

ABORIGINAL COUNCILS AND ASSOCIATIONS AMENDMENT ACT 1978

No. 56 of 1978

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

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

Short title, &c. 1. (1) This Act may be cited as the *Aboriginal Councils and Associations Amendment Act 1978*.¹

(2) The *Aboriginal Councils and Associations Act 1976*² is in this Act referred to as the Principal Act.

Commencement 2. This Act shall come into operation on the day on which the Principal Act comes into operation.

Interpretation 3. Section 3 of the Principal Act is amended—

(a) by omitting “unincorporated” from the definition of “Aboriginal association”;

(b) by omitting the definition of “Court” and substituting the following definition:

 “ ‘Court’ means the Federal Court of Australia; ”; and

(c) by omitting “the Attorney-General” from paragraph (b) of the definition of “unauthorized name” and substituting “a Minister”.

Constitution of Aboriginal Council area on satisfaction of Registrar 4. Section 16 of the Principal Act is amended—

(a) by inserting after paragraph (a) of sub-section (1) the following paragraph:

 “(aa) the area to which the application relates is not, and does not include, an area to which local government extends, or to which it is proposed to extend local government, by or under a law of a State or Territory; ”; and

(b) by omitting sub-section (3).

5. Section 17 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

Constitution of Aboriginal Council area in accordance with direction of Minister

“(4) Where an application referred to the Minister under section 16 relates to an area that is, or includes, an area to which local government extends, or to which it is proposed to extend local government, by or under a law of a State or Territory, the Minister shall not direct the Registrar under sub-section (1) to constitute the area to which the application relates, or a part of that area, as an Aboriginal Council area unless the Minister has consulted with the person responsible for administering local government in the relevant State or Territory, or in each relevant State or Territory, that is to say—

- (a) in the case of a State—the Minister of State for the State who is responsible, or principally responsible, for the administration of matters relating to local government in that State; or
- (b) in the case of a Territory—the person holding an executive office who is responsible, or principally responsible, for the administration of matters relating to local government in that Territory.”.

6. Section 22 of the Principal Act is amended—

First meeting

- (a) by omitting from sub-section (8) “declare the meeting closed” and substituting “adjourn the meeting”; and
- (b) by inserting after sub-section (8) the following sub-section:

“(8A) Where—

- (a) the Registrar adjourns a meeting of an Aboriginal Council under sub-section (8); and
- (b) the Minister is satisfied that Rules of the Council that are not inconsistent with this Act will not be adopted at that meeting if it resumes,

the Minister may declare the election of the councillors of that Council to be void, and that declaration shall have effect accordingly and the Registrar shall proceed to conduct a fresh election in accordance with section 21.”.

7. Section 24 of the Principal Act is repealed.

Election of councillors to be void

8. Section 27 of the Principal Act is amended by omitting from sub-section (5) all the words after paragraph (b) and substituting “the Crown Solicitor may lodge with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory a certificate under the hand of the Crown Solicitor or an officer of the Attorney-General’s Department authorized by the Crown Solicitor to issue such certificates certifying that that estate or interest is so vested and the officer with whom the certificate is lodged may deal with and give effect to the certificate as if it were a grant, conveyance, memorandum or instrument of

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

transfer of that estate or interest duly executed under the laws in force in the State or Territory.”

Alterations
of functions

9. Section 33 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(5) Where the Registrar refuses to alter the functions of an Aboriginal Council in accordance with a request under sub-section (1), the Council may request the Minister to alter the functions of the Council in the manner specified in the request.

“(6) Where the Minister, having regard to the matters specified in paragraphs (2) (a), (b) and (c), is satisfied that the request should be complied with, he shall, by notice published in the *Gazette*, alter the functions of the relevant Aboriginal Council in accordance with the request.

“(7) An alteration of the functions of an Aboriginal Council under sub-section (6) takes effect on the date of publication of the notice.

“(8) Where the Minister is not satisfied that the request should be complied with, he shall refuse the request and shall notify the Aboriginal Council in writing, accordingly.”

Records to
be kept and
balance
sheets and
income and
expenditure
statements
prepared

10. Section 38 of the Principal Act is amended—

(a) by adding at the end of sub-section (2) “and an income and expenditure statement giving a true and fair view of the income and expenditure of the Council for the financial year ending on that 30 June”; and

(b) by inserting in sub-section (3) “and income and expenditure statement” after “balance sheet” (wherever occurring).

Registrar
may request
explanation

11. Section 40 of the Principal Act is amended—

(a) by omitting from sub-section (3) “Where” and substituting “Subject to sub-section (4A), where”;

(b) by omitting from sub-section (4) “Where” and substituting “Subject to sub-section (4A), where”; and

(c) by inserting after sub-section (4) the following sub-sections:

“(4A) The Registrar shall not exercise his power under paragraph (3) (d) or (e) or sub-section (4) in respect of an Aboriginal Council unless he has, by notice served on the Council, informed the Council that he proposes to exercise that power and—

(a) he has ascertained from the Minister that there has been no appeal under sub-section (4B) against his decision; or

(b) there has been such an appeal but the Minister has informed the Registrar under sub-section (4C) that he agrees that the power should be exercised.

