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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ABORIGINAL DEVELOPMENT COMMISSION BILL 1979

1. General Outline of the Bill;
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(Circulated by the Minister for Aboriginal Affairs, Senator the Hon. Fred Chaney)

ABORIGINAL DEVELOPMENT COMMISSION BILL 1979

1. General Outline of the Bill

The purpose of the Bill is to:

- (a) further the economic and social development of Aborigines and, in particular, (as a recognition of the past dispossession and dispersal of the Aboriginal people) to establish an Aboriginal Entitlement Capital Account with the object of promoting Aboriginal development, self-management and self-sufficiency. The Aboriginal Entitlement Capital Account will have two funds - a Capital Fund and a General Fund. The Capital Fund will be an accumulating investment fund to receive additional moneys as a recognition of the past dispossession and dispersal of the Aboriginal people. Moneys appropriated to the Capital Fund must be invested in accordance with provisions in the Bill, but the income from such investments may be used for the Commission's programs. The General Fund will be the operating fund of the Commission;
- (b) establish the Aboriginal Development Commission which will have an Aboriginal Chairperson and a majority of Aboriginal members, to assume the activities of the Aboriginal Land Fund and Aboriginal Loans Commissions, whose Acts will be repealed, and the administration of the Department of Aboriginal Affairs' enterprise program.
- (c) establish an Aboriginal Land Register to facilitate planning by the Commission in relation to applications for land by communities or groups of Aborigines.

The Bill will provide for:

- (a) the Commission to engage its own employees on terms and conditions determined by it with the approval of the Public Service Board;
- (b) the Commission to be administratively autonomous from the Department of Aboriginal Affairs to overcome problems of co-ordination, to improve overall effectiveness in the delivery of services to Aborigines and to provide greater scope for Aboriginal training; and
- (c) a role for the National Aboriginal Conference in commenting on the operations and activities of the Commission.

The broad functions of the Commission will be to acquire land for Aboriginal communities and groups, lend money to Aborigines for housing and personal purposes, lend and grant money to Aborigines for business enterprises and to make recommendations to the Minister with respect to the furtherance of the economic and social development of Aborigines.

Background

The proposals to create a major new statutory authority and to establish the Aboriginal Entitlement Capital Account were announced by Mr Ian Viner, the then Minister for Aboriginal Affairs, in a Ministerial Statement in the House of Representatives on 26 October 1978. Mr Viner indicated that the decision to establish the Aboriginal Entitlement Capital Account arose from the 1975 policy statement of the Liberal and National Country Parties which recognised "the problems arising from the past dispossession and dispersal of the Aboriginal people and the community's resulting responsibility".

On 2 September 1979 Senator Fred Chaney announced that the Government would introduce legislation in the current Budget Sittings and that it would be left to lie on the table of the Senate until the Autumn Sittings 1980 to allow public comment and discussion during the summer Parliamentary recess.

2. Explanatory Notes on the Parts of the BillPART I - Preliminary

This part provides for citation, commencement of certain provisions from the date of Royal Assent and for the remainder to become operative on a date or dates to be fixed by Proclamation; the purpose of the Act; the interpretation and reference to other Commonwealth laws; and the repeal of the Aboriginal Loans Commission Act and the Aboriginal Land Fund Act. These are machinery provisions associated with the creation of the Aboriginal Development Commission and Aboriginal Entitlement Capital Account.

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

This part provides for the establishment of the organisation, its functions and its powers. These embrace the present functions and powers of the Aboriginal Land Fund Commission and Aboriginal Loans Commission and those relating to the Department of Aboriginal Affairs' enterprise program. Provision is made for a State or an internal Territory to confer functions and powers on the Commission. The Commission will be required to comply with any general directions given by the Minister in writing.

PART III - Constitution and Meetings of the Commission

This part provides for the constitution of the Commission, the appointment of members, the powers and duties of its members and the procedures for holding and conducting meetings.

PART IV - The Aboriginal Entitlement Capital Account

This part provides for the establishment of the Aboriginal Entitlement Capital Account which will be controlled and administered by the Commission and provides for the establishment of two funds within the Account. It provides for moneys appropriated for the programs and administration of the Commission to be paid into a General Fund and for additional moneys appropriated for capital accumulation to be paid into a Capital Fund.

The part also provides for the application of moneys in relation to land, business enterprises, housing, certain personal purposes, training and the administration of the Commission.

