

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ABORIGINAL DEVELOPMENT COMMISSION BILL 1980

1. General Outline of the Bill;
2. Explanatory Notes on the Parts of the Bill;
3. Notes on the Clauses of the Bill; and
4. Explanatory Notes on Amendments Accepted by the Government and Incorporated in the Aboriginal Development Commission Bill 1980.

(Circulated by the Minister for Aboriginal Affairs,  
Senator the Hon. Fred Chaney)



## ABORIGINAL DEVELOPMENT COMMISSION BILL 1980

### 1. General Outline of the Bill

The purpose of the Bill is to:

- (a) further the economic and social development of Aboriginals and Torres Strait Islanders, in particular (as a recognition of the past dispossession and dispersal of those people) to establish a Capital Account with the object of promoting development, self-management and self-sufficiency. The 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 and Torres Strait Islander peoples. 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 all Aboriginal membership, to assume the activities of the Aboriginal Land Fund and Aboriginal Loans Commissions, whose Acts will be repealed, and the administration of the Department of Aboriginal Affairs' enterprise program; and
- (c) establish an Aboriginal Land Register to facilitate planning by the Commission in relation to applications for land by communities or groups of Aboriginals.

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 by the amalgamation of the two existing Commissions, to improve overall effectiveness in the delivery of services to Aboriginals 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 Aboriginals for housing and personal purposes, lend and grant money to Aboriginals for business enterprises and to give advice and make recommendations to the Minister with respect to the furtherance of the economic and social development of Aboriginals and Torres Strait Islanders.

## 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 Budget Sitting 1979.

On 21 November 1979 Senator Bonner, on behalf of the Minister for Aboriginal Affairs, introduced the Aboriginal Development Commission Bill 1979. He indicated that the Government's intention was that the Bill be available for public scrutiny and debate and that it should lie on the table until later in the Autumn Sitting 1980 to allow for public comment to be received and assessed.

The Bill has now been reprinted incorporating more than 40 amendments, details of which are set out in Part 4 of this document. The Government received and considered comments by the National Executive of the National Aboriginal Conference which set up a special sub-committee to consider the Bill. The Government took into account comments by State Governments and Aboriginal organisations and individuals. The Government also took into account the results of a round of consultations with Aboriginal communities and groups throughout Australia by the Aboriginal Development Commission Task Force established within the Department of Aboriginal Affairs.

## 2. Explanatory Notes on the Parts of the Bill

### PART I - Preliminary

The 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

The 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 grant program. Provision is made for a State or an internal Territory to confer additional functions and powers on the Commission. The Commission will be required to comply with general directions given by the Minister in writing: the Minister is required to table any such directions in the Parliament within 15 sitting days. The Minister is not empowered to direct the Commission in relation to the advice it gives or recommendations it makes.

### PART III - Constitution and Meetings of the Commission

The 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

The 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 the 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 corporations.

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

The 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 is required to enter into the Register particulars of any applications which are granted.

### PART VI - Staff

The 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

The 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

The part provides for the Commission, after consultation with 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-with the exception of the power to delegate and powers related to dealings in land and declaration of Aboriginal corporations, 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

The part provides interpretations for terms used in the 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".

Sub-clause 4(2) provides that references in the Bill to Aborigines shall be read as references to members of the Aboriginal race of Australia and persons who are descendants of indigenous inhabitants of the Torres Strait Islands.

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 that an "Aboriginal body" as defined, can be declared by the Commission under clause 43 to be an Aboriginal corporation for the purposes of the land function.

"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.

"business enterprise ..."

The definition provides for the Commission to apply moneys to enterprises which have primarily social objectives, or profit-making objectives.

"dwelling ..."

The definition allows for conventional houses as well as 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
- . give advice and make recommendations to the Minister with respect to the furtherance of the economic and social development of Aborigines.

