

HOUSE OF REPRESENTATIVES

(As read a first time)

**ABORIGINAL DEVELOPMENT COMMISSION
AMENDMENT BILL 1989**

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 4 May 1989

(*Minister for Aboriginal Affairs*)

A BILL

FOR

An Act to amend the *Aboriginal Development Commission Act 1980*, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

5 1. (1) This Act may be cited as the *Aboriginal Development Commission Amendment Act 1989*.

(2) In this Act, "Principal Act" means the *Aboriginal Development Commission Act 1980*¹.

Commencement

10 2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. Section 4 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

15 "General Manager" means the General Manager of the Commission;";

(b) by adding at the end the following subsection:

“(3) The question whether a company is a subsidiary of the Commission shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the *Companies Act 1981*.”

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Functions

4. Section 8 of the Principal Act is amended:

(a) by inserting after paragraph (e) the following paragraph:

“(ea) when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister;”

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(b) by adding at the end the following subsections:

“(2) The information that may be requested by the Minister under paragraph (1) (ea) includes, but is not limited to, information about the Commission’s expenditure.

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“(3) The Minister is not empowered, when requesting information under paragraph (1) (ea), to specify the content of the information that is to be provided.”

5. After section 10 of the Principal Act the following section is inserted:

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Corporate plan

“10A. (1) The Commission shall from time to time, in consultation with the Minister, prepare a corporate plan:

(a) setting out a statement of the Commission’s objectives;

(b) outlining the strategies and policies that the Commission intends to adopt in order to achieve those objectives;

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(c) setting out criteria for the engagement of consultants by the Commission; and

(d) setting out standard terms and conditions for the engagement of consultants by the Commission.

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“(2) Each corporate plan shall relate to a period of at least 3 years and not more than 5 years.

“(3) The Commission shall, in consultation with the Minister, review the corporate plan regularly.”

Application of General Fund in relation to business enterprises

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6. Section 24 of the Principal Act is amended:

(a) by omitting from subsection (3) “the Aboriginal is, or the Aboriginals are, capable of engaging in that enterprise” and substituting “the enterprise is likely to become, or continue to be, commercially successful”;

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(b) by omitting subsection (4) and substituting the following subsection:

“(4) In considering whether to apply moneys of the General Fund under this section, the Commission shall have regard to the effects of a proposed application of moneys on the employment and training of Aboriginals.”.

Application of General Fund in relation to housing and personal loans

7. Section 25 of the Principal Act is amended by adding at the end the following subsection:

“(3) Moneys of the General Fund may also be applied in making payments, on such terms and conditions as the Commission determines, for the purpose of enabling Aboriginals, and their spouses, to obtain loans, for any or all of the purposes referred to in subsection (1), from lenders operating on a commercial basis.”.

8. After section 26 of the Principal Act the following section is inserted:

Grants and loans to be repayable where conditions breached

“26A. (1) The Commission may give written notice to a person or body to whom a grant of money has:

- (a) under section 24 at any time; or
- (b) under another provision of this Act after the commencement of this subsection;

been made stating that the Commission is satisfied that the person or body has failed to fulfil a term or condition of the grant.

“(2) A person or body who is given notice under subsection (1) is liable to pay to the Commission an amount equal to:

- (a) the amount of the grant; or
- (b) so much of the grant as the Commission specifies in the notice.

“(3) The Commission may give written notice to a person or body to whom a loan has, after the commencement of this subsection, been made under this Act, stating that the Commission is satisfied that the person or body has failed to fulfil a term or condition of the loan.

“(4) A person or body who is given notice under subsection (3) is liable to pay to the Commission, immediately, an amount equal to the sum of:

- (a) so much of the amount of the loan as has not yet been repaid; and
- (b) any accrued interest that has not been paid;

or so much of that amount as the Commission specifies in the notice.”.

9. Section 28 of the Principal Act is repealed and the following section is substituted:

Grants etc. of property for purposes of business enterprises

“28. Where moneys of the General Fund may be applied under section

24 for the purposes of a particular business enterprise, the Commission may, for the purposes of that business enterprise:

- (a) acquire by agreement any real or personal property; and
- (b) grant, sell, lease or otherwise make available property acquired by the Commission to the Aboriginal or Aboriginals who are to engage in the business enterprise, or to an Aboriginal body, on such terms and conditions (if any) as are determined by the Commission.”.

Guarantees

10. Section 30 of the Principal Act is amended by adding at the end the following subsection:

“(3) The Commission shall not, under this section, guarantee a loan for a purpose specified in subsection 24 (1) unless the Commission would, under section 24, be able to make an equivalent loan for that purpose to the borrower concerned.”.