It controls dealings in land acquired by Aboriginal communities and groups from the Commission.

Provision is also made for the Commission, within limits set by the Treasurer, to guarantee a loan made by another lending institution.

PART V - Aboriginal Land Register

This part provides for the Commission to establish and maintain an Aboriginal Land Register for entering particulars of applications by Aboriginal communities and groups for land, to facilitate planning by the Commission in acquiring land.

The Commission will be required to have regard to any appropriate considerations which may be prescribed in regard to applications under this part, and to attempt to consult with appropriate State or Territory authorities responsible for land use planning, before making an entry in the Register.

PART VI - Staff

This part provides for the Commission to engage employees necessary for the performance of its functions on terms and conditions determined by the Commission with the approval of the Public Service Board. It provides for the Commission to make arrangements with Commonwealth Departments and authorities as well as State Departments and authorities and other bodies for the secondment of staff to assist the Commission.

The part also enables the Commission to engage consultants to furnish advice or perform services on terms and conditions determined by the Commission with the approval of the Public Service Board.

PART VII - Finance

This part provides for the Commission to prepare and furnish estimates of receipts and expenditure in a form, and at times, specified by the Minister. It provides for the manner in which moneys of the Capital Account may be invested. It provides for the Commission to borrow moneys with the approval of the Treasurer. Also, it makes provision for the types of contracts that the Commission may enter.

The part provides that the Commission prepare annual reports and financial statements. It provides a role for the National Aboriginal Conference in commenting on the annual reports and a role for the Auditor-General in auditing the accounts of the Commission. It provides also for the Commission to be exempted from taxation subject only to Section 128V of the Income Tax Assessment Act 1936 in relation to mining withholding tax.

PART VIII - Miscellaneous

This part provides for the Minister to declare an incorporated Aboriginal body to be an Aboriginal corporation for the purposes of this Act. It enables the Commission to delegate its powers, to form committees and for remuneration of Commission and committee members. It protects members of the Commission and committees against actions done in good faith and also protects the rights of public servants engaged by the Commission. It provides for the making of regulations.

PART IX - Transitional

This part provides interpretations for terms used in this part. It 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 etc. to be administered by the Commission.

The part also enables the Chairman and not less than 3 other members to exercise the powers and functions of the Commission for 6 months after commencement of the Act. Also it enables the conversion of some outstanding community loans to grants and for the vesting of shares, now beneficially owned by the Aboriginal Loans Commission in Aboriginal Arts and Crafts Pty. Ltd., in Australia Council.

3. Notes on the Clauses of the Bill

PART I - PRELIMINARY

Clause 1 Short title and citation of the Bill.

Clause 2 The Bill will provide for progressive commencement. Clauses 1, 2 and 3 of the Bill will come into operation on the day it receives Royal Assent. The Aboriginal Development Commission, the Aboriginal Entitlement Capital Account, the staffing provisions, the finance and miscellaneous provisions will come into operation on a date to be fixed by proclamation. The remaining provisions will come into operation on such later date or dates as are proclaimed.

Clause 3 Statement of the purpose of the Bill.

Clause 4 Interpretation. Deals with definitions.

"Aboriginal ..."

The definition is based on the power of the Commonwealth Parliament given to it in Section 51 (xxvi) of the Australian Constitution to make laws in respect of "the people of any race for whom it is deemed necessary to make special laws".

The administrative definition of an Aboriginal applied by the Department of Aboriginal Affairs states an Aboriginal is:

"a person of Aboriginal or Torres Strait Islander descent, who identifies as an Aboriginal or Torres Strait Islander, and is accepted as such by the community with which he/she is associated".

"Aboriginal corporation ..."

The definition provides safeguards against the disposal of an interest in land by invoking the provisions of the Aboriginal Councils and Associations Act. It also provides for the Minister, after consultation with the Commission, to give agreement to any other form of incorporation.

"Aboriginal Land Trust ..."

The definition includes land trusts established under State or Territory law, with the exception of Land Trusts established under the Aboriginal Land Rights (Northern Territory) Act 1976 as such bodies are not empowered to accept money due and owing to them or give a valid discharge for such moneys. The Aboriginal Land Rights (Northern Territory) Act provides for Land Councils to accept and discharge moneys relating to land trusts.

"Aboriginal body..."

