Aboriginal Councils and Associations Amendment Bill 1992

Date Introduced: 4 November 1992
House: House of Representatives
Portfolio: Aboriginal and Torres Strait Islander Affairs

Purpose
To increase the level of accountability of Aboriginal councils and incorporated Aboriginal associations.

Background
The Aboriginal Councils and Associations Act 1976 (the Principal Act) provides for the constitution of Aboriginal and Torres Strait Islander councils and the incorporation of Aboriginal and Torres Strait Islander associations. Incorporation is a requirement for bodies to be eligible to receive government funding. The associations provisions of the Principal Act form the bulk of the work of the Registrar of Aboriginal Corporations (the Registrar). The Registrar is a statutory office holder appointed by the Minister. The Principal Act requires the Registrar to carry out certain functions, including maintenance of two public registers, one for Aboriginal councils, and one for incorporated Aboriginal associations; to advise on the incorporation of Aboriginal associations; and to arbitrate in disputes as provided for in the rules of Aboriginal corporations. Activities undertaken by incorporated associations are diverse, ranging from the provision of housing to the operations of radio stations and community stores. Between the commencement of the Principal Act in 1978 and 30 September 1992, approximately 1600 organisations have been incorporated as associations. In 1990-91, 232 organisations applied for incorporation and 220 were incorporated.

The amendments proposed by this Bill largely originate from a review by an independent consultant of the Principal Act undertaken in 1989-90. The report from that review was released by the Minister in February 1990. The review was primarily concerned with finding ways of ensuring appropriate standards of accountability for governing committees of an association to their members; of associations to the Registrar; and to those with whom an association has financial dealings. The review found evidence that some incorporated Aboriginal associations had failed to comply with the requirements of the Principal Act. The options for amending the Principal Act recommended in the report, included:
* clarifying the requirements concerning the preparation and lodging of financial statements;
* providing time limits within which statutory obligations should be met;
* increasing the penalties for breach of the statutory obligations of members of governing committees and public officials;
* expanding the Registrar's functions and powers, including power to direct an association to modify its rules in certain circumstances; and
* giving the Administrative Appeals Tribunal jurisdiction to hear appeals from the Registrar's decisions.

Main Provisions
Financial Reporting Requirement of Councils: New subsections 38(2)-38(8), that deal with the financial reporting requirements of Aboriginal councils, will be inserted into the Principal Act by clause 5. Proposed subsection 38(2) will require an Aboriginal council to prepare each financial year a 'Council's Report' consisting of a statement that the council has complied with the obligations imposed by the Principal Act, the regulations and the rules of the council; a balance sheet; an income and expenditure statement; and a list of the members of the association. A report to the Registrar by an external examiner verifying the Council's Report is required by proposed subsections 38(3) and (4). Proposed subsection 38(5) provides that a council must, if required to do so by the Registrar, make the accounts and records of the council available for inspection by the Registrar, and make a
Aboriginal Councils and Associations Amendment Bill 1992

copy of the Council's Report available for inspection at all reasonable times by adult Aboriginals of the area concerned. It will be an offence, punishable by a maximum fine of $200 (payable by each councillor), for a council, without reasonable excuse, to fail to comply with a provision of section 38 of the Principal Act (proposed subsection 38(7)).

Examination of Documents: Section 39 of the Principal Act, which deals with the audit of records of Aboriginal Councils, will be replaced by a new section 39 which will increase the powers of inspection and establish penalties for their obstruction. It will be an offence, punishable by a maximum fine of $1 500, for a person knowingly to make a false or misleading statement where an authorised person requires them to answer a question/s (proposed subsection 39(6)). 'Document' is defined to include any document relating directly or indirectly to the operations of the council (proposed subsection 39(9)).

Power of Registrar to Require Compliance with Principal Act, etc: Clause 7 provides that if the Registrar suspects on reasonable grounds that an Aboriginal council has failed to comply with a provision of the Principal Act, regulations, Rules, or there has been an irregularity in the financial affairs of the council, he/she may require the council to take, within a specified period, specified action. This clause will replace section 40 of the Principal Act under which the Registrar can request an explanation for any irregularity, require compliance, and will declare the offices of the councillors vacant if they fail to comply with the requirement.

Application for Incorporation: The effect of clause 8 will be to require an application for incorporation to state the matters for which the rules of the association are to provide in relation to arbitration by the Registrar of disputes within the incorporated association.

Registrar to Refuse to Issue a Certificate of Incorporation: New subsections 45(3) and 45(3A), deal with when the Registrar is to refuse to issue a certificate of incorporation to an Aboriginal association, and will be inserted into the Principal Act by clause 9. The Registrar is to refuse issue of a certificate of incorporation where satisfied:
* the rules of the association are unreasonable/in equitable;
* the rules of the association do not give members effective control over the running of the association;
* in the case of an association formed wholly for business purposes, or for the purpose of owning land or holding a leasehold interest in land, where it would not have on incorporation at least five members; or
* an association on incorporation would not have at least 25 members.

