

# **ABORIGINAL COUNCILS AND ASSOCIATIONS ACT 1976**

**No. 186 of 1976**

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# ABORIGINAL COUNCILS AND ASSOCIATIONS ACT 1976

No. 186 of 1976

An Act to provide for the Constitution of Aboriginal Councils and the Incorporation of Associations of Aboriginals and for matters connected therewith.

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

## PART I—PRELIMINARY

1. This Act may be cited as the *Aboriginal Councils and Associations Act 1976*.<sup>1</sup> Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.
3. In this Act, unless the contrary intention appears— Definitions.
  - “Aboriginal” means a person who is—
    - (a) a member of the Aboriginal race of Australia; or
    - (b) a member of the race to which Torres Strait Islanders belong;
  - “Aboriginal association” means an unincorporated association, society or body—
    - (a) eligibility for membership of which is limited to Aboriginals;
    - (b) that has as members not less than 5 adult Aboriginals; and
    - (c) that is formed or carried on for any lawful object, including the securing of a pecuniary profit to its members;
  - “Aboriginal Council” means an Aboriginal Council established by Part III;
  - “Aboriginal corporation” means an Aboriginal Council or an Incorporated Aboriginal Association;
  - “adult Aboriginal” means an Aboriginal who has attained the age of 18 years;
  - “area”, in relation to an Aboriginal Council, means the Aboriginal Council area for which the Council is established by this Act;
  - “committee”, in relation to an Aboriginal association, means the members having the conduct of the affairs of the association;

“councillor” means a councillor of an Aboriginal Council;

“Court” means the Australian Industrial Court;

“Deputy Registrar” means a Deputy Registrar of Aboriginal Corporations appointed under section 4;

“disposable estate or interest”, in relation to an Aboriginal corporation, means—

(a) an estate or interest that has been declared by an order under section 78 to be at the disposal of the corporation; or

(b) an estate or interest that, by virtue of sub-section 78 (4), is to be deemed to be a disposable estate or interest in relation to that corporation;

“Incorporated Aboriginal Association” means an Aboriginal association incorporated under Part IV;

“official address”, in relation to the public officer of an Aboriginal Corporation, means the address notified to the Registrar under section 37 or 57;

“public officer”, in relation to an Aboriginal Corporation, means the public officer of the corporation appointed in pursuance of section 36 or 56;

“Registrar” means the Registrar of Aboriginal Corporations appointed under section 4;

“surplus assets”, in relation to an Incorporated Aboriginal Association, means the assets remaining on the winding up of the Association after payment of the debts and liabilities of the Association and the costs, charges and expenses of the winding up;

“unauthorized name”, in relation to an Aboriginal association, means—

(a) a name that is, in the opinion of the Registrar, undesirable; or

(b) a name of a kind that the Attorney-General has, for the purposes of a law of the Australian Capital Territory relating to companies, directed the Registrar of Companies under that law not to accept for registration under that law.

## PART II—REGISTRAR OF ABORIGINAL CORPORATIONS

Registrar of  
Aboriginal  
Corporations.

4. (1) For the purposes of this Act, there shall be a Registrar of Aboriginal Corporations and such number of Deputy Registrars of Aboriginal Corporations as the Minister determines from time to time.

(2) The Registrar shall be appointed by the Minister and has such duties, functions and powers as are provided by this Act and by the regulations.

(3) The Deputy Registrars shall be appointed by the Minister for the purpose of assisting the Registrar in carrying out his duties and functions.

(4) The Registrar and the Deputy Registrars shall be officers of the Australian Public Service.

(5) The Registrar and the Deputy Registrars hold office, as such, during the pleasure of the Minister.

5. (1) In addition to the functions conferred by other provisions of this Act, the functions of the Registrar are— Functions and powers of Registrar.

- (a) to maintain 2 public registers, one being a Register of Aboriginal Councils and the other a Register of Incorporated Aboriginal Associations;
- (b) to advise adult Aboriginals on the procedures for the constitution of Aboriginal Council areas and the establishment of Aboriginal Councils for the incorporation of Aboriginal associations; and
- (c) to arbitrate in disputes as provided for by the Rules of an Aboriginal Corporation.

(2) The Registrar has power to do all things necessary or convenient to be done for or in connexion with, or as incidental to, the performance of his functions including, but without limiting the generality of the foregoing, power to act as agent for an Aboriginal corporation.

6. (1) Where there is a vacancy in the office of the Registrar or of a Deputy Registrar, the Minister may, by writing signed by him, appoint a person to act as Registrar or Deputy Registrar, as the case may be, until the filling of the vacancy, but a person so appointed shall not continue to act after the expiration of the period of 12 months after the occurrence of the vacancy. Acting appointments.

(2) Where the Registrar or a Deputy Registrar is, or is expected to be, absent from duty or from Australia or unable, whether on account of illness or otherwise, to perform the duties of his office, the Minister may, by writing signed by him, appoint a person to act as Registrar or Deputy Registrar, as the case may be, during the period during which the Registrar or Deputy Registrar is so absent or so unable to perform the duties of his office.

(3) A person appointed to act as Registrar or Deputy Registrar in accordance with this section has all the functions, powers and duties of the Registrar or Deputy Registrar, as the case may be.

(4) A person appointed under this section may resign his appointment by writing signed by him delivered to the Minister, but the resignation does not have effect until it is accepted by the Minister.

- Resignation.** 7. The Registrar or a Deputy Registrar may resign his office by writing signed by him delivered to the Minister, but the resignation does not have effect until it is accepted by the Minister.
- Registrar to have a seal.** 8. (1) The Registrar shall have and use as the seal of his office a seal in such form as the Minister, by notice in the *Gazette*, determines.
- (2) All courts, judges and persons acting judicially shall take judicial notice of—
- (a) the signature of any person who holds or has held, or acts or has acted in, the office of Registrar and of the fact that that person holds or has held, or is acting or has acted in, that office; and
- (b) the seal of the Registrar.
- Delegation by Registrar.** 9. (1) The Registrar may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a Deputy Registrar any of his powers under this Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Registrar.
- (3) A delegation under this section does not prevent the exercise of a power by the Registrar.

### PART III—ABORIGINAL COUNCIL AREAS AND ABORIGINAL COUNCILS

- Definition.** 10. In this Part, unless the contrary intention appears, “application” means an application made under section 11 but, where such an application has been varied under section 14, means that application as so varied, and “applicant” has a corresponding meaning.
- Application for constitution of Aboriginal Council area.** 11. (1) Where 10 adult Aboriginals living in a particular area desire that an Aboriginal Council be formed in respect of that area, they may apply in writing, signed by each of them, to the Registrar for the constitution of that area as an Aboriginal Council area with a view to the establishment of an Aboriginal Council for that area.
- (2) An application under sub-section (1) shall state—
- (a) the boundaries of the area proposed to be constituted as an Aboriginal Council area;
- (b) the functions of the proposed Aboriginal Council for that area, which shall include the provision of a service or services to the Aboriginals living in the area and may include any other function for the benefit of those Aboriginals; and
- (c) the names and addresses of the persons making the application.

(3) A reference in paragraph (2) (b) to a service shall be read as including a reference to a service relating to any of the following matters:—

- (a) housing;
- (b) health;
- (c) sewerage;
- (d) water supply;
- (e) electricity supply;
- (f) communications;
- (g) education or training;
- (h) relief work for unemployed persons;
- (i) roads and associated works;
- (j) garbage collection and disposal;
- (k) welfare;
- (l) community amenities.

(4) This section does not apply in relation to an area that consists of or includes the whole of an existing Aboriginal Council area.

**12. (1)** Where the Registrar receives an application under section 11, he shall—

Explanation  
of  
application.

- (a) inform the adult Aboriginals living in the area to which the application relates of his receipt of the application;
- (b) explain to those Aboriginals—
  - (i) the purpose of the application;
  - (ii) the boundaries of the area the subject of the application; and
  - (iii) the functions of the proposed Aboriginal Council for that area; and
- (c) fix a time and place for a meeting to discuss the application and notify those Aboriginals of that time and place.

(2) The Registrar shall carry out his duties under sub-section (1) by any means that he considers appropriate.

**13. (1)** The Registrar shall convene a meeting in accordance with a notification given under paragraph 12 (1) (c).

Convening  
of meeting to  
discuss  
proposed  
Aboriginal  
Council.

(2) The Registrar shall attend a meeting convened under sub-section (1) and shall endeavour to ascertain the opinions of the adult Aboriginals present at the meeting regarding—

- (a) the establishment of an Aboriginal Council for the area the subject of the application or a part of that area; and
- (b) the functions to be conferred on such a Council.

Variation of application.

**14.** The applicants may, having regard to the opinions expressed at a meeting convened in pursuance of section 13, vary their application as they think fit but not so as to extend the area to which the application relates.

Withdrawal of application.

**15.** The applicants may, by notice in writing served on the Registrar, withdraw an application at any time before the constitution of an Aboriginal Council area in accordance with the application.

