co-operative Ltd had not complied with sub-section (12) or (13).

35 (17) A by-law may be revoked by the Governor in Council by an Order in Council.

(18) A person may dispute the validity of a by-law under section 103 of the *Supreme Court Act* 1986.

Powers of Healesville and District Aboriginal Co-operative Ltd.

40 7. In addition to any of those powers which the Healesville and District Aboriginal Co-operative Ltd. has because of its incorporation, the Co-operative has power to enter into agreements with any Minister

of the State about any matter or thing relating to the protection or management of the land.

Winding-up of Healesville and District Aboriginal Co-operative Ltd.

8. If the Healesville and District Aboriginal Co-operative Ltd is wound-up and its interest in the land has not been transferred to another Aboriginal group— 5

(a) the land is to revert to the Crown to be held for the benefit of the direct descendants of the Yarra Yarra Tribe until another Aboriginal body the members of which are direct descendants of the Yarra Yarra Tribe can claim it and must be maintained in accordance with Aboriginal traditions and practices; and 10

(b) the Crown may grant the land to any other Aboriginal group the members of which are direct descendants of the Yarra Yarra Tribe and which is incorporated under any Act and which is approved by the Minister administering this Act after consulting with the Minister responsible for Aboriginal Affairs. 15

Change of ownership of land.

9. If the land is transferred or granted to another Aboriginal group in accordance with this Act— 20

(a) this Act has effect in relation to the group and the land as if—

(i) a reference in this Act to the Healesville and District Aboriginal Co-operative Ltd were a reference to the group; and 25

(ii) a reference to the Board of Directors were a reference to a body which may be declared by Order of the Governor in Council under this section; and 30

(b) the group to whom the land is transferred or granted is deemed to be the successor in law of the Healesville and District Aboriginal Co-operative Ltd for the purposes of this Act and has all the powers and duties of that body. 30

Matters to do with the management of the land.

10. (1) Sections 62 to 72 and 99 and 99A of the *Forests Act* 1958 and any regulations made under those sections apply to the land as if it is protected public land within the meaning of that Act but the other provisions of that Act do not apply. 35

(2) The land is, despite anything in the *Land Tax Act* 1958, exempt from land tax. 40

(3) The Minister administering this Act may recommend to the Governor in Council that the land or any part of it be declared a special

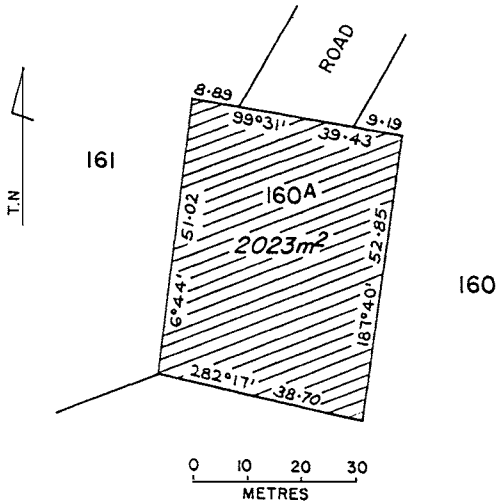
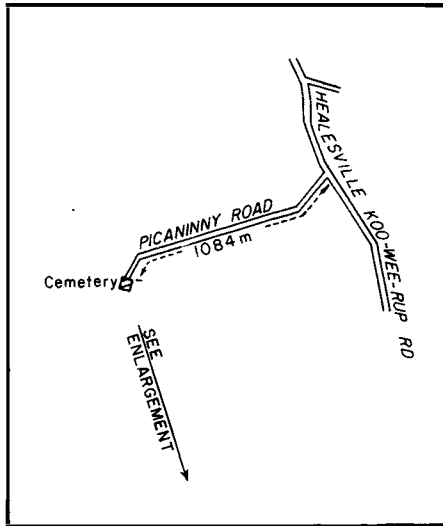
rateable property within the meaning of Part XI. of the *Local Government Act 1958* if—

- 5 (a) the Minister has received an application from the Healesville and District Aboriginal Co-operative Ltd to do so; and
 - (b) the Minister has before doing so consulted with the Minister responsible for Aboriginal Affairs.
- (4) The Healesville and District Aboriginal Co-operative Ltd has full care and control of the flora and fauna on the land except for—
- 10 (a) wildlife which has been declared by the Governor in Council to be notable or endangered wildlife under the *Wildlife Act 1975*; and
 - (b) wild flowers or native plants which have been proclaimed to be protected under the *Wild Flowers and Native Plants Protection Act 1958*.
- 15 (5) For the purposes of section 301 of the *Mines Act 1958*, the land is to be treated as if it is a cemetery.



SCHEDULE

Land in the Parish of Gracedale to be granted to the Healesville and District Aboriginal Co-operative Ltd under section 4.



PARISH OF GRACEDALE