

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

COUNCIL FOR ABORIGINAL RECONCILIATION BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister Assisting the Prime Minister for
Aboriginal Reconciliation,
the Honourable Robert Tickner, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

COUNCIL FOR ABORIGINAL RECONCILIATION BILL 1991

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill establishes the Council for Aboriginal Reconciliation, which will as its primary objective promote a process of reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community.

The Council will consist of up to 25 members, including at least 12 Aborigines and 2 Torres Strait Islanders, who will be broadly representative of the Australian community. Its membership will include persons nominated by the Minister and by the Leader of the Opposition and by the leaders of any other non-Government parties in the Parliament. The Chairperson and Deputy Chairperson of the Aboriginal and Torres Strait Islander Commission will be ex-officio members.

It is estimated that the costs directly attributable to this Bill will total some \$2.2 million in the first full financial year, including the costs of meetings, policy advice, secretariat support and program activities.

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PREAMBLE

This provision is of symbolic importance and sets out some of the reasons for, and circumstances surrounding, the enactment of legislation setting up the Council. These are:

- . the recognition of Australia's occupation by Aborigines and Torres Strait Islanders prior to British settlement;
- . the consequent dispossession and dispersal of many Aborigines and Torres Strait Islanders;
- . the desirability of a formal process of reconciliation between Aborigines and Torres Strait Islanders and other Australians by the year 2001; and
- . as a complementary aim, the seeking by the Commonwealth of a national commitment to progressively address Aboriginal and Torres Strait Islander disadvantage and aspirations during the decade leading to the centenary of Federation.

PART I - PRELIMINARY

Clause 1 - Short Title

1. This clause provides for the Act to be known as the *Council for Aboriginal Reconciliation Act 1991*.

Clause 2 - Commencement

2. This clause provides that the Act shall come into operation on the day it receives Royal Assent.

Clause 3 - Interpretation

3. This clause defines a number of terms and expressions used in the Act.

PART 2 - ESTABLISHMENT, OBJECT, FUNCTIONS AND POWERS OF COUNCIL

Clause 4 - Establishment

4. This clause establishes the Council for Aboriginal Reconciliation.

Clause 5 - Object

5. This clause sets out the primary object of the establishment of the Council, being the promotion of a process of reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community.

Clause 6 - Functions

6. Clause 6(1) provides that the Council shall carry out a number of specific functions in addressing its primary object. Key functions include:

- . to undertake initiatives to include a particular focus on the local community level to promote reconciliation;
- . to promote deeper understanding of the history, past dispossession and continuing disadvantage of Aborigines and Torres Strait Islanders, and the need to address that disadvantage;
- . to foster a national commitment to address that disadvantage;
- . to provide a forum for discussion by all Australians of reconciliation issues and policies to be adopted by all levels of government;
- . to advise the Minister on policies to promote reconciliation;
- . to consult with Aborigines and Torres Strait Islanders and other Australians on whether a document of reconciliation would advance the process of reconciliation; and
- . to report to the Minister on the outcome of those consultations, and, if the Council considers there would be benefit to the Australian community as a whole from such a document, to make recommendations to the Minister on its form and implementation.

7. Under clause 6(2), the Council is to have regard to a number of specific matters in carrying out its functions. The Council must:

- (a) have regard to the specific functions of the Aboriginal and Torres Strait Islander Commission (ATSIC);
- (b) use ATSIC and its Regional Councils as the principal means of facilitating consultation with Aborigines and Torres Strait Islanders;

- (c) co-operate and consult with government and community organisations; and
- (d) focus on the need to promote reconciliation at the local community level.

8. Under clause 6(3) the Minister must table a copy of any recommendations of the Council relating to a document of reconciliation in each House of the Parliament.

Clause 7 - Powers

9. Clause 7 provides that the Council shall have the power to do all things necessary in connection with the performance of its functions, with the exception of the power to enter into contracts (see clause 7(3)). Clause 7(2) lists some specific powers, including the power to hold inquiries, organise public education activities and to undertake research and statistical surveys.

Clause 8 - Requests by Minister for information or advice

10. This clause provides that the Council must provide any information or advice requested by the Minister.

Clause 9 - Directions by Minister

11. Clause 9 provides that the Minister may give general directions to the Council on its functions and powers, provided that:

- . the Minister first consults with the Chairperson (see clause 9(3)); and
- . the directions do not relate to the content of any information or advice given by the Council (see clause 9(2)).

Under clause 9(5), the Minister must table a copy of any directions in each House of the Parliament.

PART 3 - STRATEGIC PLANS

Clauses 10 to 13 - Strategic Plans

12. Clause 10 provides that the Council must prepare written strategic plans, on a rolling 3 year basis commencing within 12 months of the commencement of the Act. Each strategic plan must set out (see clause 10(4)) a statement of the Council's goals, objectives and strategies; a description of the Council's proposed programs; an estimate of program costs; and performance indicators and targets for the Council.

13. Under clause 10(5), the Minister must table a copy of each strategic plan in each House of the Parliament.

14. Clauses 11, 12 and 13 set out the requirements involved in the approval of, variation to and compliance with strategic plans. The Minister must consult with the Leader of the Opposition before approving a strategic plan or a variation to a strategic plan (clauses 11(2) and 12(3)).