Constitution of Aboriginal Council area on satisfaction of Registrar.

**16. (1) Where—**

(a) the Registrar is satisfied, with respect to an application under section 11—

(i) that a substantial majority of adult Aboriginals living in the area to which the application relates is in favour of the establishment of an Aboriginal Council for the area with the functions set out in the application; and

(ii) that, having regard to the needs and resources of the Aboriginals living in that area, the proposed Council could effectively perform those functions;

(b) the area to which the application relates does not consist of, or include, a part of an existing Aboriginal Council area; and

(c) the Registrar has agreed with the applicants on a name for the proposed Aboriginal Council area,

the Registrar may, by notice published in the *Gazette*, constitute that area as an Aboriginal Council area under that name.

(2) A notice under sub-section (1) shall specify the boundaries of the Aboriginal Council area.

(3) Before constituting an area under sub-section (1) as an Aboriginal Council area, the Registrar shall take into account any proposal under a law of a State or Territory for the extension to the area of local government.

(4) Where, by reason of the circumstances of an application under section 11, the Registrar is of the view that he should not constitute the area to which the application relates as an Aboriginal Council area under sub-section (1), he shall refer the application to the Minister for his direction.

(5) Where a part (in this sub-section referred to as “the prescribed part”) of an area to which an application under section 11 relates consists of a part of an existing Aboriginal Council area, the Registrar shall, before referring the application to the Minister for his direction, endeavour to ascertain the opinions of the adult Aboriginals living in the prescribed part regarding the establishment of an Aboriginal Council for the area to which the application relates or a part of that area that includes the prescribed part and the functions to be conferred on such a Council.



- (6) A reference under sub-section (4) shall be accompanied by—
- (a) all relevant documents in the possession of the Registrar;
  - (b) a statement by the Registrar of the matters ascertained by him under sub-section 13 (2) and sub-section (5) of this section; and
  - (c) any comments on the application that the Registrar may wish to make.

17. (1) Subject to sub-section (3), where an application is referred to the Minister under section 16, the Minister may, having regard to the customs and wishes of the adult Aboriginals living in the area to which the application relates or in a part of that area, direct the Registrar to constitute that area or that part as an Aboriginal Council area and, if he does so, he shall specify—

Constitution of Aboriginal Council area in accordance with direction of Minister.

- (a) the boundaries of the area to be so constituted;
- (b) the name under which the area is to be so constituted; and
- (c) the functions of the proposed Aboriginal Council for the area.

(2) Where an application referred to the Minister under section 16 relates to an area that consists of, or includes, part of an existing Aboriginal Council area, the Minister shall consult with any Aboriginal Council that may be affected by the granting of the application (in this section referred to as “the existing Council”) and with any creditors of the existing Council whose rights against it may be prejudiced by the granting of the application and may enter into—

- (a) such agreements with the existing Council with respect to the transfer to the Council for the Aboriginal Council area proposed to be constituted (in this section referred to as “the new Council”) of assets of the existing Council; and
- (b) such agreements with the creditors of the existing Council with respect to the transfer to the new Council of liabilities of the existing Council to its creditors,

as the Minister considers are required to ensure that, if the application is granted—

- (c) the existing Council will be able effectively to carry out its functions with respect to the area that will remain to it;
- (d) the new Council will be able effectively to carry out its functions with respect to the area constituted in pursuance of the application; and
- (e) the rights of those first-mentioned creditors will not be so prejudiced.

(3) The Minister shall not give a direction under sub-section (1) with respect to an application to which sub-section (2) applies unless he has entered into agreements under sub-section (2) or is otherwise satisfied that, if the application is granted, the existing Council and the new Council will be able to carry out their respective functions in their

respective areas and that the rights of creditors of the existing Council will not be prejudiced.

(4) Before directing the Registrar to constitute an area under sub-section (1) as an Aboriginal Council area, the Minister shall take into account any proposal under a law of a State or Territory for the extension to the area of local government.

(5) Where the Registrar receives a direction under sub-section (1), he shall, by notice published in the *Gazette*, constitute the area to which the direction relates as an Aboriginal Council area under the name specified in the direction.

(6) A notice under sub-section (5) shall specify the boundaries of the Aboriginal Council area.

(7) By force of this sub-section, upon the publication of a notice under sub-section (5) constituting an Aboriginal Council area—

- (a) any part of the area thus constituted that was, immediately before being so constituted, part of an existing Aboriginal Council area, ceases to be part of that last-mentioned area;
- (b) any assets the subject of agreements under paragraph (2) (a) cease to be vested in the Aboriginal Council in which they were vested immediately before publication of the notice and become vested in the Aboriginal Council that is, in accordance with section 19, established by this Act for the area so constituted; and
- (c) an Aboriginal Council that was, immediately before the publication of the notice, liable to pay and discharge any liabilities the subject of agreements under paragraph (2) (b) ceases to be so liable and the Aboriginal Council that is, in accordance with section 19, established by this Act for the area constituted under sub-section (5) becomes liable to pay and discharge those liabilities.

Refusal of application.

**18.** If the Minister does not give a direction under section 17 with respect to an application, he shall direct the registrar to refuse the application and to inform the applicants of the refusal and of the reasons for the refusal, being reasons set out by the Minister in the direction.

Establishment of Aboriginal Council.

**19.** (1) On the constitution of an Aboriginal Council area under section 16, 17 or 27, there is established by this Act an Aboriginal Council for that area.

(2) An Aboriginal Council shall be known as the Aboriginal Council for the Aboriginal Council area for which it is established.

(3) An Aboriginal Council—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;

- (c) may acquire, hold and dispose of property, other than an estate or interest in land;
- (d) may acquire and hold an estate or interest in land and may—
  - (i) in the case of a disposable estate or interest—mortgage, charge or otherwise dispose of the estate or interest; or
  - (ii) in any other case—dispose of the estate or interest, with the consent of the Minister, to another Aboriginal Corporation; and
- (e) may sue and be sued in its corporate name.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of an Aboriginal Council affixed to a document and shall, unless the contrary is proved, presume that it was duly affixed.

**20.** (1) The functions of an Aboriginal Council are—

Functions of  
Aboriginal  
Council.

- (a) where the area of the Council was constituted under section 16—the functions specified in the application on the basis of which that area was so constituted;
- (b) where the area of the Council was constituted under section 17—the functions specified in the direction in compliance with which that area was so constituted; or
- (c) where the area of the Council was constituted under section 27—the functions specified in the recommendation by virtue of which that area was so constituted.

(2) There shall be included in the notice published under section 16, 17 or 27 with respect to the constitution of the area of an Aboriginal Council a statement of the functions conferred on the Council by subsection (1).

**21.** (1) As soon as practicable after the establishment of an Aboriginal Council the Registrar shall conduct an election of councillors of the Council.

First election  
of  
councillors  
of  
Aboriginal  
Council.

(2) For the purpose of conducting an election under this section, the Registrar shall, subject to the regulations—

- (a) inform the adult Aboriginals living in the area of the Aboriginal Council of his intention to conduct the election;
- (b) fix the number of councillors to be elected and notify those Aboriginals of that number;
- (c) determine the manner in which the election is to be conducted and explain to those Aboriginals the manner in which the election is to be conducted; and
- (d) fix the date or dates, and the place or places, that are relevant to the conduct of the election and notify those Aboriginals of that date or dates and that place or places.

(3) In fixing the number of councillors to be elected at an election under this section and in determining the manner in which the election is to be conducted, the Registrar shall have regard to the views of the adult Aboriginals living in the area of the Aboriginal Council.

(4) A person is not entitled to be a candidate, or to vote, in an election of councillors of an Aboriginal Council under this section unless—

- (a) he is an Aboriginal; and
- (b) at the date, or the earlier or earliest of the dates, fixed for the purposes of the election—
  - (i) he had attained the age of 18 years; and
  - (ii) he was living in the area of the Council.

(5) If there is a dispute whether a particular person has been elected as a councillor in an election held under this section, the Registrar shall inquire into the matter and determine whether that person or another person has been elected as a councillor.

(6) At the conclusion of an election under this section, the Registrar shall publish in the *Gazette* a notice setting out the results of the election and shall take such other action (if any) as he considers appropriate to inform the adult Aboriginals living in the area of the Aboriginal Council of those results.

First  
meeting.

22. (1) The Registrar shall, as soon as practicable after the conclusion of an election, under section 21, of councillors of an Aboriginal Council, convene and preside over the first meeting of the Council after that election for the purpose of—

- (a) adopting the Rules of the Council; and
- (b) electing a Chairman of the Council.

(2) A quorum for a meeting of an Aboriginal Council under this section is a number of councillors that is not less than two-thirds of the total number of councillors constituting the Council.

(3) A question arising at a meeting of an Aboriginal Council under this section shall be decided by a majority of the votes of the councillors present and voting and, in the event of the votes being equal, the Registrar has a casting vote.

