ABORIGINAL DEVELOPMENT COMMISSION BILL 1980

Purpose

To further the economic and social development of Aboriginals; to establish the Aboriginal Entitlement Capital Account with the object of promoting Aboriginal development, self-management and self-sufficiency; and to establish the Aboriginal Development Commission and an Aboriginal Land Register.

Background

This Bill replaces the Aboriginal Development Commission Bill 1979 which was introduced in the Senate on 21 November 1979. For the background to that Bill see Digest 79/188. During the Summer Parliamentary Recess copies of the Bill with explanatory notes were distributed to Aboriginal individuals and communities. Comments were invited and these were examined and evaluated by a Task Force within the Department of Aboriginal Affairs which also consulted widely with Aboriginal groups and communities. In addition six State Governments and key Aboriginal organisations responded. The amendments contained in the new Bill adopt the main submissions by

- reducing the role of the Minister
- creating an all Aboriginal Commission
- conferring powers and responsibilities on the Commission greater than those in the original Bill.

Provisions

Amendments to the 1979 Bill will be noted thus (amendment).

Part I - Preliminary

Clause 2 sets out those provisions which come into
operation when the Act receives Royal Assent and those which become operative on a date or dates to be set by Proclamation. Clauses 5 and 6 repeal the Aboriginal Loans Commission Act 1974 and the Aboriginal Land Fund Act 1974 respectively.

Clause 3 gives the purposes as above and includes in these purposes people of the Aboriginal race of Australia and people who are descendants of the indigenous inhabitants of the Torres Strait Islands (amendment).

In clause 4 the definitions of Aboriginal Corporation, Aboriginal Land Trust, business enterprise and personal property are amended for clarification.

Part II - Establishment, Functions and Powers of the Aboriginal Development Commission

The Aboriginal Development Commission is established (clause 7) with the following functions (clause 8):

a) to assist communities and groups of Aboriginals to acquire land;
b) to assist Aboriginals to engage in business enterprises;
c) to assist Aboriginals to obtain finance for housing and for other personal needs, and to provide such finance;
d) to assist in the training of Aboriginals in relation to matters related to the functions of the Commission;
e) to administer and control the Capital Account;
f) to give advice (amendment) and make recommendations to the Minister for the economic and social development of Aboriginals; and
g) such other functions as the Minister determines by notice in writing to the Commission (amendment).

The Commission may charge for work done, appoint agents or act as an agent, co-operate with the States, Northern Territory, local governments and other persons and organisations, collect information, and accept gifts or bequests if satisfied with the purpose of the gift or bequest (amendment) (clause 9). The Commission shall have such additional (amendment) functions and powers as are
expressly conferred or imposed on it by a State Act or law
of an internal territory except as otherwise directed by the
Minister (clause 10). The Commission shall perform its
functions and exercise its powers as directed by the
Minister in writing. However, the Minister may not give
directions relating to the content of any advice,
information or recommendation given by the Commission to a
Minister, Department or authority of the Commonwealth or of
a State or Territory and shall lay a copy of any direction
in writing given by him to the Commission before each House
of Parliament within 15 days of the direction being given.
Such a copy of a direction shall not disclose matters known
to be sacred to Aboriginals (amendment) (clause 11).

Part III - Constitution and Meetings of the Commission

The Commission shall be a body corporate and shall
consist of a Chairman, Deputy Chairman and 8 other members,
all appointed by the Governor-General (clauses 12, 13). All
members shall be Aboriginals (amendment) and may be
appointed for up to 5 years but shall be eligible for
reappointment (clause 13). In clauses 14 to 16 provision is
made for leave of absence, resignation and acting
appointments. Clause 17 provides that the Governor-General
may suspend a member from office by reason of misbehaviour
or physical or mental incapacity and the Minister shall lay
a statement of the grounds of the suspension before each
House of Parliament within 7 sitting days of the suspension,
and if each House passes a resolution within 15 sitting days
from the date of the statement that the member should be
restored to office, the Governor-General shall terminate the
suspension; if a resolution is not passed by both Houses,
the Governor-General may terminate the member's appointment
(amendment). The Governor-General may terminate the
appointment of a member who is absent without leave from the
Minister for 3 consecutive meetings, becomes bankrupt or
fails to comply with the provision in clause 18 concerning
the disclosure of pecuniary interest.

Clause 19 makes provision for the holding of
meetings of the Commission.