PART 4 - CONSTITUTION, MEETINGS AND COMMITTEES

Division 1 - Constitution of Council

Clause 14 - Constitution of Council

15. This clause provides for the Council to consist of between 15 and 25 members, of whom at least 12 shall be Aborigines and at least 2 Torres Strait Islanders. The Chairperson must be an Aborigine. The Minister, the Leader of the Opposition, and the leaders of any other non-Government parties in the Parliament, can each nominate one member of Council. Ex-officio members comprise the Chairperson and Deputy Chairperson of the Aboriginal and Torres Strait Islander Commission.

16. Under clause 14(3), the Minister is required to consult with the Leader of the Opposition and any other non-government party in the Parliament, in addition to the Aboriginal and Torres Strait Islander Commission, before giving advice to the Governor-General on appointments.

Clause 15 - Validation of appointments

17. This clause provides that an appointment is not invalidated by an error in the way the appointment is made.

Division 2 - Council meetings and Committees

Clause 16 - Meetings

18. This clause sets out the mode of operation of Council meetings. There are to be at least 4 meetings in each financial year. Meetings may be convened by the Chairperson, by the Minister or on receipt by the Chairperson of a written request by a majority of members (see clause 16(1), (2) and (3)).

19. Because members may be living in all parts of Australia, including remote areas, it may be difficult for members to be physically present for Council meetings, especially urgent meetings at short notice.

Clauses 16(8), (9) and (10) provide that members may participate at meetings by a number of means of communication, including by telephone or closed circuit television. These provisions facilitate the efficient operation of Council business, and ensure that members' participation by such means is recognised.

Clause 17 - Committees

20. This clause provides for the establishment and mode of operation of committees to assist Council in the performance of its functions. The establishment of committees is subject to the approval of the Minister (clause 17(1)), who must first consult with the Leader of the Opposition in the House of Representatives (see Clause 17(2)). The Chairperson of the committee must be a Council member (see clause 17(4)). Where a member disagrees with a finding or recommendation included in a committee report, this dissenting view must be identified (see clause 17(7)). Committees must not publish reports without Council's approval (see Clause 17(8)). These provisions ensure proper accountability in respect of committee operations.

Division 3 - Administrative Provisions

Clause 18 - Term of Office

21. This clause provides that members may hold office for up to 4 years and be re-appointed. It also provides that persons nominating representatives on the Council have the power to terminate those appointments.

Clause 19 - Remuneration and allowances

22. This clause includes the standard provisions for remuneration and allowances that apply to a statutory authority of this nature.

Clause 20 - Leave of absence

23. This clause provides that the Remuneration Tribunal may determine recreation leave entitlements for a full time Chairperson, and empowers the Minister to grant to the Chairperson leave of absence, other than recreation leave. It also empowers the Chairperson to grant leave of absence from meetings to any other member of Council.

Clause 21 - Acting appointments

24. This clause provides for acting appointments to be made in the office of Chairperson and Deputy Chairperson, when either position is vacant, or where any incumbents are unable to fulfil their duties.

Clause 22 - Resignation

25. This clause provides that an appointed member may resign by writing to the Governor-General.

Clause 23 - Disclosure of interests

26. This clause provides the standard provisions in respect of disclosure of interest by Council and committee members. Any such disclosure must be recorded in Council minutes and the member must not, unless so determined by the Minister or Council, be present during Council deliberations on the matter in question, or take part in any Council decision on that matter (clause 23(2)).

Clause 24 - Termination of appointment

27. This clause provides for the termination of appointments to the Council by the Governor-General in certain circumstances.

Clause 25 - Terms and conditions not provided for by Act

28. This clause provides for the Minister to determine terms and conditions for members of the Council not otherwise provided for in the Act.

PART 5 - MISCELLANEOUS

Clause 26 - Council Secretariat

29. This clause provides that the staff required to provide secretariat services to the Council must be members of the Australian Public Service.

Clause 27 - Confidential information not to be disclosed

30. This clause provides that Council or a committee must not disclose any information or other matter which has been given to the Council on a confidential basis.

Clause 28 - Reports etc to identify dissenting views

31. This clause provides for dissenting views of members to be identified in any report by the Council to the Minister. This provision ensures that all viewpoints represented on the Council are brought to the Minister's attention.

Clause 29 - Delegation by Council

32. This clause empowers the Council to delegate all or any of its powers under the Act to a Council member, a

committee or to a member of the Senior Executive Service of the Australian Public Service.

Clause 30 - Annual report

33. This clause requires the Council to prepare and give to the Minister annual reports as soon as practicable after the end of each financial year.

34. In order to ensure its accountability to the Parliament, the Council must include in the annual report a report on its progress toward reconciliation, details of any directions given to it by the Minister, and an assessment of its performance for the year against the performance indicators and targets set out in the Council's strategic plan.

35. After a copy of the report has been tabled in the usual manner, the Chairperson is to refer a copy of the report to the Chairperson of the committee of the House of Representatives that deals with matters relating to Aborigines and Torres Strait Islanders.

Clause 31 - Regulations

36. This clause provides that the Governor-General may make regulations as necessary.

Clause 32 - Act ceases to be in force on 1 January 2001

37. This clause provides for the Act to cease operation on the first day of January in the year 2001.

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