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

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 or Territory Act may confer additional 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. Provides that the Minister shall not give directions to the Commission relating to the content of any advice, information or recommendations given by the Commission. Also provides that the Minister shall cause a copy of any directions given to be laid before the Parliament within 15 sitting days. A copy of a direction laid before the Parliament shall not disclose any matters known to the Commission to be sacred to Aborigines.

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 all of whom shall be Aborigines. 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, after consultation with the Commission, 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 Aboriginal 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. Provides for the Minister to lay the grounds for suspension before the Parliament within 7 sitting days. Where it is resolved within 15 sitting days that the member be restored the Governor-General shall terminate the suspension. Where there is no such resolution the Governor-General may terminate the appointment. 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 income 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. Provision is made for gifts and bequests to be paid into the Capital Fund, if the Commission considers it appropriate.

Clause 23

Provides that where an application for land under Clause 32 has been entered in the Aboriginal Land Register and after the Commission has endeavoured to consult with State or Territory land use planning authorities, 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. The clause also requires the Commission to set terms and conditions in relation to grants. The clause enables land to be acquired on a "walk-in-walk-out" basis.

Clause 24

Provides for moneys of the General Fund to be applied by the Commission in making loans to Aboriginals and/or grants to Aboriginal bodies 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,
- . the repayment of existing debts; and
- . incidental purposes.

Clause 26

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

- . additional functions conferred on it under clauses 8(1)(g) and 10.
- . the administration of the Commission,
- . training the staff of the Commission, and
- . assist in the training of Aborigines 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 on a "Walk-in-walk-out" basis 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 Aborigines to engage in business enterprises and to grant, sell, lease or otherwise make available property so acquired to Aborigines.

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 Aborigines 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 Aborigines for a business enterprise, housing or personal purpose, subject to such limits as the Treasurer determines.

Clause 31 Provides for an Aboriginal corporation within the meaning of the Bill, which acquires an interest in land from the Commission, not to dispose of that interest other than in accordance with a notice published by the Commission in the Gazette, after consultation with the Minister.

#### 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 Aborigines. Provides for the Commission to enter in the Register particulars of applications which have been granted.

#### 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 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 except with the approval of the Minister, 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 clause 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 - MISCELLANEOUSClause 43

Provides for the Commission, if it is satisfied that an Aboriginal body defined in Clause 4 is a community of Aboriginals, to declare, by notice published in the Gazette, that body to be an Aboriginal corporation for the purposes of the legislation.

Provides also that the Commission may, after consulting with the Minister, by notice published in the Gazette, declare an Aboriginal body to be an Aboriginal corporation for the purposes of the legislation.

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 and its powers relating to dealings in land and the declaration of Aboriginal bodies as Aboriginal corporations.

Clause 45

Enables the Commission 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 purpose 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.



4. NOTES ON AMENDMENTS ACCEPTED BY THE GOVERNMENT AND INCORPORATED IN THE  
ABORIGINAL DEVELOPMENT COMMISSION BILL 1980

PART I - PRELIMINARY

Clause 3           The purpose clause of the legislation is amended to include reference to Torres Strait Islanders as well as to members of the Aboriginal race of Australia.

Clause 4           Interpretation. Deals with definitions.

The definition of "Aboriginal" is amended to provide that references in the legislation be read as references to members of the Aboriginal race of Australia and to descendants of indigenous inhabitants of the Torres Strait Islands.

"Aboriginal Corporation"

The definition is amended to provide that an "Aboriginal body" (defined in the Bill) can be declared by the Commission under clause 43 to be an Aboriginal corporation. The definition has application in relation to the Commission's land function and provides a role for the Commission, not the Minister as previously drafted, to make declarations concerning Aboriginal corporations under Clause 43.

"business enterprise"

The definition is amended to enable moneys administered by the Commission also to be applied for business enterprises which have primarily social rather than profit making objectives.

"personal property"

The amendment to the definition provides for the description of personal property to be made legally and presentationally clearer and puts beyond doubt the power of the Commission to engage in walk-in-walk-out land purchases.