- (4) If—
  - (a) a motion for the adoption of the Rules of the Council has been passed; and
  - (b) the Registrar is of the opinion that the Rules are inconsistent with this Act,

the Registrar shall explain to the meeting his reasons for considering that the Rules are inconsistent with this Act and shall, thereupon, rescind the motion.

(5) Where a motion for the adoption of the Rules of the Council has been rescinded under sub-section (4), a further motion for the adoption of other Rules of the Council may be moved.

(6) Where Rules of the Council that are not inconsistent with this Act have been adopted, the Rules thereupon take effect and the Registrar shall obtain, and keep in his office, a copy of those Rules.

(7) The Registrar may adjourn a meeting of an Aboriginal Council under this section from time to time for the purpose of enabling further consideration of any question before the meeting.

(8) If the Registrar is satisfied that Rules of the Council that are not inconsistent with this Act will not be adopted at a meeting under this section, he shall declare the meeting closed.

(9) A motion for the election of a Chairman of the Aboriginal Council shall not be moved until Rules of the Council that are not inconsistent with this Act have been adopted and, on a Chairman being elected, the Registrar shall cease to preside over, or to take any further part in, the meeting.

(10) In this section, “this Act” includes the regulations.

**23. (1)** Subject to this Act and the regulations, the Rules of an Aboriginal Council shall make provision for and in relation to—

Rules to provide for certain matters.

- (a) the manner of election of councillors;
- (b) the term of office of councillors (not being a term in excess of 3 years) and the procedure for removal from office;
- (c) the creation of the executive offices of the Council and the procedure for filling those offices;
- (d) the procedure for the conduct of meetings of the Council;
- (e) the manner in which the funds of the Council are to be managed;
- (f) the procedure for settling disputes between the Council and Aborigines living in the area of the Council; and
- (g) the method of altering the Rules of the Council, whether by making new Rules or by varying or rescinding Rules in force,

and may make provision, not contrary to law, for and in relation to any other matter.

(2) The Rules of an Aboriginal Council shall comply with any requirements of the regulations.

(3) The Rules of an Aboriginal Council with respect to any matter may be based on Aboriginal custom.

Election of  
councillors to  
be void.

**24.** Where the Registrar declares a meeting of an Aboriginal Council closed under sub-section 22 (8), the election of the councillors of that Council shall be deemed to be void and the Registrar shall proceed to conduct a fresh election in accordance with section 21.

Election of  
new  
councillors.

**25.** (1) Within 3 months before the date on which the terms of office of the councillors constituting an Aboriginal Council (in this section referred to as “the retiring councillors”) expire, the Registrar shall conduct, in accordance with the Rules of the Council, an election of new councillors.

(2) For the purpose of conducting an election under this section, the Registrar shall—

- (a) inform the adult Aboriginals living in the area of the Aboriginal Council of his intention to conduct the election;
- (b) notify those Aboriginals of the number of councillors to be elected;
- (c) explain to those Aboriginals the manner of conducting the election that is specified in the Rules of the Aboriginal Council; and
- (d) fix the date or dates, and the place or places, that are relevant to the conduct of the election and notify those Aboriginals of that date or dates and that place or places.

(3) A person is not entitled to be a candidate, or to vote, in an election of councillors of an Aboriginal Council under this section unless—

- (a) he is an Aboriginal; and
- (b) at the date, or the earlier or earliest of the dates, fixed for the purposes of the election—
  - (i) he had attained the age of 18 years; and
  - (ii) he was living in the area of the Council.

(4) A person elected as a new councillor under this section takes office on the expiration of the term of office of the retiring councillors.

(5) At the conclusion of an election under this section, the Registrar shall publish in the *Gazette* a notice setting out the results of the election and shall take such other action (if any) as he considers appropriate to inform the adult Aboriginals living in the area of the Aboriginal Council of those results.

Area to be  
added to  
Aboriginal  
Council area.

**26.** (1) Where the Registrar is satisfied—

- (a) that a substantial majority of adult Aboriginals living in an area (in this section referred to as “the additional area”) is in favour of the addition of that area to the area (in this section referred to as “the original area”) of an Aboriginal Council;
- (b) that a substantial majority of adult Aboriginals living in the original area is in favour of the addition of the additional area to the original area;

- (c) that, having regard to the needs and resources of Aboriginals living in both areas, the Aboriginal Council for the original area could effectively carry out its functions with respect to both areas; and
- (d) where the additional area consists of or includes a part of the area of another Aboriginal Council—that, having regard to the needs and resources of Aboriginals living in the remaining part of the area of that other Aboriginal Council, that other Aboriginal Council could effectively carry out its functions in that remaining part,

the Registrar may make a recommendation to the Minister that the additional area be added to the original area.

(2) Where the additional area that, in accordance with a recommendation under sub-section (1), is to be added to the area of an Aboriginal Council (in this section referred to as “the first Council”) consists of or includes a part of the area of another Aboriginal Council (in this section referred to as “the second Council”), the Minister shall consult with the second Council and with any creditors of the second Council whose rights against it may be prejudiced if the recommendation is given effect to and may enter into—

- (a) such agreements with the second Council with respect to the transfer to the first Council of assets of the second Council; and
- (b) such agreements with the creditors of the second Council with respect to the transfer to the first Council of liabilities of the second Council to its creditors,

as the Minister thinks are required to ensure that, if the recommendation is given effect to—

- (c) the second Council will be able effectively to carry out its functions with respect to the area that will remain to it;
- (d) the first Council will be able effectively to carry out its functions with respect to both the original area and the additional area, regarded as one area; and
- (e) the rights of those first-mentioned creditors will not be so prejudiced.

(3) Where—

- (a) the Minister approves a recommendation made under sub-section (1); and
- (b) where the additional area to which the recommendation relates is an area referred to in sub-section (2)—the Minister has entered into agreements under that sub-section or is otherwise satisfied that, if the recommendation is given effect to, the first Council and the second Council will be able to carry out their respective functions in their respective areas and that the rights of creditors of the second Council will not be prejudiced,

the Minister shall, by notice published in the *Gazette*, re-define the boundaries of the original area so as to add to it the additional area.

(4) By force of this sub-section, upon the publication of a notice under sub-section (3) redefining the area of an Aboriginal Council—

- (a) any part of the area of another Aboriginal Council that is included in the redefined area of the first-mentioned Aboriginal Council ceases to be part of the area of that other Aboriginal Council;
- (b) any assets the subject of agreements under paragraph (2) (a) cease to be vested in the Aboriginal Council in which they were vested immediately before the publication of the notice and become vested in the first-mentioned Aboriginal Council; and
- (c) an Aboriginal Council that was, immediately before the publication of the notice, liable to pay and discharge any liabilities the subject of agreements under paragraph (2) (b), ceases to be so liable and the first-mentioned Aboriginal Council becomes liable to pay and discharge those liabilities.

(5) This section does not apply in circumstances where the area to be added to the area of an Aboriginal Council consists of or includes the whole of an existing Aboriginal Council area.

Amalgamation of 2 or more Aboriginal Council areas, &c.

27. (1) Where the Registrar is satisfied—

- (a) that a substantial majority of adult Aboriginals living in each of 2 or more Aboriginal Council areas—
  - (i) is in favour of the amalgamation of those areas to form 1 Aboriginal Council area and the establishment of an Aboriginal Council for that area;
  - (ii) is agreed on the functions to be performed by the proposed Aboriginal Council; and
  - (iii) is agreed on an appropriate name for the proposed Aboriginal Council area;
- (b) that the proposed Aboriginal Council area is an appropriate area for the operation of an Aboriginal Council having the functions proposed; and
- (c) that, having regard to the needs and resources of the Aboriginals living in the proposed Aboriginal Council area, the proposed Aboriginal Council could effectively perform the proposed functions,

the Registrar may make a recommendation to the Minister that effect be given to the views of those majorities.

(2) Where a recommendation is made to the Minister under sub-section (1), the Minister, if he is satisfied that it is proper so to do, may, by notice published in the *Gazette*, constitute the proposed Aboriginal



Council area as an Aboriginal Council area under the name specified in the recommendation.

(3) By force of this sub-section, on the publication of a notice under sub-section (2)—

- (a) the Aboriginal Council areas included in the newly constituted Aboriginal Council area cease to be constituted as Aboriginal Council areas and the Aboriginal Councils for those areas (in this section referred to as “the former Councils”) cease to exist;
- (b) all rights, property and assets that, immediately before the date of that publication, were vested in the former Councils are vested in the Aboriginal Council for the Aboriginal Council area constituted by the notice (in this section referred to as “the new Council”); and
- (c) the new Council becomes liable to pay and discharge all the duties, liabilities and obligations of the former Councils, being the duties, liabilities and obligations that existed immediately before that date.