“(4B) Where an Aboriginal Council is served with a notice under sub-section (4A), it may, within 21 days after the service of the notice, appeal to the Minister, in writing, against the relevant decision of the Registrar.

“(4C) Where, under sub-section (4B), an Aboriginal Council appeals to the Minister against a decision of the Registrar to exercise a power, the Minister shall inquire into the matter and shall inform the Registrar and the Aboriginal Council, in writing, whether he considers that the power should be exercised.”.

- 12.** Section 43 of the Principal Act is amended by inserting in sub-section (1) “under this Act” after “association” (second occurring). Application for incorporation
- 13.** Section 45 of the Principal Act is amended— Registrar may issue certificate of incorporation
- (a) by inserting in sub-section (1) “under this Act” after “incorporation” (first occurring);
- (b) by adding at the end of paragraph (c) of sub-section (4) “or, if the changes are not made, of reasons for the changes not being made”; and
- (c) by inserting in sub-section (5) “or of reasons for such changes not being made” after “incorporation” (second occurring).
- 14.** Section 46 of the Principal Act is amended by omitting paragraph (a) of sub-section (1) and substituting the following paragraphs: Incorporation of Aboriginal association
- “(a) in the case of an unincorporated association—becomes a body corporate with perpetual succession;
- “(aa) in the case of an association incorporated otherwise than under this Act—continues in existence by force only of this section as a body corporate and has perpetual succession;”.
- 15.** Section 47 of the Principal Act is amended by inserting “under this Act” after “association” (wherever occurring). Rules of Incorporated Aboriginal Association
- 16.** Section 52 of the Principal Act is amended— Notification of alteration of objects
- (a) by inserting after sub-section (2) the following sub-sections:
- “(2A) Where the Registrar refuses to approve an alteration filed under sub-section (1), the relevant Association may request the Minister to approve the alteration.
- “(2B) Where the Minister, having regard to the matters specified in paragraphs (2) (a) and (b), is satisfied that the request should be complied with, he shall approve the alteration.

“(2C) Where the Minister is not satisfied that the request should be complied with, he shall refuse to approve the alteration and shall notify the Association, in writing accordingly.”; and

- (b) by adding at the end of sub-section (3) “or by the Minister under sub-section (2B)”.

Records to be kept and balance sheets and income and expenditure statements to be prepared

17. Section 59 of the Principal Act is amended—

- (a) by adding at the end of sub-section (2) “and an income and expenditure statement giving a true and fair view of the income and expenditure of the Association for the financial year ending on that 30 June”; and
- (b) by inserting in sub-section (3) “and income and expenditure statement” after “balance sheet” (wherever occurring).

Registrar may request explanation

18. Section 61 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “Where” and substituting “Subject to sub-section (5), where”;
- (b) by omitting from sub-section (4) “Where” and substituting “Subject to sub-section (5), where”; and
- (c) by adding at the end thereof the following sub-sections:

“(5) The Registrar shall not exercise his power under paragraph (3) (d) or (e) or sub-section (4) in respect of an Incorporated Aboriginal Association unless he has, by notice served on the association, informed the association that he proposes to exercise that power and—

- (a) he has ascertained from the Minister that there has been no appeal under sub-section (6) against his decision; or
- (b) there has been such an appeal but the Minister has informed the Registrar under sub-section (7) that he agrees that the power should be exercised.

“(6) Where an Incorporated Aboriginal Association is served with a notice under sub-section (5), it may, within 21 days after the service of the notice, appeal to the Minister, in writing, against the relevant decision of the Registrar.

“(7) Where, under sub-section (6), an Incorporated Aboriginal Association appeals to the Minister against a decision of the Registrar to exercise a power, the Minister shall inquire into the matter and shall inform the Registrar and the Association, in writing, whether he considers that the power should be exercised.”.

- 19.** Section 62 of the Principal Act is amended by omitting from paragraph (c) “Australian Industrial Court” and substituting “Federal Court of Australia”.
- Application
of law of
Australian
Capital
Territory
relating to
compositions
with
creditors
- 20.** Section 67 of the Principal Act is amended by omitting from paragraph (e) “Australian Industrial Court” and substituting “Federal Court of Australia”.
- Application
of law of
Australian
Capital
Territory
relating to
winding up
- 21.** Section 78 of the Principal Act is amended—
- (a) by omitting from sub-section (2) “or a State”; and
- (b) by adding at the end thereof the following sub-section:
- “(5) Any purported transfer of, or other dealing with, an estate or interest in land held by an Aboriginal corporation, other than a disposable estate or interest, is void and of no effect.”
- Order with
respect to
disposable
estate or
interest
- 22.** Section 79 of the Principal Act is amended by inserting “the Minister or” before “The Registrar”.
- Extension of
time

NOTES

1. Act No. 56, 1976; assented to 22 June 1978.
2. Act No. 186, 1976.