The definition includes Aboriginal corporate bodies except a land trust within the meaning of the Aboriginal Land Rights (Northern Territory) Act 1976 as these bodies are not constituted to receive and discharge moneys.

"dwelling..."

The definition also allows transportable homes used for residential accommodation to be acquired.

Clause 5 Provides for the repeal of the Aboriginal Loans Commission Act 1974.

Clause 6 Provides for the repeal of the Aboriginal Land Fund Act 1974.

PART II - ESTABLISHMENT, FUNCTIONS AND POWERS OF THE ABORIGINAL DEVELOPMENT COMMISSION

Clause 7 Provides for the establishment of the Aboriginal Development Commission.

Clause 8 Confers functions on the Commission to further the economic and social development of Aboriginals, in particular, including assistance in order to enable Aboriginals to:

- . acquire land
- . engage in business enterprises
- . obtain finance for housing and personal purposes
- . obtain training
- . make recommendations to the Minister with respect to the furtherance of the economic and social development of Aboriginals.

The clause also includes provision for conferring on the Commission other functions which advance the economic and social development of Aboriginals.

Clause 9 Confers powers on the Commission to do all things necessary or convenient to be done, for, or in connection with, its functions.

Clause 10 Provides for the future possibility that a State Act may confer functions or powers on the Commission. However, the Minister may give directions excepting any particular conferral.

Clause 11 Provides for the Minister to give general directions in writing to the Commission.

PART III - CONSTITUTION AND MEETINGS OF THE COMMISSION

Clause 12 Provides for the establishment of the Commission as a corporate body with perpetual succession, to have a common seal, that it may acquire, hold and dispose of real or personal property.

and that it may sue and be sued in its corporate name.

- Clause 13 Provides for a 10 member board of whom at least the Chairman and six other members will be Aborigines. Three of the ten members will be required to have knowledge or experience in matters relevant to the application of moneys for land, enterprises and housing purposes. Appointments will be made by the Governor-General for periods not exceeding 5 years and members will be eligible for re-appointment.
- Clause 14 Enables the Minister to grant leave of absence to a member.
- Clause 15 Enables the resignation of a member to be made in writing and delivered to the Governor-General.
- Clause 16 Enables the Minister to make appointments for persons to act as Chairman or members during a vacancy in the office of the Chairman or a member.
- Clause 17 Provides for the Governor-General to terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity. All members will be part-time.
- Clause 18 Specifies circumstances in which a member is required to disclose a direct or indirect pecuniary interest in a matter to be considered by the Commission, and provides for a member disclosing an interest not to take part in any deliberation or decision with respect to that matter.
- Clause 19 Provides for the Commission to hold meetings and enables the Minister to request that a meeting be convened. The clause specifies the method of appointing presiding officers at meetings if the Chairman is absent, the method of deciding questions which arise and provides for six members to constitute a quorum.

PART IV - THE ABORIGINAL ENTITLEMENT CAPITAL ACCOUNT

- Clause 20 Establishes the Aboriginal Entitlement Capital Account, consisting of a Capital Fund for the purpose of accumulating investment and a General Fund for the programs and administration of the Commission to be vested in the Commission.
- Clause 21 Provides for payments to be made into the General Fund in respect of:
- moneys appropriated by law for the purposes of the General Fund. The Minister for Finance may give directions as to the amounts and timing of payments.

- . loan repayments
- . moneys received from dealings and proceeds of the disposal of any property
- . income from investments
- . moneys borrowed
- . gifts, devises or bequests
- . any other moneys.

Clause 22

Provides for payments into the Capital Fund of moneys appropriated for the purpose of providing capital for investment. Provision is included for payments to be made as soon as practicable after the appropriation is made. Clause 37 specifies the forms of investment.

Clause 23

Provides that where an application for land under Clause 32 has been entered in the Aboriginal Land Register, the Commission may apply moneys of the General Fund in making grants to Aboriginal land trusts and Aboriginal corporations to enable such bodies to acquire interests in land and any personal property associated with that land which will enable Aboriginals to occupy the land. This clause enables land to be acquired on a "walk-in-walk-out" basis.

The Commission may also apply moneys in order for it to acquire interests in land and personal property which it may then grant to Aboriginal land trusts and Aboriginal corporations.