(4) Any agreement or instrument subsisting immediately before the date of publication of a notice under sub-section (2) to which any of the former Councils was a party has effect, on and after that date, as if—

- (a) the new Council were substituted for that former Council as a party to the agreement or instrument; and
- (b) any reference in the agreement or instrument to that former Council were (except in relation to matters that occurred before that date) a reference to the new Council.

(5) Where—

- (a) the title to an estate or interest in land held by any of the former Councils is, by virtue of sub-section (3), vested in the new Council; and
- (b) that estate or interest is registered in the name of that former Council in the Register Book kept under a law relating to the transfer of land in force in the State or Territory in which the land is situated,

the Registrar or other proper officer keeping the Register Book may make such alterations to the entry in the Register Book with respect to that estate or interest as will record the vesting of that estate or interest, by virtue of sub-section (3), in the new Council.

**28.** The exercise of the powers and the performance of the functions of an Aboriginal Council shall not be affected by reason only— Exercise of powers, &c.

- (a) of there being a vacancy in the office of a councillor;
- (b) of there being a defect in the election of a councillor; or
- (c) of any person having acted in the office of councillor when disqualified from holding that office.

Powers of  
Aboriginal  
Council  
generally.

**29.** Subject to this Act, an Aboriginal Council may do all things that are necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, may—

- (a) raise or borrow moneys on such terms, and in such manner, as it thinks fit;
- (b) secure the repayment of moneys so raised or borrowed, or the payment of a debt, or liability of the Council, by giving mortgages, charges or other securities upon or over all or any of the property of the Council, not being an estate or interest in land that is not a disposable estate or interest;
- (c) invest moneys in any manner that it thinks fit; and
- (d) receive and disburse moneys provided to it.

By-laws.

**30.** (1) Subject to this Act, an Aboriginal Council may make by-laws, not inconsistent with any other law in force in the area of the Council, for purposes connected with its functions.

(2) A by-law made under sub-section (1) may fix a charge for a service provided or made available by the Council for Aboriginals living in the area of the Council, and may make provision with respect to the payment of that charge.

(3) The amount of the charge referred to in sub-section (2) may, if unpaid, be recovered by the Council by action in a court of competent jurisdiction from an Aboriginal to whom the service to which the charge relates has been provided or made available.

(4) A by-law has no effect unless it has been approved by the Minister.

(5) Where the Minister approves any by-laws, he shall cause the by-laws to be laid before each House of the Parliament within 15 sitting days of that House after the giving of his approval.

(6) If any by-laws are not laid before each House of the Parliament in accordance with sub-section (5), the by-laws shall be void and of no effect.

(7) Where any by-laws have been laid before a House of the Parliament in accordance with sub-section (5) of this section, sub-sections (4), (5) and (5A) of section 48 of the *Acts Interpretation Act 1901* apply in relation to those by-laws as if they were regulations.

(8) The Registrar shall use his best endeavours to ensure that the by-laws of an Aboriginal Council are made known to adult Aboriginals in the area of the Aboriginal Council.

(9) A by-law does not apply in relation to a person who is not an Aboriginal.

(10) The by-laws may provide that any contravention of a by-law is an offence punishable, upon conviction, by a fine not exceeding \$20.

(11) In proceedings for an offence referred to in sub-section (10) it is a defence if the person charged proves that the by-law to which the offence relates had not been brought to his attention.

**31.** The moneys of an Aboriginal Council shall be applied only—

Application  
of moneys by  
Council.

- (a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Council in the performance of its functions, or the exercise of its powers, under this Act;
- (b) in the payment of any allowances payable to councillors under this Act; and
- (c) in the making of other payments authorized by this Act.

**32.** A councillor is entitled to be paid such allowances with respect to his expenses as a councillor as are provided for by the Rules of the Aboriginal Council.

Allowances  
for  
councillors.

**33.** (1) An Aboriginal Council may request the Registrar to alter the functions of the Council in the manner specified in the request.

Alteration of  
functions.

(2) Where the Registrar is satisfied, with respect to a request under sub-section (1)—

- (a) that a substantial majority of adult Aboriginals living in the area of the Aboriginal Council is in favour of the alteration specified in the request;
- (b) that, having regard to the needs and resources of the Aboriginals living in that area, the Council could effectively perform the functions as proposed to be altered in accordance with the request; and
- (c) that the functions as proposed to be altered in accordance with the request include at least 1 function in the nature of the provision of a service to the Aboriginals living in that area,

the Registrar shall, by notice published in the *Gazette*, alter the functions of the Council in accordance with the request.

(3) An alteration of the functions of an Aboriginal Council under sub-section (2) takes effect on the date of publication of the notice.

(4) Where the Registrar is not satisfied as required by sub-section (2) with respect to a request under sub-section (1), he shall refuse the request and shall notify the Aboriginal Council, in writing, accordingly.

**34.** An alteration of the functions of an Aboriginal Council does not affect any right, liability or obligation of the Council or of any person, or any legal proceeding existing or pending immediately before the alteration took place.

Alteration of  
functions not  
to affect  
existing  
rights and  
obligations.

Filing and approval of alterations of Rules.

**35. (1)** Where an Aboriginal Council alters the Rules of the Council the public officer of the Council shall, within 6 weeks after the making of the alteration, file with the Registrar a copy of the alteration.

Penalty: \$50.

(2) The Registrar shall consider an alteration filed under sub-section (1) and shall—

(a) if he is satisfied that the Rules of the Aboriginal Council as proposed to be altered are not inconsistent with this Act or the regulations—approve the alteration; or

(b) if he is not so satisfied—refuse to approve the alteration.

(3) The Registrar shall notify the public officer of the Aboriginal Council, in writing, of his approval, or his refusal of approval, of an alteration filed by the public officer under sub-section (1).

(4) An alteration referred to in sub-section (1) does not take effect unless and until approved by the Registrar under sub-section (2).

Appointment of public officer, &c.

**36. (1)** An Aboriginal Council shall, within 3 weeks after the first meeting of the Council, appoint a person to be the public officer of the Council and determine an official address for the person from time to time holding the office and, if that office at any time becomes vacant, shall, within 3 weeks after it becomes vacant, appoint a person to fill that vacancy.

(2) The public officer of an Aboriginal Council holds office during the pleasure of the Council.

(3) The public officer of an Aboriginal Council may resign his office by writing signed by him delivered to the Chairman of the Council but the resignation does not have effect until it is accepted by the Chairman of the Council.

(4) An Aboriginal Council shall terminate the appointment of the public officer of the Council if he becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his creditors.

(5) Where the Registrar considers that the place of the official address of the public officer of an Aboriginal Council is not an appropriate place for the performance of the duties of the public officer under this Act, he may direct the Council to determine another official address and to notify him of the address so determined and the Council shall obey that direction.

**37. (1)** An Aboriginal Council shall, within 3 weeks after the appointment of a public officer, serve on the Registrar a notice in writing setting out the full name and official address of the public officer.

Notification of appointment and change of public officer.

**(2)** Where an Aboriginal Council changes the official address of its public officer, it shall, within 3 weeks after the change, serve on the Registrar a notice in writing of the change.

**38. (1)** An Aboriginal Council shall cause to be kept proper accounts and records of the transactions and affairs of the Council and shall do all things necessary to ensure that all payments out of the moneys of the Council are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Council and over the incurring of liabilities by the Council.

Records to be kept and balance sheets prepared.

**(2)** An Aboriginal Council shall, as soon as practicable after each 30 June, cause to be prepared a balance sheet setting out the assets and liabilities of the Council as at that 30 June.

**(3)** An Aboriginal Council shall, as soon as practicable after a balance sheet has been prepared under sub-section (2), cause a person having the prescribed qualifications—

- (a)** to examine whether the balance sheet is based on proper accounts and records and is in agreement with those accounts and records; and
- (b)** to furnish to the Council a report of the results of that examination drawing attention to any irregularity in the financial affairs of the Council disclosed by that examination.

**(4)** The public officer of an Aboriginal Council shall, within 6 weeks after the furnishing to the Council of a report under sub-section (3) with respect to a balance sheet prepared under sub-section (2), file with the Registrar a copy of that balance sheet and a copy of that report.

Penalty for any contravention of this sub-section: \$50.

**39. (1)** The Registrar may, at any time, cause a person having the prescribed qualifications to inspect and audit the accounts and records caused to be kept by an Aboriginal Council in pursuance of sub-section 38 (1) and to furnish to him a report of the results of that inspection and audit drawing attention to any irregularity in the financial affairs of the Council disclosed by that inspection and audit.

Audit of records and balance sheets.

**(2)** The Registrar shall, before an inspection and audit under sub-section (1) is commenced, by notice in writing served on the public officer of the Aboriginal Council concerned, inform it that such an inspection and audit will be carried out and name the person whom he has engaged for the purpose.

**(3)** Where a notice is served on the public officer of an Aboriginal Council under sub-section (2), the Council shall ensure that the person named in the notice or a person authorized by that person has, for the

purposes of the inspection and audit referred to in the notice, full and free access to all accounts, records, documents and papers of the Council relevant directly or indirectly to the payment of money by the Council or to the acquisition, receipt, custody or disposal of assets by the Council.