Part IV - The Aboriginal Entitlement Capital Account

Clause 20 establishes the Aboriginal Entitlement
Capital Account which is vested in the Commission and which
shall consist of two funds, the Capital Fund for the
purposes of accumulating capital for investment through
moneys appropriated by law or moneys (other than income)
derived from investments or received by the Commission as a
gift or bequest and considered by the Commission as
appropriate for the Capital Fund (amendment) (clause 22);
and the General Fund which shall have paid into it (clause 21) moneys appropriated by law, interest on, and repayments of, loans made out of the General Fund for business enterprises, housing or personal loans; moneys received by the Commission in respect of any dealings in property for business purposes or for the provision of housing (clauses 28 and 29); any income derived from investment of moneys from the Capital Account; moneys borrowed by the Commission (clause 38); moneys received by the Commission as a gift or bequest and regarded by the Commission as appropriate for the General Fund (amendment) and any other moneys received by the Commission (clause 21). Moneys from the General Fund may be applied inter alia: in grants to Aboriginal land trusts and Aboriginal corporations for the acquisition of interests in land and in personal property necessary to enable Aboriginals to occupy land (clause 23); to enable Aboriginal people or bodies (amendment) to engage in business enterprises (clause 24); in making loans to Aboriginals and their spouses or Aboriginal bodies for housing and associated requirements (clause 25); and to pay for the administrative expenses of the Commission and for the training of employees of the Commission and the training of Aboriginals in matters related to the application of moneys under clauses 23, 24 and 25; and for other specific functions and powers (clause 26). Specifically, the Commission may acquire and then grant to an Aboriginal Land Trust or an Aboriginal Corporation an interest in land and personal property necessary to enable members of such bodies to occupy the land (clause 27). It may acquire by agreement any real or personal property and then grant, sell or lease or otherwise make available that property to an Aboriginal(s) or an Aboriginal body to engage in business enterprises (clause 28) or then sell, lease or otherwise make available that property to Aboriginals and their spouses for housing and related purposes (clause 29).

Clause 31 stipulates that an Aboriginal Corporation which acquires an interest in land or shares from the Commission shall not dispose of that interest until the Commission, after consultation with the Minister and being satisfied that the disposal will further the economic and social development of Aboriginals, publishes a notice in the Gazette declaring the interest may be disposed of (amendment).

Part V - The Aboriginal Land Register

Clause 32 provides that, to facilitate planning in the application of land funds, the Commission shall cause to be kept an Aboriginal Land Register in which particulars of applications by a community or group of Aboriginals (including an Aboriginal Corporation or Land Trust)
(amendment) for an interest in land may be entered upon an application in writing. When an application so registered has been granted, the Commission shall cause that fact to be recorded in the Register (amendment).

Part VI - Staff

Clauses 33 to 35 empower the Commission to employ staff and engage consultants on terms and conditions determined by it with the approval of the Public Service Board; and arrange with Commonwealth and State Departments and authorities or any organisation to make their officers available to the Commission.

Part VII - Finance

The Commission is to prepare and submit to the Minister annual estimates of receipts and expenditure and for such other period as directed by the Minister (clause 36). It may invest moneys not immediately required: on deposit with an approved bank; in securities of the Commonwealth; or in any other manner approved by the Treasurer (clause 37). It may also borrow money as approved by the Treasurer, and the Minister for Finance is authorised to lend moneys appropriated by Parliament for the purpose to the Commission on such terms and conditions as he determines. The Treasurer may guarantee the repayment of amounts borrowed other than from the Commonwealth (clause 38). Except in relation to contracts entered into under clauses 23 (land) 24 (business enterprises) or 25 (housing) the Commission shall not, except with the approval of the Minister, enter into contracts involving the payment or receipt of an amount exceeding $100,000, or a higher prescribed amount (clause 39). The Commission shall provide to the Minister annual reports of its operations with financial statements in a form approved by the Minister for Finance. The annual reports shall include any general directions given to the Commission by the Minister; shall not disclose any matters known by the Commission to be held sacred by Aboriginals; and shall have been submitted for comment to the National Aboriginal Conference. The Auditor General shall report on the financial statements to the Minister and copies of the report and financial statements, together with a copy of the report of the Auditor General and any comments of the National Aboriginal Conference shall be laid before each House of Parliament (clause 40). Clause 42 exempts the Commission from taxation except in relation to mining, stamp duty or similar tax.

Part VIII - Miscellaneous

Clause 43 provides that the Commission shall by
notice in the Gazette declare that an Aboriginal body of which all are members of the same community of Aboriginals and which has applied to the Commission in writing, is an Aboriginal Corporation for the purposes of the Act. Also, after consultation with the Minister the Commission may declare by notice in the Gazette that a specified Aboriginal body is an Aboriginal Corporation for the purposes of the Act (amendment).

Part IX - Transitional

This part provides for the rights and liabilities relating to the Aboriginal Loans Commission and Aboriginal Land Fund Commission to be transferred to the Commission and for certain grants and approvals to be administered by the Commission (clauses 51 and 52). It allows the Chairman and not less than three other members to exercise the powers and functions of the Commission for up to six months after the commencement of Part II of the Act (clause 53). It also enables the conversion of some outstanding community loans to grants and for the vesting of shares in Aboriginal Arts and Crafts Pty. Ltd., now beneficially owned by the Loans Commission, in the Australian Council.

23 April 1980

Education and Welfare Group
LEGISLATIVE RESEARCH SERVICE