Clause 24

Provides for moneys of the General Fund to be applied by the Commission in making loans and/or grants for the purposes of enabling Aboriginals capable of engaging in a business enterprise, to engage in such enterprises. The clause also provides for the making of payments in respect of the investigation or supervision of, or the provision of accounting services, management advice or technical assistance in relation to, an Aboriginal business enterprise. The Bill provides that where persons fail to fulfil the terms and conditions of a grant the Commission may require such persons to repay to the Commission an amount equal to all or part of the amount of the grant.

Clause 25

Enables the Commission to apply moneys of the General Fund in making loans to Aboriginals and their spouses, and to Aboriginal bodies for:

- . dwellings and land, including transportable homes for use as residential accommodation,

- . extensions, renovations, modifications and additions to dwellings,
- . the purchase of household effects; and
- . the repayment of existing debts.

Clause 26

Enables the Commission to apply moneys of the General Fund to:

- . the administration of the Commission,
- . training the staff of the Commission, and
- . assist in the training of Aboriginals in order that they may obtain and develop land, obtain loans or grants for business enterprises and loans for housing and personal purposes.

Clause 27

Enables the Commission to grant to an Aboriginal Corporation or an Aboriginal Land Trust an interest in land and personal property for the purpose of enabling members of such bodies to occupy land so acquired. The Commission will not be empowered to receive payment in respect of any grant.

Clause 28

Enables the Commission to acquire by agreement, any real or personal property for the purposes of enabling Aboriginals to engage in business enterprises and to grant, sell, lease or otherwise make available property so acquired to Aboriginals.

Clause 29

Enables the Commission to acquire by agreement, any real or personal property for housing and personal loan purposes and to sell, lease or otherwise make available property so acquired to Aboriginals and their spouses or to Aboriginal bodies.

Clause 30

Provides for the Commission to guarantee the due payment of a loan made by a bank, credit union, Aboriginal body or any other lending institution to Aboriginals for a business enterprise, housing or personal purpose, subject to such limits as the Treasurer determines.

Clause 31

Provides generally for Section 78 of the Aboriginal Councils and Associations Act 1976, which governs the disposability of land by incorporated Aboriginal organisations under that Act, to apply in respect of an Aboriginal corporation which acquires an interest in land from the Commission. The clause also provides for the Minister to declare that a specified interest in land may be disposed of (including transfer, lease, mortgage etc.) if satisfied that it will further the economic and social development of Aboriginals.

PART V - THE ABORIGINAL LAND REGISTER

Clause 32 Provides for the establishment and maintenance of an Aboriginal Land Register to facilitate planning by the Commission in relation to applications for land from communities or groups of Aboriginals. Before causing an entry to be made in the Register the Commission will be required to endeavour to consult with the appropriate authority responsible for planning in relation to the use and development of land in the State or Territory in which the relevant land is situated. The clause enables relevant considerations which the Commission may have regard to in determining whether a request is appropriate for entry in the Register, to be prescribed.

PART VI - STAFF

Clause 33 Provides for the Commission to employ persons necessary for the performance of its functions on terms and conditions determined by the Commission with the approval of the Public Service Board.

Clause 34 Enables the Commission to make arrangements with Commonwealth/State Departments and authorities and other bodies for the services of officers of such bodies to be made available to the Commission.

Clause 35 Enables the Commission to engage consultants to furnish advice to, or perform services for, the Commission on terms and conditions determined by the Commission with the approval of the Public Service Board.

PART VII - FINANCE

Clause 36 Provides for the Commission to prepare and submit annual estimates of receipts and expenditure, and any other financial estimates, in such form and at such time as the Minister directs.

Clause 37 Enables moneys of the General Fund not immediately required by the Commission to be invested;

- (a) on deposit with an approved bank,
- (b) in securities of the Commonwealth, or
- (c) in any other manner approved by the Treasurer.

Defines "approved bank" for the purposes of this clause.

Clause 38

Enables the Commission, with the approval of the Treasurer, to borrow moneys for the exercise of its powers or the performance of its functions. The Minister for Finance, out of moneys appropriated by Parliament, may lend to the Commission moneys that it is authorised to borrow. The clause enables the Commission to give security over its assets for the repayment of amounts borrowed. The Treasurer may guarantee amounts borrowed otherwise than from the Commonwealth.

Clause 39

Restricts the Commission from entering into a contract involving the payment or receipt of an amount exceeding \$100,000 or such higher amounts, if prescribed, except in relation to contracts under clauses 23(land), 24 (business enterprises) or 25 (housing).

