Aboriginal and Torres Strait Islander Commission Bill 1988

Date Introduced: 24 August 1988
House: House of Representatives
Presented by: Hon. Gerry Hand, M.P., Minister for Aboriginal Affairs

Digest of Bill

Purpose

To establish the Aboriginal and Torres Strait Islander Commission (the Commission) and related bodies. These bodies will replace the Department of Aboriginal Affairs, the Aboriginal Development Commission and the Institute of Aboriginal Studies. In addition, the Bill contains a preamble which declares, amongst other matters, that the Aboriginal and Torres Strait Islander people were the original occupants and owners of Australia and that these people have, as a result of dispossession, become the most disadvantaged group in Australia.

Background

In 1973 the Whitlam Government established an elected National Aboriginal Consultative Committee (NACC) to advise the Government in the area of Aboriginal and Islander affairs. In 1976 a Committee of Inquiry chaired by Dr L.R. Hiatt produced a critical report on the NACC, and in 1977 the Fraser Government replaced the NACC with another elected advisory body, the National Aboriginal Conference (NAC). Several critical reviews of the NAC, including one by Dr H.C. Coombs in 1983, led to the NAC being disbanded in June 1985.

Meanwhile, in 1980 the Aboriginal Development Commission (ADC) was established with the general aim of furthering the economic and social development of Aborigines. To this end the ADC provides housing loans and grants and runs a number of business programs, such as the business equity acquisitions program, the community employment and enterprise development scheme and the small business loans scheme. In the 1987–88 financial year, the ADC had a total net expenditure of $99.8 million, of which $48.8 million went towards providing rental accommodation, $17.9 million was allocated to encouraging home ownership, while $2.9 million was spent on corporate services.
In October 1985, the then Minister for Aboriginal Affairs, Mr Clyde Holding, released a discussion paper on a proposed National Aboriginal and Islander Consultative Organisation. It was proposed to establish regional assemblies made up of representatives of local communities and/or their organisations, and a National Congress made up of representatives from the regional assemblies, national Aboriginal service organisations and state Aboriginal consultative bodies.

The next major step towards establishing a new national Aboriginal body was taken on 10 December 1987. In a statement to the House of Representatives entitled 'Foundations for the Future', the Minister for Aboriginal Affairs, Mr Gerry Hand, outlined the Government's proposal to replace the Department of Aboriginal Affairs and the Aboriginal Development Commission with an Aboriginal and Torres Strait Islander Commission (ATSIC). The Minister proposed establishing 28 Regional Councils, each consisting of one representative from each of the communities and organisations within the region. Each Council would determine priorities for their region and send two representatives to a Zone Council. The six Zone Councils (Qld, W.A., N.S.W. and A.C.T., Vic. and Tas., S.A., N.T.) would consider policy proposals brought forward by Regional Councils and provide policy advice to the Minister and to a 12 person Aboriginal and Torres Strait Islander Commission. One Commissioner would be nominated by each of the six Zone Councils, one by the Torres Strait Islander community and five, including the chairperson, would be appointed by the Minister. The legislation establishing the new Commission would include a preamble recognising that Aboriginal people and Torres Strait Islanders were the original owners of the land. The legislation would also provide for the establishment of an Aboriginal Development Corporation within the framework of the Commission and an Australian Council for Aboriginal Studies. In his statement, the Minister said the Government would only proceed with the proposal if it met with Aboriginal and Islander approval.

In January 1988, the Minister began consulting with Aboriginal and Islander communities. In March he claimed overwhelming support for the basic proposal and produced a document outlining alternatives to some parts of the proposal. However, the proposal met resistance from the ADC. Soon after the Minister's March announcement, the ADC released a statement opposing the proposed Commission. Perhaps not surprisingly, the ADC was against its own abolition but the criticism went beyond this. The proposed Commission was seen as increasing Ministerial interference in Aboriginal affairs and also as increasing the bureaucracy, without any actual increase in the legislative power of Aboriginal bodies. It was stated in the Media Release that "The irony is that what ITSAC [the Commission] purports to offer Aborigines does not need a mammoth bureaucratic reshuffle of the deck-chairs. It can be achieved under powers already conferred by legislation, and a renewed political commitment to extending the capital base which is already at the disposal of the Aboriginal communities, already under their control and already advancing their economic equality." The ADC continued its campaign against the proposed Commission, and on 27 May the Minister tabled a directive under the Aboriginal Development
Commission Act 1980 that required the Commissioners to co-operate in the introduction of the Commission. The Commissioners refused to co-operate and began legal action seeking a determination that the direction was invalid (the directive was later found to be valid). Subsequently, eight of the ten Commissioners of the ADC, who had been appointed on a temporary basis, were dismissed.

In April, the Minister altered the initial proposal in several respects. The number of proposed regions was to be around 56. Regional Councils would comprise 20 members elected under a 'one person, one vote' system. There would be no Zone Councils. The number of proposed Commissioners was to be 15, of whom 12 would be elected by a postal ballot of Regional Councillors. There would be one Commissioner from a special Central Australian zone, one each from the Vic., S.A., Tas. and N.T. zones, one from the Torres Strait Islander Regional Council, and two from each of the W.A., N.S.W., and Qld zones. Three Commissioners, including the Chairperson, would be appointed by the Minister. There would be an Office of Torres Strait Islander Affairs within ATSIC, a Torres Strait Islander Advisory Board and direct access to the Minister within the budget process for the Torres Strait Islander Council.