(4) A person named in a notice served under sub-section (2) or a person authorized by him may, for the purpose only of use in the inspection and audit to which the notice relates, take copies of, or extracts from, such accounts, records, documents and papers.

Registrar  
may request  
explanation.

40. (1) Where—

- (a) an Aboriginal Council fails to carry out its obligations under section 38; or
- (b) a report filed under sub-section 38 (4) or a report furnished under sub-section 39 (1) draws attention to any irregularity in the financial affairs of an Aboriginal Council,

the Registrar may, by notice served on the public officer of the Council, request the Council to furnish to the Registrar, within the time specified in the notice, an explanation, in writing, why the Council has failed to carry out those obligations or why that irregularity has occurred, as the case may be.

(2) Where the Registrar considers that an explanation furnished by an Aboriginal Council under sub-section (1) is satisfactory, he may, by notice served on the public officer of the Council, require the Council to take such action as is specified in the notice within the period specified in the notice, being action designed to remedy the matter the subject of the explanation by the Council.

(3) Where—

- (a) an Aboriginal Council fails to furnish an explanation in accordance with sub-section (1);
- (b) the Registrar considers that an explanation furnished by an Aboriginal Council under sub-section (1) is not satisfactory; or
- (c) an Aboriginal Council fails to comply with a requirement served under sub-section (2),

the Registrar—

- (d) may, by notice published in the *Gazette*, declare the offices of the councillors of the Council to be vacant; or
- (e) may commence an investigation under section 68 into the conduct of the affairs of the Council.

(4) Where an Aboriginal Council fails to carry out its obligations under section 36 or 37, the Registrar may, by notice published in the *Gazette*, declare the offices of the Councillors to be vacant.

(5) Where the offices of the councillors of an Aboriginal Council are declared to be vacant under this section, the Registrar shall proceed to conduct a fresh election in accordance with section 21.

(6) Section 22 does not apply in relation to an election conducted by virtue of sub-section (5).

**41.** A councillor is not liable to contribute towards the payment of the debts or liabilities of an Aboriginal Council. Liability of councillors.

**42.** An Aboriginal Council may employ such staff as is necessary for the performance of its functions. Staff.

#### PART IV—INCORPORATED ABORIGINAL ASSOCIATIONS

**43.** (1) The committee of an Aboriginal association may apply to the Registrar, in writing signed by each member of the committee, for the incorporation of the association. Application for incorporation.

(2) An application under sub-section (1) shall state—

- (a) the proposed name of the Association when incorporated, which shall include the words “Aboriginal Corporation” or the words “Torres Strait Islanders Corporation”;
- (b) the objects of the association;
- (c) whether the members of the association are to be liable to contribute towards the payment of the debts and liabilities of the association and, if so, the extent of that liability;
- (d) the place or places where the activities of the association are, or are to be, carried on; and
- (e) the names and addresses of the persons who constitute the committee of the association,

and shall be accompanied by a statement of the Rules by which, in the event of the incorporation of the association, its affairs are to be regulated.

(3) Subject to this Act and the regulations, the Rules referred to in sub-section (2) shall make provision for and in relation to—

- (a) the qualifications of members of the association;
- (b) the creation of the executive offices of the association and the procedure for filling those offices;
- (c) the procedure for the settling of disputes between the association and its members;
- (d) the constitution of the Governing Committee of the association and the powers of that Committee;
- (e) the procedure for the conduct of meetings of the Governing Committee of the association;
- (f) the manner in which the funds of the association are to be managed;
- (g) the method of altering the rules of the association, whether by making new rules or by varying or rescinding rules in force; and
- (h) the method of altering the objects of the association,

and may make provision, not contrary to law, for and in relation to any other matter.

(4) The Rules of an association with respect to any matter may be based on Aboriginal custom.

Rights of members to share in pecuniary profits, &c.

44. Where an Aboriginal Association is to be carried on wholly or partly for the purpose of securing pecuniary profit to its members, the rules referred to in sub-section 43 (2) shall make provision with respect to the rights of persons who are members from time to time to share in the pecuniary profits of the association and the rights of persons who are members at the time of a winding-up of the association to share in the distribution of any surplus assets resulting from the winding-up, and those rules may make provision for conferring rights on or in respect of a person upon his ceasing to be a member by resignation or death.

Registrar may issue certificate of incorporation.

45. (1) Subject to this section, the Registrar, upon receipt of an application under section 43 for the incorporation of an Aboriginal association shall—

- (a) if he is satisfied that it is proper for him so to do, issue to the association a certificate of incorporation; or
- (b) if he is not satisfied, refuse to issue a certificate of incorporation and inform the association, in writing, of his refusal and of the reasons for his refusal.

(2) Except as otherwise directed by the Minister, the Registrar shall refuse to issue a certificate of incorporation under this Act to an Aboriginal association if the proposed name of the association is an unauthorized name.

(3) The Registrar shall refuse to issue a certificate of incorporation under this Act to an Aboriginal association if he is satisfied that the Rules referred to in sub-section 43 (2) are unreasonable or inequitable.

(4) Where the Registrar refuses to issue a certificate of incorporation to an Aboriginal association, he shall—

- (a) notify the association, in writing, of his refusal;
- (b) set out in the notification the reason for his refusal; and
- (c) invite the committee of the association to make such changes in the application for incorporation or in the Rules accompanying the application for incorporation as will remove the grounds for refusal of the application and advise the Registrar, within the time specified in the notification, of any changes so made.

(5) Where the Registrar is notified, in accordance with sub-section (4), of changes made in an application for incorporation or in the Rules accompanying an application for incorporation, he shall reconsider the application under sub-section (1).



**46.** (1) Upon the issue to an Aboriginal association of a certificate of incorporation under section 45, the association—

Incorporation of Aboriginal association.

- (a) becomes a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of property, other than an estate or interest in land;
- (d) may acquire and hold an estate or interest in land and may—
  - (i) in the case of a disposable estate or interest—mortgage, charge or otherwise dispose of the estate or interest; or
  - (ii) in any other case—dispose of the estate or interest, with the consent of the Minister, to another Aboriginal Corporation; and
- (e) may sue and be sued in its corporate name.

(2) The name of an Incorporated Aboriginal Association is the name set out in its certificate of incorporation.

(3) The common seal of an Incorporated Aboriginal Association is of no effect unless the name of the Association is inscribed on the seal in legible characters.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of an Incorporated Aboriginal Association affixed to a document and shall presume that it was duly affixed.

**47.** The Rules accompanying the application for the incorporation of an association or, where those Rules have been altered in accordance with sub-section 45 (4), those Rules as so altered shall, upon the incorporation of the association, be the Rules of the Incorporated Aboriginal Association, but may be altered in accordance with the method of alteration laid down in those Rules.

Rules of Incorporated Aboriginal Association.

**48.** (1) A person who is or has been a member of an Incorporated Aboriginal Association in respect of which the application for incorporation stated that the members of the Association were not to be liable to contribute towards the payment of the debts and liabilities of the Association is not liable so to contribute.

Liability of members of Incorporated Aboriginal Associations.

(2) A person who is or has been a member of an Incorporated Aboriginal Association in respect of which the application for incorporation stated that the members of the Association were to be liable, to the extent specified in the application, to contribute towards the payment of the debts and liabilities of the Association is liable so to contribute in respect of debts and liabilities incurred after the incorporation of the Association and before he ceases or ceased to be a member.

Eligibility  
for  
membership  
of  
Incorporated  
Aboriginal  
Association.

**49. (1)** A person who is not an Aboriginal is not entitled to become a member of an Incorporated Aboriginal Association.

(2) A person who, but for sub-section (1), would be, or would have been, a member of an Incorporated Aboriginal Association shall, for the purposes of section 48, be treated as being, or as having been, such a member.

Vesting of  
property in  
Incorporated  
Aboriginal  
Associations.

**50. (1)** Upon the incorporation of an Aboriginal association under this Act any personal property (other than personal property consisting of an estate or interest in land) held by a person, in trust or otherwise, for or on behalf of the members of the Association vests, subject to any trust, covenant, contract or liability affecting the property (other than a trust for the members) in the Incorporated Aboriginal Association.

(2) Where a person holds an estate or interest in land in trust or otherwise for or on behalf of the members of an Aboriginal association, that person shall, upon the incorporation of the Association under this Act, take all action required to vest, subject to any trust (other than a trust for the members), or any covenant, contract or liability affecting the estate or interest, the estate or interest in the Incorporated Aboriginal Association.

Power to  
borrow  
money and  
give  
securities.

**51.** An Incorporated Aboriginal Association may, subject to this Act and to the Rules of the Association—

- (a) raise or borrow money upon such terms, and in such manner, as it thinks fit; and
- (b) secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the Association, by giving mortgages, charges or other securities upon or over all or any of the property of the Association, not being an estate or interest in land that is not a disposable estate or interest.