Clause 40

Provides for the Commission to prepare and submit to the Minister annual reports of its operations together with financial statements in such form as the Minister for Finance approves. Each report is to include particulars of any general directions given by the Minister during the period to which the report relates. The Commission will be prohibited from disclosing in its reports any information known to the Commission to be held sacred by Aborigines. The Auditor-General will report on the financial statements of the Commission. Before submitting a report to the Minister the Commission will give the National Aboriginal Conference the opportunity of commenting on the report. The Minister will table in the Parliament copies of the Commission's report and financial statements together with a copy of the report of the Auditor-General and a copy of the comments made by the National Aboriginal Conference.

Clause 41

Provides for Division 2 of Part XI of the Audit Act to apply, which requires the Commission to keep accounts in accordance with commercial practice.

Clause 42

Provides for the Commission to be exempt from taxation under any law of the Commonwealth a State or Territory except for Section 128V of the Income Tax Assessment Act 1936 relating to mining withholding tax. The clause also exempts the Commission from payments of stamp duty or any similar tax of the Commonwealth, a State or Territory in respect of any documents which are executed or any transaction in relation to the borrowing of money by the Commission.

PART VIII - MISCELLANEOUS

- Clause 43 Enables the Minister, after consultation with the Commission, to declare an Aboriginal body corporate other than a corporation established under the Aboriginal Councils and Associations Act, to be an Aboriginal corporation for the purposes of the Bill. This provision enables existing or future Aboriginal corporate legal entities established under the law of a State or internal Territory to be declared an appropriate body corporate to hold an interest in land from the Commission.
- Clause 44 Enables the Commission by writing under its common seal to delegate to a member of the Commission or to an employee of the Commission any of its powers except the power of delegation. This clause does not prevent the exercise of a delegated power by the Commission.
- Clause 45 Enables the Commission, with the approval of the Minister, to appoint a committee to assist the Commission in relation to any matter relating to its functions. A committee may undertake investigations, furnish reports and make recommendations, if requested.
- Clause 46 Provides for a member of the Commission, or a member of a committee, to be paid remuneration and allowances as determined by the Remuneration Tribunal.
- Clause 47 Provides protection against actions in respect of a member of the Commission and a member of a committee appointed by the Commission, in relation to an act done in good faith for the purposes of the Bill. The provision does not provide protection against wilful or negligent acts.
- Clause 48 Provides for a person engaged full time by the Commission, who before his/her appointment was an officer of the Australian Public Service or a person to whom the Officers' Rights Declaration Act applied, to retain his/her existing and accruing rights.
- Clause 49 Empowers the Governor-General to make all necessary regulations to give effect to this Act.

PART IX - TRANSITIONAL

- Clause 50 Interpretation of definitions used in this Part.
- Clause 51 Provides for the rights, titles, interests and liabilities of the existing Aboriginal Loans Commission and Aboriginal Land Fund Commission to be vested in the Commission upon repeal of the existing Acts. The clause also provides for complaints or matters relating to the Loans Commission and Land Fund Commission, under the Ombudsman Act 1976, to continue and be dealt with as if the complaints or matters related to the new Commission.
- Clause 52 Provides for approvals, arrangements or agreements in relation to grants of money for business enterprises administered by the Department of Aboriginal Affairs on behalf of the Commonwealth to continue to have effect as the legal responsibility of the Commission upon proclamation.
- Clause 53 Provides that within 6 months of the commencement of Part II of the Act, the Chairman and not less than three other members may exercise the powers and functions of the Commission. A quorum is specified as being a majority of members for the time being holding office. This provision enables flexibility in connection with the progressive commencement of the legislation.
- Clause 54 Enables the Commission, with the approval of the Minister, to convert all or part of outstanding loans made to Aboriginal communities for the purchase of pastoral properties under the former Aboriginal Enterprises (Assistance) Act 1968, or the Aboriginal Loans Commission Act 1974, to grants. This provision will enable the converting of loans to grants where current government policy provides for assistance to Aboriginals to be provided by means of grants.
- Clause 55 Provides for the Aboriginal Loans Commission's shareholding in Aboriginal Arts and Crafts Pty.Ltd., being a company incorporated under the A.C.T. Companies Ordinance 1962, to promote and market Aboriginal art and craft, to be vested in the Australia Council established by the Australia Council Act 1975. This accords with current Government policy concerning the administration of Arts in Australia.