



Aboriginal Councils and Associations Amendment Act 1992

No. 189 of 1992

An Act to amend the *Aboriginal Councils and Associations Act 1976*

[Assented to 18 December 1992]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Aboriginal Councils and Associations Amendment Act 1992*.

(2) In this Act, “**Principal Act**” means the *Aboriginal Councils and Associations Act 1976*¹.

Commencement

2.(1) Apart from section 13, this Act commences on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), section 13 commences on a day to be fixed by Proclamation.

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(3) If section 13 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Functions and powers of Registrar

3. Section 5 of the Principal Act is amended by omitting from paragraph (1)(c) “Aboriginal corporation” and substituting “Aboriginal Council”.

Delegation by Registrar

4. Section 9 of the Principal Act is amended by omitting from subsection (1) “Deputy Registrar” and substituting “person”.

Accounts, records and financial statements

5. Section 38 of the Principal Act is amended by omitting subsections (2), (3) and (4) and substituting the following subsections:

“(2) The Council must, as soon as practicable after each 30 June, cause to be prepared a report (**‘Council’s Report’**) consisting of:

- (a) a statement, in a form approved by the Registrar, whether the Council has complied with the obligations imposed by this Act, the regulations and the Rules of the Council during the financial year ending on that date; and
- (b) a balance sheet setting out the assets and liabilities of the Council as at that 30 June; and
- (c) an income and expenditure statement giving a true and fair view of the income and expenditure of the Council for the financial year ending on that 30 June; and
- (d) a copy of the latest list given to the Registrar under subsection 58(3) or (4).

“(3) As soon as practicable after the report has been prepared, the Council must cause a person authorised by the Registrar for the purposes of this section:

- (a) to examine:
 - (i) whether the Council has complied with the obligations imposed by this Act, the regulations and the Rules of the Council; and
 - (ii) whether the balance sheet and income and expenditure statement are based on proper accounts and records and are in agreement with those accounts and records; and
- (b) to give the Council a report (**‘examiner’s report’**) of the results of that examination, drawing attention to any irregularity that it has disclosed.

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“(4) The Council must file with the Registrar a copy of the Council’s report and the examiner’s report as soon as practicable after receiving the latter and in any case not later than 31 December after the end of the relevant financial year.

“(5) The Council must:

- (a) if so required by the Registrar, make the accounts and records of the Council available for inspection by the Registrar at a reasonable time; and
- (b) make a copy of the Council’s report and the examiner’s report available for inspection at all reasonable times by adult Aboriginals in the area concerned.

“(6) If the Council is established at any time in April, May or June in a financial year:

- (a) this section applies as if the reference in subsection (2) to 30 June were a reference to the 30 June ending the next financial year; and
- (b) the period from the date of establishment to that 30 June is to be treated as a financial year.

“(7) If the Council fails, without reasonable excuse, to comply with a provision of this section, each councillor is guilty of an offence punishable, on conviction, by a fine not exceeding \$200.

“(8) In a prosecution of a person for an offence against subsection (7) arising out of a contravention of a provision of this section, it is a defence if the person proves that he or she:

- (a) did not aid, abet, counsel or procure the contravention; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention.”.

6. Section 39 of the Principal Act is repealed and the following section is substituted:

Examination of documents

“39.(1) The Registrar may, at any time, cause a person authorised by the Registrar for the purposes of this section to examine the documents of an Aboriginal Council and to report to the Registrar on the results of that examination, drawing attention to any irregularity in the operations or financial affairs of the Council disclosed by that examination.

“(2) The authorised person is entitled at all reasonable times to full and free access to the documents of the Council.

“(3) The authorised person may make copies, or take extracts from, any such documents.

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“(4) The authorised person may require any person to answer such questions, and produce such documents in the possession of the person, or to which the person has access, as the authorised person considers necessary for the purposes of this section.

“(5) A person who, without reasonable excuse, fails to comply with a requirement under subsection (4) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

“(6) A person who, in answer to a requirement under subsection (4), makes a statement knowing it to be false or misleading in a material particular is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,500.

“(7) A person is not excused from answering a question or producing a document when required to do so under subsection (4) on the ground that the answer to the question, or the production of the document, might tend to incriminate the person or make the person liable to a penalty, but the answer, the production of the document, or anything obtained as a direct or indirect consequence of the answer or the production, is not admissible in evidence against the person in any proceedings, other than proceedings for an offence against this section.

“(8) Before exercising powers under this section, the authorised person must produce written authority by the Registrar. If he or she fails to do so he or she has no powers under this section.

“(9) In this section:

‘document’ means any document relating directly or indirectly to the operations of the Council, the receipt or payment of money by the Council or the acquisition, receipt, custody or disposal of assets by the Council.”.

7. Section 40 of the Principal Act is repealed and the following section is substituted:

Registrar may require compliance with Act etc.

“40.(1) If the Registrar suspects on reasonable grounds that:

- (a) an Aboriginal Council has failed to comply with a provision of this Act, the regulations or the Rules; or
- (b) there has been an irregularity in the financial affairs of an Aboriginal Council;

the Registrar may, by notice served on the public officer, require the Council to take the action specified in the notice within the period specified in the notice, for the purpose of complying with the Act, the regulations or the Rules or remedying the irregularity, as the case may be.

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“(2) The Registrar is not required to take action under this section before taking any other action under this Act.”.

Application for incorporation

8. Section 43 of the Principal Act is amended by inserting after paragraph (3)(e) the following paragraph:

“(ea) the matters for which the Rules are to provide under section 58A in relation to meetings of the association;”.

Registrar may issue certificate of incorporation

9. Section 45 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

“(3) The Registrar must refuse to issue a certificate of incorporation to an Aboriginal association if satisfied that the Rules:

- (a) are unreasonable or inequitable; or
- (b) do not make sufficient provision (as required by section 58B) to give the members effective control over the running of the association.

“(3A) The Registrar must refuse to issue a certificate of incorporation to an Aboriginal association unless satisfied that:

- (a) if the association is formed wholly for business purposes—upon incorporation, it will have at least 5 members; or
- (b) if it is formed principally for the purpose of owning land or holding a leasehold interest in land—upon incorporation, it will have at least 5 members; or
- (c) in any other case—upon incorporation, it will have at least 25 members.”.

Rules of Incorporated Aboriginal Associations

10. Section 47 of the Principal Act is amended by adding at the end the following subsection:

“(2) The Rules of an Incorporated Aboriginal Association as in force from time to time have the effect of a contract:

- (a) between the Association and each member; and
- (b) between the Association and the public officer; and
- (c) between the Association and each member of the Governing Committee; and
- (d) between each member and each other member.”.

11. After section 49A of the Principal Act the following sections are inserted: