

Queensland



ANNO TRICESIMO QUINTO

ELIZABETHAE SECUNDAE REGINAE

No. 43 of 1986

An Act to amend the Community Services (Aborigines) Act
1984-1985 in certain particulars

[ASSENTED TO 25TH SEPTEMBER, 1986]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Community Services (Aborigines) Act Amendment Act 1986*.

(2) In this Act the *Community Services (Aborigines) Act 1984-1985* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Community Services (Aborigines) Act 1984-1986*.

2. Amendment of s. 5. Savings. Section 5 of the Principal Act is amended in subsection (8) by omitting all words from and including the words "shall continue" to the end of the subsection and substituting the words "is hereby divested from the Under Secretary and vested in the Corporation and shall continue to be maintained by the Corporation in accordance with this Act."

3. Amendment of s. 6. Meaning of terms. Section 6 of the Principal Act is amended by—

(a) numbering the provisions thereof as subsection (1);

(b) omitting the definition "Aborigine";

(c) inserting before the definition "area" the following definition:—

" "Aborigine" means a person who is a descendant of an indigenous inhabitant of Australia other than the Torres Strait Islands and includes any person who resides in an area as part of a community of Aborigines;"

(d) adding at the end thereof the following subsection:—

"(2) For the purposes of this Act, an area for which an Aboriginal Council is established includes all land from time to time granted in trust to that council and included in the instrument of title relating to that area or committed to that council for the purposes of local government."

4. Amendment of s. 14. Requirement of Aboriginal Councils. Section 14 of the Principal Act is amended in subsection (1) by—

(a) inserting after the words "every trust area" the words "that is approved by the Governor in Council to be so governed";

(b) adding at the end of the subsection the following paragraph:—

"Every area that at the passing of the *Community Services (Aborigines) Act Amendment Act 1986* is governed by an Aboriginal Council shall be deemed to have been approved by the Governor in Council to be so governed."

5. Amendment of s. 17. Times for election of councillors. Section 17 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(5) The first constitution of an Aboriginal Council shall be by means of an election therefor held on a date appointed for the purpose by the Governor in Council or, if there be no such date appointed, on the date on which are held the triennial elections for the purpose of reconstituting Local Authorities pursuant to the *Local Government Act 1936-1985*.

6. Amendment of s. 19. Relationship of Aboriginal area to Local Authority Area. Section 19 of the Principal Act is amended by—

(a) numbering the provisions thereof as subsection (1);

(b) adding at the end thereof the following subsection:—

“(2) Upon the assumption by an Aboriginal Council of the discharge of the functions of local government of an area that forms part of an Area within the meaning of the *Local Government Act 1936-1985*—

(a) the Local Authority of that Area shall cease to have delegated to it the functions of local government of the area affected by the assumption;

and

(b) the by-laws of that Local Authority shall cease to be of force and effect in the area affected by the assumption

for as long as the Aboriginal Council continues to assume the discharge of the functions of local government of that area, without prejudice to the continued operation and effect of anything duly done pursuant to the by-laws before they ceased to be of force and effect.”.

7. Amendment of s. 25. Functions of Aboriginal Councils. Section 25 of the Principal Act is amended by—

(a) in subsection (1), adding at the end thereof the following paragraph:—

“By-laws made by an Aboriginal Council may adopt wholly or partly by-laws made by any Local Authority within the meaning of the *Local Government Act 1936-1985* or by any other Aboriginal Council or other authority or the provisions of any Act or regulations made under any Act.”;

(b) in subsection 3,

(i) adding at the end of paragraph (c), after the word “inhabitants” the following expression and words:—

“ ;

(d) the doing of anything (other than the mere making available of information) that a Local Authority within the meaning

of the *Local Government Act 1936-1985* is required or authorized to do by any other Act, other than the *Local Government Act 1936-1985*”;

(ii) adding at the end of the subsection the following paragraph:—

“Where any other Act, other than the *Local Government Act 1936-1985*, requires or authorizes a Local Authority within the meaning of the *Local Government Act 1936-1985* to do anything (other than the mere making available of information), then, for the purpose of applying that other Act in an area, that other Act shall be so construed that—

(a) the expression Local Authority therein shall be deemed to include the Aboriginal Council established for the area;

and

(b) the Aboriginal Council established for the area shall be the Local Authority for the area to the exclusion of any Local Authority within the meaning of the *Local Government Act 1936-1985* for as long as the Aboriginal Council continues to assume the discharge of functions of local government of the area.”.