Notification  
of alteration  
of objects.

**52. (1)** The public officer of an Incorporated Aboriginal Association shall, within 6 weeks after the making of an alteration of the objects of the Association, file with the Registrar a copy of the alteration.

Penalty: \$50.

(2) The Registrar shall consider an alteration filed under sub-section (1) and shall—

- (a) if he is satisfied that it is proper for him so to do, approve the alteration; or
- (b) if he is not so satisfied, refuse to approve the alteration and inform the Association, in writing, of his refusal and of the reasons for his refusal.

(3) An alteration referred to in sub-section (1) does not take effect unless and until approved by the Registrar under sub-section (2).

**53. (1)** Where an Incorporated Aboriginal Association proposes to change its name, the Governing Committee of the Association shall make application, in writing, to the Registrar for his approval of the proposed new name. Change of name.

(2) The Registrar shall approve a proposed new name submitted to him under sub-section (1) if—

- (a) the name includes the words “Aboriginal Corporation” or the words “Torres Strait Islanders Corporation”; and
- (b) the name is not an unauthorized name.

(3) Where an Incorporated Aboriginal Association has changed its name to a new name that has been approved by the Registrar under sub-section (2), the public officer of the Association shall serve on the Registrar a notice in writing of the change.

Penalty: \$50.

(4) Where the Registrar receives a notice under sub-section (3), he shall issue to the Incorporated Aboriginal Association a certificate of incorporation in the new name of the Association and that certificate of incorporation has effect, from the date of issue, as the certificate of incorporation of the Association.

(5) A change of name by an Incorporated Aboriginal Association does not take effect until the issue to the Association under sub-section (4) of a certificate of incorporation in the new name.

**54. (1)** Where an Incorporated Aboriginal Association alters its Rules, the public officer of the Association shall, within 6 weeks after the making of the alteration, file with the Registrar a notification of the alteration. Filing and approval of alterations of Rules.

Penalty: \$50.

(2) The Registrar shall consider an alteration filed under sub-section (1) and shall—

- (a) if he is satisfied that the Rules of the Incorporated Aboriginal Association as proposed to be altered are not inconsistent with this Act—approve the alteration; or
- (b) if he is not so satisfied—refuse to approve the alteration.

(3) The Registrar shall notify the public officer of the Incorporated Aboriginal Association, in writing, of his approval, or his refusal of approval, of an alteration filed by the public officer under sub-section (1).

(4) An alteration referred to in sub-section (1) does not take effect unless and until approved by the Registrar under sub-section (2).

Alteration of objects, &c., does not affect existing rights and obligations.

**55.** An alteration of the objects of an Incorporated Aboriginal Association or the issue of a certificate of incorporation to an Association in a new name, does not affect any right, liability or obligation of the Association or of any person, or any legal proceedings, existing or pending immediately before the alteration took effect or the certificate was issued, as the case may be.

Appointment of public officer, &c.

**56.** (1) The Governing Committee of an Incorporated Aboriginal Association shall, within 3 weeks after its incorporation under this Act, appoint a person to be the public officer of the Association and determine an official address for the person from time to time holding the office and, if that office at any time becomes vacant, shall, within 3 weeks after it becomes vacant, appoint a person to fill that vacancy.

(2) The public officer of an Incorporated Aboriginal Association holds office during the pleasure of the Governing Committee of the Association.

(3) The public officer of an Incorporated Aboriginal Association may resign his office by writing signed by him delivered to the Chairman of the Governing Committee of the Association but the resignation does not have effect until it is accepted by the Chairman.

(4) The Governing Committee of an Incorporated Aboriginal Association shall terminate the appointment of the public officer of the Association if he becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his creditors.

(5) Where the Registrar considers that the place of the official address of the public officer of an Incorporated Aboriginal Association is not an appropriate place for the performance of the duties of the public officer under this Act, the Registrar may serve on the public officer a notice directing the Governing Committee of the Association to determine another official address and to notify him of the address so determined, and the Governing Committee shall obey that direction.

Notice of appointment and change of Public Officers.

**57.** (1) The Governing Committee of an Incorporated Aboriginal Association shall, within 3 weeks after the appointment of a public officer, serve on the Registrar a notice in writing setting out the full name and official address of the public officer.

(2) Where the Governing Committee of an Incorporated Aboriginal Association changes the official address of its public officer, it shall, within 3 weeks after the change, serve on the Registrar a notice in writing of the change.

Public officer to keep register of members.

**58.** (1) The public officer of an Incorporated Aboriginal Association shall keep, at his official address, a register, in a form satisfactory to the Registrar, showing—

(a) the name and address of every member of the Association;

- (b) the date upon which each member joined the Association; and
- (c) where a member of the Association ceased to be such a member—the date upon which he so ceased.

(2) The public officer of an Incorporated Aboriginal Association shall take such action as is required to ensure that a register kept by him under sub-section (1) is open for inspection, at all reasonable times, by members of the public.

Penalty: \$50.

**59.** (1) The Governing Committee of an Incorporated Aboriginal Association shall cause to be kept proper accounts and records of the transactions and affairs of the Association and shall do all things necessary to ensure that all payments out of the moneys of the Association are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Association and over the incurring of liabilities by the Association.

Records to be kept and balance sheets prepared.

(2) The Governing Committee of an Incorporated Aboriginal Association shall, as soon as practicable after each 30 June, cause to be prepared a balance sheet setting out the assets and liabilities of the Association as at that 30 June.

(3) The Governing Committee of an Incorporated Aboriginal Association shall, as soon as practicable after a balance sheet has been prepared under sub-section (2), cause a person having the prescribed qualifications—

- (a) to examine whether the balance sheet is based on proper accounts and records and is in agreement with those accounts and records; and
- (b) to furnish to the Governing Committee a report of the results of that examination drawing attention to any irregularity in the financial affairs of the Association disclosed by that examination.

(4) The public officer of an Incorporated Aboriginal Association shall, within 6 weeks after the furnishing to the Governing Committee of that Association of a report under sub-section (3) with respect to a balance sheet prepared under sub-section (2), file with the Registrar a copy of that balance sheet and a copy of that report.

Penalty for any contravention of this sub-section: \$50.

**60.** (1) The Registrar may, at any time, cause a person having the prescribed qualifications to inspect and audit the accounts and records caused to be kept by the Governing Committee of an Incorporated Aboriginal Association in pursuance of sub-section 59 (1) and to furnish to him a report of the results of that inspection and audit drawing attention to any irregularity in the financial affairs of the Association disclosed by that inspection and audit.

Audit of records and balance sheets.

(2) The Registrar shall, before an inspection and audit under sub-section (1) is commenced, by notice in writing served on the public officer of the Incorporated Aboriginal Association concerned, inform the Governing Committee of the Association that such an inspection and audit will be carried out and name the person whom he has engaged for the purpose.

(3) Where a notice is served on the public officer of an Incorporated Aboriginal Association under sub-section (2), the Governing Committee of the Association shall take such action as is necessary to ensure that the person named in the notice or a person authorized by that person has, for the purposes of the inspection and audit referred to in the notice, full and free access to all accounts, records, documents and papers of the Association relevant directly or indirectly to the payment of money by the Association or to the acquisition, receipt, custody or disposal of assets by the Association.

(4) A person named in a notice served under sub-section (2) or a person authorized by him may, for the purpose only of use in the inspection and audit to which the notice relates, take copies of, or extracts from, such accounts, records, documents and papers.

Registrar  
may request  
explanation.

**61. (1) Where—**

- (a) the Governing Committee of an Incorporated Aboriginal Association fails to carry out its obligations under section 59; or
- (b) a report filed under sub-section 59 (4) or a report furnished under sub-section 60 (1) draws attention to any irregularity in the financial affairs of an Incorporated Aboriginal Association,

the Registrar may, by notice in writing served on the public officer of the Association, request the Governing Committee of the Association to furnish to the Registrar, within the time specified in the notice, an explanation, in writing, why the Council has failed to carry out those obligations or why that irregularity has occurred, as the case may be.

(2) Where the Registrar considers that an explanation furnished by the Governing Committee of an Incorporated Aboriginal Association under sub-section (1) is satisfactory, he may, by notice served on the public officer of the Association, require the Governing Committee to take such action as is specified in the notice within the period specified in the notice, being action designed to remedy the matter the subject of the explanation by the Governing Committee.

(3) Where—

- (a) the Governing Committee of an Incorporated Aboriginal Association fails to furnish an explanation in accordance with sub-section (1);
- (b) the Registrar considers that an explanation furnished by the Governing Committee of an Incorporated Aboriginal Association under sub-section (1) is not satisfactory; or

- (c) the Governing Committee of an Incorporated Aboriginal Association fails to comply with a requirement served under sub-section (2),

the Registrar—

- (d) may petition the Court that the Association be wound up; or  
 (e) may commence an investigation under section 68 into the conduct of the affairs of the Association.

