



Aboriginal and Torres Strait Islander Commission (Misbehaviour) Determination 2002

I, PHILIP MAXWELL RUDDOCK, Minister for Immigration and Multicultural and Indigenous Affairs, make this Determination under subsection 4A (1) of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

Dated 14 November

2002

PHILIP RUDDOCK

Minister for Immigration and Multicultural and Indigenous Affairs

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1 Name of Determination

This Determination is the *Aboriginal and Torres Strait Islander Commission (Misbehaviour) Determination 2002*.

2 Commencement

This Determination commences on gazettal.

3 Definitions

In this Determination:

Aboriginal body means:

- (a) a body that is established by or under the Act; or
- (b) an Aboriginal or Torres Strait Islander corporation.

Note ***Aboriginal or Torres Strait Islander corporation*** is defined in section 4 of the Act as meaning:

- (a) an Aboriginal association incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*; or
- (b) a body corporate where either of the following conditions is satisfied:
 - (i) all the members of the body corporate are Aboriginal persons or Torres Strait Islanders, or both;
 - (ii) a controlling interest in the body corporate is held by Aboriginal persons or Torres Strait Islanders, or both.

Act means the *Aboriginal and Torres Strait Islander Commission Act 1989*.

Administrator of a Regional Council means an Administrator appointed under section 115, 123, 123A or 124J of the Act to administer the affairs of a Regional Council.

duties includes obligations under the following Acts:

- (a) *Commonwealth Authorities and Companies Act 1997*;
- (b) *Public Service Act 1999*;
- (c) *Financial Management and Accountability Act 1997*;
- (d) any other Act that:
 - (i) imposes obligations or duties on a person holding an office or position; or
 - (ii) requires the person to comply with a code of conduct.

Note Other terms defined or used in the Act have the same meaning in this Determination (*Acts Interpretation Act 1901*). These include the following:

- appointed Indigenous Land Corporation Director
- Chairperson of a Regional Council
- Chairperson of the TSRA
- Chief Executive Officer
- Commission
- Commissioner

- Deputy Chairperson of a Regional Council
- Deputy Chairperson of the TSRA
- Director of Evaluation and Audit
- Indigenous Business Australia Director
- member of the TSRA
- Regional Councillor
- TSRA
- TSRA Administrator
- TSRA General Manager.

4 Application of Determination

This Determination applies in relation to the behaviour of a person holding or occupying one or more of the following offices or positions:

- (a) Commissioner (includes Chairperson and Deputy Chairperson of ATSIC) (section 40 of the Act);
- (b) Regional Councillor (section 122A of the Act);
- (c) Chairperson of a Regional Council (section 127C of the Act);
- (d) Deputy Chairperson of a Regional Council (section 127G of the Act);
- (e) Chief Executive Officer (of ATSIC) (section 53 of the Act);
- (f) Director of Evaluation and Audit (of ATSIC) (section 77G of the Act);
- (g) Administrator of a Regional Council (section 124F of the Act);
- (h) Chairperson of the TSRA (section 143Y of the Act);
- (i) Deputy Chairperson of the TSRA (section 144B of the Act);
- (j) member of the TSRA (section 143S of the Act);
- (k) TSRA General Manager (section 144P of the Act);
- (l) TSRA Administrator (section 144ZN of the Act);
- (m) Indigenous Business Australia Director (includes Chairperson and Deputy Chairperson of the Indigenous Business Australia Board) (section 165 of the Act);
- (n) appointed Indigenous Land Corporation Director (includes Chairperson and Deputy Chairperson of the Indigenous Land Corporation) (section 192H of the Act).

Note The section references are references to the sections of the Act under which, because of misbehaviour:

- (a) the person may be suspended or removed from office; or
- (b) the person's appointment may be terminated.

5 Behaviour taken to be misbehaviour for the purposes of the Act

- (1) For subsection 4A (1) of the Act, the behaviour of a person in each of the following circumstances is taken to be misbehaviour:
 - (a) the person, at a meeting of an Aboriginal body:
 - (i) behaves in a way that has a seriously disruptive effect on the meeting; and

- (ii) continues to do so after the person who is presiding at the meeting requests the person to refrain from the behaviour;
 - (b) the person contravenes subsection 90 (2) of the Act;
 - (c) the person gives incorrect or misleading information, or fails to disclose relevant information, with the intention or result that the person is paid remuneration or allowances by an Aboriginal body or under a law of the Commonwealth;
 - (d) the person sexually harasses another person within the meaning of Division 3 of Part II of the *Sex Discrimination Act 1984*;
 - (e) the person harasses, intimidates or interferes with:
 - (i) a member or an employee of an Aboriginal body; or
 - (ii) another person in relation to a member or an employee of an Aboriginal body;with the intention or result that the member or employee breaches a code of conduct applicable to him or her, or otherwise fails in his or her duties;
 - (f) the person influences or attempts to influence a member or an employee of an Aboriginal body in the performance of his or her duties with the intention or result that the person or another person gains an improper advantage;
 - (g) the person dishonestly or improperly seeks a benefit from an Aboriginal body to which the person is not entitled;
 - (h) the person behaves in a way that brings the integrity and public reputation of an Aboriginal body into public disrepute;
 - (i) the person bribes or attempts to bribe another person;
 - (j) the person seriously misuses the facilities, funds or equipment of an Aboriginal body;
 - (k) the person is convicted of an offence for which there is a penalty of imprisonment.
- (2) Behaviour mentioned in paragraphs (1) (a) to (k) includes behaviour of the person whether or not the person is performing duties or functions as the holder or occupier of an office or position mentioned in section 4.
- (3) For paragraph (1) (e), a person is not taken to interfere with a member or employee of an Aboriginal body if the person is acting:
- (a) in good faith; and
 - (b) in the performance of his or her own duties or functions, whether as the holder or occupier of:
 - (i) an office or position mentioned in section 4; or
 - (ii) another office or position.
- (4) Behaviour mentioned in paragraph (1) (h) includes behaviour of the person that:
- (a) occurred after the commencement of this Determination and before the person held or occupied the office or position; and

- (b) becomes public knowledge after that time.
- (5) For paragraph (1) (k), a person is taken to be convicted of an offence if:
 - (a) the person is convicted, whether summarily or on indictment, of the offence; or
 - (b) the person is charged with, and found guilty of, the offence but discharged without a conviction being recorded.

6 Determination not exhaustive

- (1) Section 5 is not intended to limit the kinds of behaviour that are misbehaviour for the Act.
- (2) Any behaviour that is misbehaviour within the general meaning of the Act does not cease to be misbehaviour because of anything in this Determination.

7 Revocation

The *ATSIC (Misbehaviour) Determination No. 2* is revoked.