11. After section 31 of the Principal Act the following section is inserted in Part IV:

Loan, grant, acquisition and guarantee documents to show legislative authority etc.

“31A. Where the Commission approves a loan, grant, acquisition or guarantee under this Part, the Commission shall ensure that its own records, and any documents that it issues in relation to that approval of that loan, grant, acquisition or guarantee, set out:

- (a) the provision of this Part that authorises the making of the loan, grant or acquisition or the giving of the guarantee; and
- (b) which of the Commission’s objectives, as set out in the corporate plan, will be furthered by the making of the loan, grant or acquisition or the giving of the guarantee.”.

12. After section 32 of the Principal Act the following Part is inserted:

“PART VA—GENERAL MANAGER

General Manager

“32A. (1) There shall be a General Manager of the Commission, who shall be appointed by the Minister after consulting the Commission.

“(2) The General Manager shall, subject to subsection (3), manage the day-to-day administration of the Commission.

“(3) The General Manager shall, in managing the administration of the Commission and in exercising any powers conferred on the General Manager by this Act, act in accordance with any policies determined, and any directions given, by the Commission in writing.

“(4) In spite of any policy determined or direction given by the Commission for the purpose of subsection (3), the General Manager shall, when requested by the Minister, provide information or advice to the Minister on any matter specified by the Minister.

5 **Period of appointment**

“32B. (1) The General Manager holds office for such period as is specified in the instrument of appointment.

“(2) The period that may be specified in the instrument of appointment:

- 10 (a) shall not be less than 2 years, unless subsection (3) would otherwise prevent the appointment of that person; and
(b) shall not exceed 5 years.

“(3) A person who has turned 65 shall not be appointed as the General Manager and a person shall not be appointed as the General Manager for a period that extends beyond the day on which the person will turn 65.

15 **Leave of absence**

“32C. The Minister may grant leave of absence to the General Manager on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

Acting General Manager

20 “32D. (1) The Minister may appoint a person to act as the General Manager:

- (a) during a vacancy in the office of General Manager, whether or not an appointment has previously been made to the office; or
25 (b) during any period, or during all periods, when the General Manager is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 6 months.

30 “(2) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
(b) there was a defect or irregularity in connection with the appointment;
(c) the appointment had ceased to have effect; or
35 (d) the occasion to act had not arisen or had ceased.

Disclosure of interests

“32E. (1) The General Manager shall give written notice to the Minister of all direct or indirect pecuniary interests that the General Manager has or acquires in any business or in any body corporate that carries on a business.

“(2) Where the General Manager has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, the General Manager shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Chairman in writing.

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Resignation

“32F. The General Manager may resign by writing signed by him or her and sent to the Minister.

Termination of appointment

“32G. (1) The Minister may, after consulting the Commission, terminate the appointment of the General Manager because of incompetence, misbehaviour or physical or mental incapacity.

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“(2) If the General Manager:

- (a) is absent from duty, except on leave granted under section 32C, for 14 consecutive days or for 28 days in any period of 12 months;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (c) fails, without reasonable excuse, to comply with section 32E; or
- (d) engages in paid employment outside the duties of the office of General Manager without the written consent of the Minister given after consulting the Commission;

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the Minister shall terminate the appointment of the General Manager.

Other terms and conditions

“32H. The General Manager holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*.”

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13. (1) Section 33 of the Principal Act is repealed and the following section is substituted:

Staff

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“33. (1) Subject to this Part, the staff required to assist the Commission in the performance of its functions shall be persons appointed or employed under the *Public Service Act 1922*.

“(2) The General Manager has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.”

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(2) Section 81B of the *Public Service Act 1922* has effect in relation to any person who, immediately before the commencement of this Act:

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- (a) was employed by the Commission; and
- (b) was an unattached officer for the purposes of the *Public Service Act 1922*;

5 as if the person had ceased to be an officer of the Australian Public Service immediately before that commencement.

Estimates

14. Section 36 of the Principal Act is amended by adding at the end the following subsections:

10 “(2) Subject to subsection (3), the money of the Commission shall not be spent except in accordance with estimates of expenditure approved by the Minister.

“(3) The amount spent by the Commission in relation to matters covered by an item in estimates approved by the Minister may differ from the amount allocated to that item in those estimates by not more than:

- 15 (a) 1% of the amount so allocated; or
 - (b) \$250,000 or such larger amount as is prescribed;
- whichever is larger.

20 “(4) Nothing in subsection (3) empowers the Commission to spend amounts in relation to matters covered by the estimates approved by the Minister that exceed in total the total amount of expenditure provided for by those estimates.”.