8. Amendment of s. 32. Accounts and audit. Section 32 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:—

“(3) The Auditor-General shall certify whether the annual statement furnished by the chairman of an Aboriginal Council under section 33 and referred to in paragraph (b) of section 33 (1)—

(a) is in agreement with the accounts of the council;
and

(b) in his opinion, fairly sets out the financial transactions for the period to which it relates and shows a true and fair view of the state of the council’s financial affairs at the close of that period.”.

9. Repeal of and new s. 33. Financial returns and statements. The Principal Act is amended by repealing section 33 and substituting the following section:—

“33. **Financial statements.** (1) The chairman of an Aboriginal Council shall cause to be prepared and furnish to the Minister—

(a) at the beginning of each month during a period of three years after the commencement of this Act and thereafter at the beginning of each quarter, a statement of receipts and disbursements with respect to each fund of the council during the month or, as the case may be, the quarter last preceding;

and

(b) on or before 31 July in each year, a statement, in a form required by the Minister, of receipts and disbursements with respect to each fund of the council during the year terminating on 30 June last preceding.

(2) The chairman of an Aboriginal Council shall certify whether the statements furnished by him under subsection (1) are in agreement with the accounts of the council.”.

10. Amendment of s. 42. Aboriginal Courts. Section 42 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

“(2) An Aboriginal Court shall be constituted—

(a) by two justices of the peace each of whom is an Aborigine resident in its area and is a person not disqualified by subsection (3) to sit as a member of the court in the case in question;

or

(b) where paragraph (a) cannot be readily complied with, by the members of the Aboriginal Council established for its area who are persons not disqualified by subsection (3) to sit as a member of the court in the case in question or by a majority of such members.”.

11. Amendment of s. 43. Jurisdiction of Aboriginal Courts. Section 43 of the Principal Act is amended by—

(a) in subsection (2), omitting paragraph (b) and substituting the following paragraph:—

“(b) disputes concerning any matter that—

(i) is a matter accepted by the community resident in its area as a matter rightly governed by the usages and customs of that community;

and

(ii) is not a breach of the by-laws applicable within its area or of a law of the Commonwealth or the State or a matter arising under a law of the Commonwealth or the State;”;

(b) adding at the end thereof the following subsection:—

“(3) The decision of an Aboriginal Court that any matter before it is a matter of a description referred to in subparagraph (i) of paragraph (b) of subsection (2) shall be final and conclusive and no proceeding shall be brought or heard to restrain the Aboriginal Court from disposing of a dispute concerning that matter by reason that such a decision is incorrect.”.

12. Amendment of s. 44. Limitation of jurisdiction over persons. Section 44 of the Principal Act is amended in subsection (2) by inserting

after the words "residence there" the words "or that he is a member of the family or household of such a person".

13. Repeal of and new s. 47. Membership of council. The Principal Act is amended by repealing section 47 and substituting the following section:—

"47. Membership of Council. (1) On and from the passing of the *Community Services (Aborigines) Act Amendment Act 1986* the Aboriginal Co-ordinating Council shall be constituted by—

(a) the persons who are chairmen of the Aboriginal Councils;

and

(b) a number of persons (equal to the number of Aboriginal Councils) consisting of one person selected by each Aboriginal Council and being a member of the council by which he is selected.

(2) A person selected by an Aboriginal Council under subsection (1) to be a member of the Aboriginal Co-ordinating Council may be selected for such period, not extending beyond the date of the next triennial election of the Aboriginal Council, as that council nominates at the time the selection is made but if no such period is nominated, he shall be deemed to have been selected for a period expiring upon the date of the next triennial election of the Aboriginal Council.

(3) Each member of the Aboriginal Co-ordinating Council may from time to time appoint another member of the Aboriginal Council of which he is Chairman or a member, as the case may be, to be his delegate to the Aboriginal Co-ordinating Council.

In the event of a member of the Aboriginal Co-ordinating Council being unable to attend a meeting of that council or a meeting of the executive committee of that council (if he is a member of the executive committee) his delegate appointed for the time being shall be entitled to attend the meeting in place of the member and for that purpose shall have and may exercise the powers and entitlements of the member by whom he is appointed for the time being as a delegate except the powers and entitlements had by that member by reason of his being chairman or deputy-chairman of that council."