The legislation introduced in August included some further changes, including an alteration to the wording of the preamble so that land rights cases presently before the courts would not be affected. In the second reading speech to this Bill, the Minister makes it clear that the preamble is not intended to affect existing rights or create new rights.

In the Explanatory Memorandum to the Bill it is estimated that the Bill will result in savings of $8.824 million per year.

Main Provisions

Clause 4 contains the circular definitions of an Aboriginal person as a person of the Aboriginal race of Australia, and of a Torres Strait Islander as a descendant of an indigenous inhabitant of the Torres Strait Islands.

Part II (Clauses 6 – 74) establishes the Aboriginal and Torres Strait Islander Commission as a corporate body with responsibilities across the spectrum of Aboriginal and Islander affairs. Clause 7 provides that its functions include developing policy proposals, formulating and implementing programs and advising the Minister. Clause 11 defines its relationship with the Minister. The Minister may give the Commission general instructions and the Commission is to follow those directions. The Commission will be authorised by clause 15 to make housing grants and loans on such terms and conditions as the Commission sees fit.

Clauses 21 to 47 provide for its constitution, administration, operations and staffing. The Commission is to consist of a Chairperson and 14 members. Twelve members are to be elected and the remaining two members and the Chairperson are to be appointed by the Minister (clause 21).
Division 8 (clauses 48 to 63) deals with finances. The Commission is to prepare estimates (clause 50) and a draft budget (clause 52). A Housing Fund is to be established (clause 56), as is a Regional Land Fund (clause 57). The Commission is to be exempt from all Commonwealth and State taxes (clause 60).

Clauses 64 to 73 provide for special consultation in the budget process between the Minister and Torres Strait Islander representatives; for the establishment of an Office of Torres Strait Islander Affairs within the Commission to monitor the development of programs which affect Islanders; and for the establishment of a Torres Strait Islander Advisory Board to advise the Minister, the Commission and the Regional Council for the Torres Strait on matters related to the social, economic and cultural advancement of Islanders.

Part III (Clauses 75 – 121) establishes a system of 60 Regional Councils. The Councillors are to be elected representatives and will determine priorities and programs for their region. The Regional Councils will also be required to prepare a regional plan for their area (clause 78), and to prepare draft budgets (clause 81).

Clause 85 provides that a person will be entitled to vote at a Regional election if the person is an Aboriginal person or a Torres Strait Islander who has attained the age of 18 years and lives in the region. Clause 86 provides that a person is not qualified to stand for election if the person is not entitled to vote at the election for that region’s Council, is a member of the staff of, or a consultant to, the Commission, or has received, and is serving, a prison sentence of one year or more. Clauses 87 to 97 provide for Regional Council elections to be held between 1 July and 31 December every three years. Voting will not be compulsory and the first election is to be held as soon as practicable after these provisions come into effect. Clause 112 divides Australia into 12 zones and clause 113 requires the members of the Council or Councils of the region or regions included in a zone to elect one of their number to represent the zone on the Commission.

Part IV (Clauses 122 – 169) establishes the Aboriginal Economic Development Corporation. The main functions of the Corporation will be to encourage participation in commercial projects and to promote those industries (clause 125). The Corporation’s Board is to consist of a Chairperson, Deputy Chairperson and seven other members. At least three of the Directors are to be Commissioners (clause 134). The Corporation’s funds will consist of any amount appropriated by Parliament and the funds payable under clause 225 (i.e. the capital of the ADC) (clause 156). The Treasurer will be able to limit the Corporation’s borrowings (clause 159). Clause 162 provides for the payment of annual dividends to the Commonwealth for the 1992–93 and subsequent financial years.

Part V (Clauses 170 – 209) establishes the Institute of Aboriginal and Torres Strait Islander Studies. Clause 171 provides that the Institute’s functions will include undertaking and promoting Aboriginal and Islander studies and establishing and maintaining a cultural resource collection. Clause 173 provides
that all persons who, immediately before the commencement of the clause, were members of the Australian Institute of Aboriginal Studies, will be members of the new Institute. Clause 178 will establish a Council of the Institute, consisting of four members elected by the members of the Institute; one member, who is a Torres Strait Islander, appointed by the Minister upon the recommendation of the Torres Strait Advisory Board; and four other Aboriginal and Islander members appointed by the Minister. Clauses 197 to 201 will establish a Research Advisory Committee of the Institute, the functions of which will include assessing research grant applications and advising the Council on research matters.

Part VI includes clause 217 which provides for Aboriginal Hostels Ltd, a Commonwealth controlled company, to be staffed under the Public Service Act 1922.

Part VII provides for the transfer of assets and liabilities from the Department of Aboriginal Affairs, the Aboriginal Development Corporation and the Australian Institute of Aboriginal Studies to the bodies which are replacing them, and repeals and amends relevant Acts.

For further information, if required, contact the Education and Welfare Group.

6 October 1988

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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