15. After section 39 of the Principal Act the following section is inserted:

Ministerial Finance Directions

25 “39A. (1) The Minister shall give to the Commission written directions (in this section called ‘Ministerial Finance Directions’), not inconsistent with this Act or the regulations, about the administration of the Commission’s finances.

30 “(2) The Commission shall comply with a Ministerial Finance Direction that is in force, even if it is inconsistent with the provisions of the corporate plan.

“(3) The Ministerial Finance Directions may apply, adopt or incorporate, with or without modification, directions given under the *Audit Act 1901* by the Minister, or the Secretary to the Department of Finance, being such directions as in force at a particular time or as in force from time to time.

35 “(4) Without limiting the operation of the *Freedom of Information Act 1982*, the Minister shall ensure that copies of the Ministerial Finance Directions as in force from time to time are available for inspection and purchase at each office of the Commission.

40 “(5) The General Manager shall cause notice of the making of Ministerial Finance Directions under this section to be published in the *Gazette*.”.

Annual report and financial statements

16. Section 40 of the Principal Act is amended:

- (a) by omitting subsection (4);
- (b) by omitting from subsection (6) "and a copy of any comments made by the National Aboriginal Conference".

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17. After section 40 of the Principal Act the following sections are inserted:

Minister may direct audit of subsidiaries

"40A. (1) The Minister may, in writing, direct that:

- (a) a specified company that is a subsidiary of the Commission; or
- (b) all companies that are subsidiaries of the Commission;

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shall be audited by the Auditor-General.

"(2) The Minister shall not give a direction under subsection (1) without the consent in writing of the Auditor-General.

"(3) While a direction under subsection (1) is in force, section 40B applies to each company to which the direction relates.

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Auditor-General shall audit subsidiaries

"40B. (1) The Auditor-General shall audit the financial statements of a subsidiary company and shall prepare and submit to the Minister a report of the result of the audit.

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"(2) The Auditor-General shall inspect and audit the accounts and records of financial transactions of a subsidiary company, and records relating to assets of, or in the custody of, the company, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his or her so doing.

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"(3) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (2).

"(4) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under subsection (2).

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"(5) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to all accounts and records of a subsidiary company relating directly or indirectly to the receipt or payment of money by the company or to the acquisition, receipt, custody or disposal of assets by the company.

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"(6) The Auditor-General or a person authorised by the Auditor-General may make copies of, or take extracts from, any such accounts or records.

5 “(7) The Auditor-General or a person authorised by the Auditor-General may require any person to furnish him or her with such information in the possession of the person, or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this section, and the person shall comply with the requirement.

“(8) A person who contravenes subsection (7) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000.

10 “(9) Nothing in this section affects the application to a subsidiary company of any law in force in a State or Territory relating to:

- (a) the appointment of an auditor of the company; or
- (b) the powers and duties of an auditor of the company appointed under such a law.

15 “(10) Nothing in this section prevents:

- (a) the appointment of the Auditor-General as auditor of a subsidiary company for the purposes of a law in force in a State or Territory; or
- (b) the inclusion, in an arrangement referred to in section 63P of the *Audit Act 1901* relating to such an appointment, of a provision for the payment of a fee by the company to the Commonwealth in respect of the carrying out of an audit to which the arrangement relates.

25 “(11) In this section:

‘financial statements’, in relation to a company, means profit and loss accounts and balance sheets of the company and includes statements, reports and notes, other than auditors’ reports or directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets;

30 ‘subsidiary company’ means a company to which this section applies because of section 40A.”.

Application of Division 2 of Part XI of Audit Act

18. Section 41 of the Principal Act is amended by adding at the end the following subsection:

35 “(3) The *Audit Act 1901* applies to the Commission as if the Commission were not a Department for the purposes of Part VII of that Act.”.

19. Section 44 of the Principal Act is repealed and the following section is substituted:

Delegation

40 “44. (1) The Commission may, by writing under its common seal, delegate any or all of its functions and powers under this Act (other than its powers under subsection 31 (2) and section 43) to a member of the

Commission, the General Manager or a member of the staff of the Commission.

“(2) The General Manager may, by writing signed by him or her, delegate any or all of his or her functions and powers under this Act to a member of the staff of the Commission.”

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Remuneration and allowances

20. Section 46 of the Principal Act is amended:

(a) by inserting in subsection (1) “, the General Manager” after “Commission”;

(b) by inserting in subsection (1) “or she” after “he”.

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NOTE

1. No. 34, 1980, as amended. For previous amendments, see Nos. 65 and 166, 1985.

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