14. Amendment of s. 48. Functions of council. Section 48 of the Principal Act is amended by—

(a) numbering the provisions thereof as subsection (1);

(b) in paragraph (a), omitting the words "the Minister and the Under Secretary" and substituting the words "any person";

(c) omitting paragraph (e) and the word "and" immediately preceding that paragraph and substituting the following words:—

"(e) to accept grants or loans of money from the Government of the Commonwealth or the State or contributions of money

from any other source and, subject to subsection (2), to expend that money in accordance with the terms and conditions on which the money is received or, if there be no such terms and conditions, in securing the progress, development and well being of Aborigines in all or any of the areas;

- (f) to establish and operate such lawful businesses as the council thinks fit, for the promotion, progress, development and well being of Aborigines;
 - (g) to act on behalf of one or more of the Aboriginal Councils for such lawful purposes as are requested of it by the Aboriginal Council or Councils concerned;
 - (h) to employ such agents and servants as are necessary for the proper and efficient discharge of its functions and powers under this Act;
 - (i) to make, perform, and enter into and upon all such lawful contracts, transactions and activities as are necessary or expedient for the efficient conduct of any business operated by it or for the proper discharge of any of its functions; and
 - (j) to attend to such other matters as are prescribed.”
- (d) adding at the end thereof the following subsection:—

“(2) The Aboriginal Co-ordinating Council shall not expend money for works or any purpose within any area until it has first consulted with the Aboriginal Council established for that area and the Aboriginal Council has approved of the works or purpose.”.

15. New ss. 53A and 53B. The Principal Act is amended by inserting after section 53 the following sections:—

“53A. Budget of Aboriginal Co-ordinating Council. (1) The Aboriginal Co-ordinating Council shall be subject to, shall comply with and may exercise the powers of investment under the provisions of sections 29 to 33 and section 35 as if that council were an Aboriginal Council established under this Act, subject however to the following modifications:—

- (a) section 29 (2) shall be read as if the words “rates and charges to be levied” were the word “disbursements”;
- (b) section 31 (2) shall be read as if the words “, subject to section 24,” were deleted;
- (c) section 32 (1) shall be read as if the second and third paragraphs thereof were deleted.

53B. Borrowing powers. (1) For the purpose of enabling it to discharge its functions and powers under this Act the Aboriginal Co-ordinating Council may borrow money in such amount, on such security (if any) and on such terms and conditions as the Minister approves.

(2) The council shall not enter into negotiations for borrowing money except with the Minister's approval first had and obtained."

16. Amendment of s. 55. Membership of Board. Section 55 of the Principal Act is amended in subsection (3) by omitting from paragraph (a) the word "two" and substituting the word "three".

17. Repeal of and new s. 77. Protection of fishing and hunting. The Principal Act is amended by repealing section 77 and substituting the following section:—

"77. Aborigines' right to certain natural resources. (1) Notwithstanding the provisions of any other Act, a member of a community of Aborigines resident in an area shall not be liable to prosecution as for an offence—

(a) for taking marine products or fauna by traditional means for consumption by members of the community;

or

(b) for taking forest products or quarry material within the meaning of the *Forestry Act 1959-1984* within the area for use for development or other purposes within the area.

(2) Subsection (1) shall not be construed to authorize the sale or other disposal for gain of any marine product or fauna taken by traditional means or any forest products or quarry material taken in accordance with that subsection.

(3) Notwithstanding the provisions of the *Forestry Act 1959-1984* an Aboriginal Council established for an area may authorize the gathering, digging and removal of forest products or quarry material within the area for the purpose of improvement of the area or use in the area of the products or material and the products or material may be gathered, dug and removed to the extent authorized by this subsection without the payment of royalty in respect thereof."

18. Amendment of s. 82. Regulations. Section 82 of the Principal Act is amended by—

(a) in paragraph 11, inserting after the words "Community Funds" the words "or of the Aboriginal Co-ordinating Council";

(b) inserting after paragraph 11 the following paragraph:—

"12. meetings of Aboriginal Councils: the venue and regularity thereof: the access thereto of members of the community of Aborigines resident in the area for which an Aboriginal Council is established;"

(c) omitting from paragraph 15 the words "Under Secretary" and substituting the word "Corporation".