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

Clause 8           The amendment to sub-clause (1)(f) clarifies that the Commission has a role in providing advice as well as recommendations to the Minister with respect to the furtherance of the economic and social development of Aborigines.

The amendment to sub-clause (1)(g) clarifies the requirement that notices by the Minister in respect of other functions which might be conferred on the Commission must be made in writing and given to the Commission.

Sub-clause (2) has been deleted as sub-clause (1)(g) provides an adequate mechanism for conferring additional functions on the Commission.

Clause 9 The substitution of the Commission for the Minister in sub-clause (2)(a) provides a role for the Commission, not the Minister as previously drafted, to be satisfied that a gift, devise or bequest is consistent with the purposes and powers of the Commission contained in the legislation.

Clause 10 The amendment makes it clear that functions and powers conferred by an Act of a State or internal Territory are additional to those conferred by this legislation.

Clause 11 Provides by the addition of three new subclauses that:

- (i) the Minister may not give general directions to the Commission in respect of advice, information or recommendations the Commission may provide to a Minister, Department or authority of a State or Territory. For example, the Commission has a role in providing advice and information in Clause 8(1)(f), 9(1)(c) and the amended clause 23(3)(b);
- (ii) the Commission has the discretion to tender information and advice it thinks appropriate;
- (iii) the Minister table directions in the Parliament within 15 sitting days of giving a direction; and
- (iv) general directions tabled in the Parliament shall not disclose matters known to the Commission to be held sacred by Aborigines.

The amendments to this clause have the effect of ensuring early public disclosure of any directions given by the Minister.

### PART III - CONSTITUTION AND MEETINGS OF THE COMMISSION

Clause 13 Provides that the membership of the Commission shall be all Aboriginal and deletes the requirement for three appointments with expertise.

Clause 14 Provides that the Minister consult with the Commission before granting leave of absence to a member of the Commission.

Clause 16 Provides for consequential amendments arising out of the change to all Aboriginal membership of the Commission and ensures that acting appointments are also Aboriginal persons.

Clause 17 Provides that the Governor-General may suspend a member from office by reason of misbehaviour, physical or mental incapacity and for the Minister to cause a statement of the ground

of the suspension to be laid before each House of Parliament within 7 sitting days.

Provides also that a House may, within 15 sitting days, by resolution, declare that the member ought to be restored to office and, if resolved by each House, the Governor-General shall terminate the suspension. If not resolved by each House the Governor-General may terminate an appointment.

The amendment to sub-clause (2) provides the Governor-General with a discretion in regard to the termination of an appointment for reasons contained in the sub-clause.

#### PART IV - ABORIGINAL ENTITLEMENT CAPITAL ACCOUNT

Clause 21 The amendment to sub-clause(1)(g) provides for the Commission to have a discretion to decide if moneys received by way of a gift, devise or bequest ought to be paid into the General Fund. The amendment results from the amendment made to Clause 22 enabling gifts etc., to be paid into the Capital Fund.

Clause 22 The substituted clause provides that in addition to moneys appropriated by law for the Capital Fund, moneys received by the Commission by way of a gift, devise or bequest may be paid into the Capital Fund and dealt with in accordance with the investment provisions, if considered appropriate in the opinion of the Commission.

Clause 23 Provides by the removal of "if any", a mandatory requirement that the Commission determine terms and conditions in respect of grants of money to Aboriginal Land Trusts or Aboriginal Corporations for the object of enabling members of those bodies to occupy and improve land.

The amendment to sub-clause (1)(b) makes it clear that acquisitions in respect of Clause 27 are acquisitions by the Commission of an interest in land or personal property.

The substituted sub-clause (3) covers matters previously contained in clause 32 which should more appropriately be located in this functional clause.