(4) Where the Governing Committee of an Incorporated Aboriginal Association fails to carry out its obligations under section 56 or 57, the Registrar may petition the Court that the Association be wound up.

**62.** Subject to this Act, the provisions of the law in force in the Australian Capital Territory that relate to compromises or arrangements between companies and their creditors, apply, so far as they are capable of application and subject to such modifications, adaptations and exceptions as are prescribed, to and in relation to Incorporated Aboriginal Associations and, in the application of that law—

Application of law of Australian Capital Territory relating to compositions with creditors.

- (a) a reference to a company shall be read as a reference to an Incorporated Aboriginal Association;  
 (b) a reference to the directors of a company shall be read as a reference to the members of the Governing Committee of an Incorporated Aboriginal Association; and  
 (c) a reference to the Court shall be read as a reference to the Australian Industrial Court.

**63.** (1) Subject to this section, an Incorporated Aboriginal Association may be wound up under an order of the Court on the petition of—

Winding up by Court.

- (a) the Association;  
 (b) any creditor, including a contingent or prospective creditor, of the Association;  
 (c) a member of the Association;  
 (d) the judicial manager of the Association; or  
 (e) the Registrar,

or of any 2 or more of those parties.

(2) A petition under sub-section (1) shall specify one or more of the following grounds:—

- (a) the Incorporated Aboriginal Association has, in accordance with its rules, resolved that it be wound up by the Court;  
 (b) the business of the Association was not commenced within 1 year after its incorporation or has been suspended for a continuous period of 1 year;  
 (c) there are fewer than 5 members of the Association;  
 (d) the Association is unable to pay its debts;  
 (e) the members of the Committee of the Association have acted in the affairs of the Association in their own interests rather than in

the interests of the members as a whole or in any other manner whatsoever that appears to be unfair or unjust to other members;

- (f) a ground set out in sub-section 61 (3) or (4);
- (g) by reason of the complexity or magnitude of the activities of the Association, it is inappropriate that it continue to be incorporated under this Act;
- (h) it is just and equitable that the Association be wound up.

(3) For the purpose of the consideration by the Court of a petition under sub-section (1) on the ground set out in paragraph (2) (d), an Incorporated Aboriginal Association shall be deemed to be unable to pay its debts if—

- (a) a creditor, by assignment or otherwise, to whom the Association is indebted in a sum exceeding \$500—
  - (i) has, by service of a demand upon the public officer, required the Association to pay that sum; and
  - (ii) has, within 3 days of that service, served a copy of that demand upon the Registrar for his information, and the Association has, for a period of 28 days after the service referred to in sub-paragraph (i), neglected to pay that sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the Association is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court, which shall take into account the contingent and prospective liabilities of the Association, that the Association is unable to pay its debts.

(4) A member of an Incorporated Aboriginal Association is not entitled to present a petition under sub-section (1) on a ground specified in paragraph (2) (a), (b), (d), (g) or (h) unless—

- (a) there are fewer than 5 members of the Association; or
- (b) the member has been a member of the Association since the date of its incorporation or has been a member for at least 6 months prior to the presentation of the petition.

(5) No person other than the Registrar is entitled to present a petition under sub-section (1) on a ground specified in paragraph (2) (f).

(6) The Court shall not hear a petition under sub-section (1) if it is presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the Court.

Voluntary  
winding up.

**64.** (1) An Incorporated Aboriginal Association may be wound up voluntarily if the Association so resolves by special resolution.



(2) The public officer of an Incorporated Aboriginal Association shall, within 3 weeks after the passing of a resolution for voluntary winding up, lodge with the Registrar a notice in the prescribed form of the passing of the resolution and a copy of the resolution.

Penalty: \$50.

(3) The Registrar shall, within 3 weeks after the lodging of a notice under sub-section (2), publish in the *Gazette* a notice of the passing of the resolution to which the notice relates.

(4) For the purposes of this section, a resolution is a special resolution if it is passed by a majority of not less than three-fourths of such members as being entitled so to do vote in person, or, where proxies are allowed, by proxy, at a general meeting of which not less than 21 days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

(5) This section does not apply in relation to an Incorporated Aboriginal Association that is the owner of an estate or interest in land that is not a disposable estate or interest.

**65.** (1) Subject to this section, where, upon the winding up of an Incorporated Aboriginal Association, there remain any surplus assets and—

Distribution  
of surplus  
assets in  
winding up.

(a) the rules of the Association make provision for the distribution of the surplus assets of the Association in the event of the Association's being wound up; or

(b) where there are no such rules—a resolution relating to the distribution of the surplus assets of the Association has been passed by at least two-thirds of the members of the Association,

the Court or the liquidator shall distribute those assets in accordance with those rules or that resolution, as the case may be.

(2) Where, in a winding up by the Court—

(a) a Judge of the Court considers that a distribution of the surplus assets of the Association in accordance with the rules of the Association or with a resolution under paragraph (1) (b) would not be just; or

(b) no such rules exist and such a resolution has not been passed, the Judge shall make such orders for the distribution of those assets as, having regard to the objects of the Association, he considers just.

(3) Where, in a voluntary winding up—

(a) the liquidator considers that a distribution of the surplus assets of the Association in accordance with the rules of the Association or with a resolution relating to the distribution of those surplus assets passed by a majority of at least two-thirds of the members of the Association would not be just; or

(b) no such rules exist and such a resolution has not been passed,

the liquidator shall apply to a Judge of the Court to exercise all or any of the powers that the Judge might exercise under sub-section (2) if the Association were being wound up by the Court.

Estate or interest other than disposable estate or interest.

**66.** (1) An estate or interest in land that is not a disposable estate or interest does not form part of the assets of an Incorporated Aboriginal Association in a winding up.

(2) Where the Court has determined, on a petition under section 63, that an Incorporated Aboriginal Association should be wound up, the Court may make such order as it thinks appropriate with respect to an estate or interest in land held by the Association that is not a disposable estate or interest.

(3) In making an order under sub-section (2) with respect to an estate or interest in land, the Court shall have regard to—

- (a) the circumstances in which the Incorporated Aboriginal Association acquired the estate or interest;
- (b) any submission to the Court made by the Minister with respect to the estate or interest; and
- (c) any other matter that the Court considers relevant.

Application of law of Australian Capital Territory relating to winding up.

**67.** Subject to this Act, the provisions of the law in force in the Australian Capital Territory that relate to the winding up of companies, other than unregistered companies, apply, so far as they are applicable and subject to such modifications, adaptations and exceptions (if any) as are prescribed, to and in relation to the winding up of Incorporated Aboriginal Associations and, in the application of that law—

- (a) a reference to a company shall be read as a reference to an Incorporated Aboriginal Association;
- (b) a reference to the directors of a company shall be read as a reference to the members of the Governing Committee of an Incorporated Aboriginal Association;
- (c) a reference to the Secretary of a company shall be read as a reference to the public officer of an Incorporated Aboriginal Association;
- (d) a reference to the principal place of business of a company shall be read as a reference to the official address of the public officer of an Incorporated Aboriginal Association;
- (e) a reference to the court shall be read as a reference to the Australian Industrial Court; and
- (f) a reference to the Registrar shall be read as a reference to the Registrar of Aboriginal Corporations.

**PART V—INVESTIGATION AND JUDICIAL MANAGEMENT  
OF ABORIGINAL CORPORATIONS**

**68. (1) Where the Registrar—**

- (a) is empowered, under section 40 or 61, to commence an investigation under this section into the conduct of the affairs of an Aboriginal corporation; or
- (b) has in his possession any information that he considers calls for an investigation under this section into the conduct of the affairs of an Aboriginal corporation,

Investigation  
by Registrar.

he may serve on the public officer of the corporation a notice in writing calling upon the corporation to show cause, within such period, not less than 6 weeks, as is specified in the notice, why he should not, on the ground specified in the notice, investigate the conduct of the affairs of the corporation.

(2) If an Aboriginal corporation fails, within the period specified in a notice served under sub-section (1), to show cause to the satisfaction of the Registrar, the Registrar may make the investigation referred to in the notice.

(3) For the purposes of an investigation under sub-section (2), the Registrar may, by notice in writing given to a person whom the Registrar believes to have some knowledge of the affairs of the Aboriginal corporation, require that person to attend before him at the time and place specified in the notice and there to answer questions relating to the affairs of the corporation.

(4) A person is not excused from answering a question when required to do so under sub-section (3) on the ground that the answer to the question might tend to incriminate him or make him liable to a penalty, but his answer to any such question is not admissible in evidence against him in any proceedings, other than proceedings for an offence against sub-section 69 (1) or (2).

**69. (1) A person shall not, without reasonable excuse, refuse or fail—**

- (a) to attend before the Registrar; or
- (b) to answer a question,

when so required in pursuance of sub-section 68 (3).

Penalty: \$50.