Rules to Constitute Contract: Clause 10 will add a new subsection to section 47, which will make the Rules of incorporated Aboriginal Associations a binding contract between the members, the governing committee and the association, so any party may take legal action to enforce compliance with the Rules.

Eligibility for Membership of Governing Committee of an Incorporated Aboriginal Association: Clause 11 will insert new sections 49B-49E into the Principal Act. Proposed section 49B, will make certain persons, in certain circumstances, ineligible to be elected, or hold office, as a member of the governing committee of an incorporated Aboriginal association. A person will be ineligible to be elected, or hold office, as a member of the governing committee of an incorporated Aboriginal association if he/she has been convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment:
* for fraud or misappropriation of funds, for three months or more;
* or in any other case, for one year or longer (proposed subsection 49B(1)).

A person will be able to stand for election, or be elected, if at least five years have elapsed since their conviction, and they are not serving a term of imprisonment (proposed subsection 49B(2)). In addition, the Registrar may declare that proposed subsection 49B(1) does not apply to a particular conviction (proposed subsection 49B(3)). If a person requests the Registrar to declare that proposed subsection 49B(1) does not apply to them, and the Registrar refuses to do so, they may appeal to the Minister who is to either make a declaration that proposed subsection 49B(1) does not apply, or refuse to make a declaration (proposed subsections 49B(4) and 49B(5)).

Disclosure of Pecuniary Interests: The principal effect of proposed section 49D will be to require a member of the governing committee of an incorporated Aboriginal association who has a direct or
Aboriginal Councils and Associations Amendment Bill 1992

indirect pecuniary interest in a matter being considered or about to be considered by the committee, to disclose the nature of that interest at a meeting of the committee.

Bankruptcy of a Member of the Governing Committee of an Incorporated Aboriginal Association: Proposed section 49E provides that a member of the governing committee of an incorporated Aboriginal association will, unless the Registrar declares otherwise, cease to hold office if he/she becomes bankrupt or insolvent.

Register of Members: The principal effects of clause 12 will be:
* to require a governing committee to provide the Registrar each financial year with a list of the names and addresses of all members of the association; and
* make it an offence for a governing council, where requested by the Registrar to provide an updated list of the names and addresses of all members of the association, to fail, without reasonable excuse to do so.

Arbitration by Registrar: Proposed section 58A, deals with the arbitration of disputes between members of an incorporated Aboriginal association or an association and its members, and will be inserted into the Principal Act by clause 13. Proposed section 58A provides for the settlement by arbitration of disputes between members of an incorporated Aboriginal association or an association and its members. On application by the parties in a dispute between members of an association, the Registrar may arbitrate in the dispute. On application or otherwise, in a dispute between the association and one or more of its members, the Registrar may arbitrate in the dispute. Arbitration may be conducted by the Registrar or by a person appointed by the Registrar. An arbitrator will not be liable for anything he/she has done in connection with an arbitration, or has omitted to do, provided they acted in good faith. Despite arbitration occurring, or having occurred, a party to a dispute may bring an action in connection with the dispute, unless the court orders otherwise.

Financial Reporting Requirements of Governing Committee of an Incorporated Aboriginal Association; Examination of Documents of Associations; and Power of Registrar to Require Governing Committee Compliance with Principal Act: Clauses 14 and 16 are similar in effect to clauses 5-7. Whereas clauses 5-7 relate to Aboriginal councils, clauses 14 and 16 relate to committees of incorporated Aboriginal associations.

Injunctions: Clause 17 will replace section 61 of the Principal Act with a new section 61 which will allow the Registrar to apply to the courts for an injunction requiring a member or members of a governing committee not to contravene, or to cease contravening the Principal Act, the regulation or their Rules.

Administrator: New sections 71-77E, which deal with the appointment of an administrator, will be inserted into the Principal Act by clause 23. Proposed section 71 provides that the Registrar may serve on the public officer of an Aboriginal corporation a notice calling on the corporation to show, within a reasonable specified period, why an administrator should not be appointed. The Registrar is to appoint an administrator if satisfied certain grounds have been established, including that the appointment is required in the public interest. The administrator will be responsible for the affairs of the Aboriginal corporation and have the functions and duties of the public officer (proposed section 75). An administrator may cancel or vary contracts of employment (proposed section 76). A person who has had their contract of employment cancelled or varied by an administrator may apply to the Administrative Appeals Tribunal for a review of the decision (proposed section 77). An administrator will not be liable for anything he/she has done in connection with the exercise or performance of powers, functions or duties conferred on them, or has omitted to be done, provided they acted in good faith (proposed section 77B).

References
2. Ibid., at p. 89.
6. Ibid., at pp. 106 and 107.
Aboriginal Councils and Associations Amendment Bill 1992

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