Clause 24 Provides by amendment to sub-clause(1)(c) that grants of money for business enterprises may only be made to Aboriginal bodies (as defined in Clause 4) and precludes such grants being made to individuals. It ensures that this aspect of the legislation complies with Government policy on enterprise grant-in-aid funding.

Provides in sub-clause (4) consequential amendments resulting from the insertion of Aboriginal bodies in the preceding amended clause.

Clause 25 Provides by the addition of a new sub-clause(c) that loans may be made to Aboriginals and their spouses for purposes incidental to acquiring or modifying a dwelling. Examples of the type of expenses concerned are stamp duty, legal expenses, rates and tax adjustments.

Clause 26 Provides in respect of sub-clause (a) for the deletion from the end of the sub-clause of "under this Act" as it is an unnecessary form of wording.

Provides by the addition of a further sub-clause after sub-clause (a) a means of applying moneys received into the Aboriginal Entitlement Capital Account in respect of additional functions acquired under Clause 8(1)(g) and Clause 10. The amendment rectifies a technical deficiency in the Bill in that funds previously could be paid into the Account for such additional purposes but could not be paid out of the Account.

Provides for payments for incidental purposes to be made in accordance with the amended clause.

Clause 27 Provides a simplified description of the function to acquire interests in land and personal property and to grant interests so acquired or part thereof, to Aboriginal Land Trusts and Aboriginal Corporations.

Clause 31 The clause provides in sub-clause (1) for an Aboriginal corporation under the legislation, not limited to an Aboriginal corporation within the meaning of the Aboriginal Councils and Associations Act 1976 as previously drafted, which acquires an interest in land from the Commission, not to dispose of that interest other than in accordance with a notice under this clause.

Provides in sub-clause (2) that the Commission, not the Minister as previously drafted, now may, after consultation with the Minister, by notice published in the Gazette, declare that an interest may be disposed of in accordance with such notice and in a manner defined in the clause.

Provides in sub-clause (3) for the Commission, not the Minister as previously drafted, to make a declaration if satisfied that the disposal will further the economic and social development of Aborigines.

The substitute sub-clause (5) is a consequential amendment arising out of the changes made to sub-clauses (1)(2) and (3).

Provides a substitute sub-clause (7) which defines "Aboriginal corporation" and "dispose" for the purposes of the clause.

#### PART V - THE ABORIGINAL LAND REGISTER

Clause 32 Provides by amendment to sub-clause (2) that an application by or on behalf of a community or group of Aborigines also includes an application by or on behalf of an Aboriginal Land Trust or Aboriginal corporation.

Provides a substitute sub-clause (3) for an entry to be made in the Register upon the granting of an application.

#### PART VIII - MISCELLANEOUS

Clause 43 Provides a substitute clause requiring the Commission, if it is satisfied that an Aboriginal body defined in clause 4 is a community of Aborigines, to declare by notice published in the Gazette that body to be an Aboriginal corporation for the purposes of the legislation.

Provides also that the Commission may, after consulting with the Minister, by notice published in the Gazette, declare an Aboriginal body to be an Aboriginal corporation for the purposes of the legislation.

The intention of this clause is to empower the Commission to grant land rights to Aboriginal corporations consisting entirely of Aborigines or in other circumstances and only after consultation with the Minister, to grant land rights to other Aboriginal bodies which must be controlled by Aborigines. Previously, the Bill provided the Minister with this role.

- Clause 44      The amendment to sub-clause (1) prohibits the Commission from delegating, in addition to the power of delegation, its powers in regard to dealings in land and the declaration of Aboriginal bodies as Aboriginal corporations.
- Clause 45      Provides a substitute sub-clause (1) which provides a role for the Commission, without the approval of the Minister as previously drafted, to appoint committees to assist the Commission. Committees so appointed must now act in accordance with directions given by the Commission.
- Clause 51      Provides clarification that rights, property and assets vested in the Aboriginal Loans Commission and Aboriginal Land Fund Commission will be vested in the Aboriginal Development Commission upon commencement of the legislation.