(2) A person shall not, when appearing before the Registrar for examination in pursuance of sub-section 68 (3), make a statement that he knows to be false or misleading in a material particular.

Penalty for any contravention of this sub-section: \$1,500.

Entry on  
premises.

**70.** (1) Where the Registrar believes on reasonable grounds that it is necessary for the purposes of his investigation of the affairs of an Aboriginal corporation to enter land or premises occupied by the corporation, he may, at all reasonable times, enter the land or premises and may—

- (a) examine books on the land or premises that relate to the affairs of the corporation or that he believes, on reasonable grounds, relate to those affairs;
- (b) take possession of any of those books for such period as he thinks necessary for the purposes of the investigation; and
- (c) make copies of, or take extracts from, any of those books.

(2) The Registrar is not entitled to refuse to permit a person to inspect books referred to in sub-section (1) that are in the possession of the Registrar under that sub-section if the person would be entitled to inspect those books if the Registrar had not taken possession of them.

(3) A person shall not obstruct or hinder the Registrar in the exercise of his powers under this section.

Penalty: \$1,500.

Application  
for judicial  
management  
of  
Aboriginal  
corpor-  
ation.

**71.** (1) Where the Registrar, having regard to the results of an investigation made by him under section 68 into the conduct of the affairs of an Aboriginal corporation, is of the opinion that it is necessary or proper to do so, he may apply to the Court for an order that the corporation be placed under judicial management.

(2) An application to the Court under sub-section (1) shall ask that, if the application is granted, the Registrar or a person included in a panel of 3 persons nominated by the Registrar for the purpose shall be appointed as the judicial manager of the Aboriginal corporation.

(3) The Aboriginal corporation is entitled to be heard on any application made to the Court under this section.

Judicial  
manage-  
ment.

**72.** (1) An order for the judicial management of an Aboriginal corporation on an application under section 71 is subject to the provisions of this section and of sections 73, 74, 75, 76 and 77.

(2) The Court shall, in an order for the judicial management of an Aboriginal corporation, appoint as judicial manager the Registrar or one of the panel nominated by the Registrar in the application for the order.

(3) The Court may, at any time, cancel the appointment of a person as judicial manager and appoint in his stead any other person.

(4) A judicial manager shall receive such remuneration (if any) as the Court directs.

(5) The Court may direct how and by whom the remuneration, charges and expenses of the judicial manager shall be borne and may, if it thinks fit, charge that remuneration and those charges and expenses on

the property of the Aboriginal corporation in such order of priority in relation to any existing charges on that property as it thinks fit.

(6) The conduct of the affairs of the Aboriginal corporation shall, on and after a date specified in the order of the Court, vest in the judicial manager appointed by the Court and, on and after that date, no person not so appointed shall have the conduct of those affairs while the corporation continues to be under judicial management.

(7) The judicial manager shall act as the public officer of the Aboriginal corporation and the person who was the public officer of the corporation immediately before the appointment of the judicial manager ceases to be the public officer of the corporation.

(8) The Court shall issue such directions to the judicial manager as to his powers and duties as it deems desirable in the circumstances of the case, including directions as to the making of reports to the Court from time to time on the conduct of the affairs of the Aboriginal corporation.

(9) The judicial manager shall act under the control of the Court and may apply to the Court at any time for instructions as to the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

(10) The judicial manager shall give to the Minister such information as the Minister requires from time to time and shall report to the Minister whenever he intends to apply to the Court for instructions and shall, at the same time, furnish to the Minister particulars of the application.

(11) The Minister is entitled to be heard on any application under sub-section (9) and may himself make application to the Court with reference to the conduct of the judicial management.

**73.** At any time after the making of an order on an application under section 71 for the judicial management of an Aboriginal corporation, the Court may declare vacant—

- (a) where the corporation is an Aboriginal Council—all offices of the councillors constituting the Council; or
- (b) where the corporation is an Incorporated Aboriginal Association—all offices of the members of the Governing Committee of the Association.

Order declaring vacant offices of councillors, &c.

**74.** The judicial manager is not subject to any action, claim or demand by, or liable to, any person in respect of anything done, or omitted to be done, in good faith in the exercise, or in connexion with the exercise, of the powers conferred on the judicial manager by this Act.

Indemnity.

**75.** The Court may, either of its own motion or on the application of the judicial manager, at any time while an order for judicial management is in force with respect to an Aboriginal corporation, after hearing

Cancellation of certain contracts.

all persons who, in the opinion of the Court, are entitled to be heard, cancel or vary (either unconditionally or subject to such conditions as the Court thinks just) any contract or agreement between the corporation and any other person, being a contract or agreement entered into before the management of the corporation was vested in the judicial manager, that the Court is satisfied should be cancelled or varied.

Order for election of councillors, &c.

**76.** Before cancelling, in accordance with section 77, an order for judicial management with respect to an Aboriginal corporation in respect of which a declaration has been made under section 73 declaring vacant—

- (a) where the corporation is an Aboriginal Council—all offices of the councillors constituting the Council; or
- (b) where the corporation is an Aboriginal Association—all offices of the members of the Governing Committee of the Association,

the Court shall direct the Registrar to conduct an election, as specified in the direction, to fill the vacancies.

Cancellation of judicial management order.

**77.** (1) If, at any time, on the application of the judicial manager or of any other person interested, it appears to the Court that the purpose of the order for the judicial management of an Aboriginal corporation has been fulfilled or that for any reason it is undesirable that the order should remain in force, the Court may cancel the order and, thereupon, the judicial manager shall be divested of the conduct of the affairs of the corporation, which shall again vest in—

- (a) where the corporation is an Aboriginal Council—the Council; or
- (b) where the corporation is an Aboriginal Association—the Governing Committee of the Association.

(2) Section 36 applies in relation to an Aboriginal Corporation (being an Aboriginal Council) referred to in sub-section (1) and section 56 applies in relation to an Aboriginal Corporation (being an Incorporated Aboriginal Association) referred to in that sub-section as if the office of public officer of the Corporation had become vacant on the date of cancellation of the order for judicial management of the Corporation.

## PART VI—MISCELLANEOUS

Order with respect to disposable estate or interest.

**78.** (1) An Aboriginal corporation that acquires an estate or interest in land may request the Minister to make an order declaring that the estate or interest is at the disposal of the corporation.

(2) The Minister shall make an order in accordance with a request under sub-section (1) unless he is satisfied that the estate or interest was acquired by an Aboriginal corporation (whether the corporation requesting the order or another Aboriginal corporation) from, or as a result of the grant of moneys to the corporation by, the Commonwealth or a State.

- (3) An order under this section—
- (a) is irrevocable; and
  - (b) shall be published in the *Gazette* as soon as practicable after it is made.
- (4) Where—
- (a) an Aboriginal corporation acquires an estate or interest in land, whether by force of a provision of this Act or otherwise; and
  - (b) that estate or interest was, before that acquisition, a disposable estate or interest in relation to another Aboriginal corporation,

that estate or interest shall, for the purposes of this Act, be deemed to be a disposable estate or interest in relation to the first-mentioned Aboriginal corporation.

**79.** Where, under this Act or the regulations, an act or thing is required to be performed or done within a specified time, the Registrar may, in special circumstances, if he thinks fit, extend the time for the performance or doing of that act or thing. Extension of time.

**80.** (1) A notice, demand, summons, writ or other document or process may be served on an Aboriginal corporation by serving it personally on the public officer of the corporation or by sending it by post to him at his official address. Service on Aboriginal corporation, &c.

(2) An Aboriginal corporation may give notice or make a demand by writing signed by the public officer of the corporation.

**81.** A document required or permitted by this Act to be served on, or filed with, the Registrar may be served on, or filed with, the Registrar personally or by post. Service on Registrar, &c.

**82.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular— Regulations.

- (a) prescribing the manner of conduct of elections of councillors for Aboriginal Councils;
- (b) providing for or in relation to the striking off the Register of Incorporated Aboriginal Associations of the name of, and for and in relation to the dissolution of, an Association that is not carrying on its activities or is not in operation;
- (c) providing for the issue of certified copies of certificates of incorporation;
- (d) providing for the inspection of documents kept by, or filed with, the Registrar under this Act or the regulations;
- (e) prescribing the form in which any application, notice, declaration or certificate shall be made, given, published, issued or filed under this Act or the regulations;

- (f) prescribing matters that are to be provided for in the Rules of Aboriginal Councils or restrictions on the making of such Rules;
  - (g) making provision, to be applicable to all or any Aboriginal Councils, with respect to any matter that could be dealt with in the Rules of Aboriginal Councils;
  - (h) prescribing matters that are to be provided for in the Rules of Incorporated Aboriginal Associations;
  - (i) prescribing the fees to be paid on the making, giving, publishing, issuing, filing or inspecting of any document under this Act or the regulations; and
  - (j) prescribing penalties, not exceeding a fine of \$20, for offences against the regulations.
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**NOTE**

1. Act No. 186, 1976; assented to 15 December 1976.