

COMMUNITY SERVICES (ABORIGINES) ACT AMENDMENT ACT

No. 104 of 1990

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Queensland



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ELIZABETHAE SECUNDAE REGINAE

No. 104 of 1990

An Act to amend the Community Services (Aborigines) Act
1984-1986 in certain particulars and for related purposes

[ASSENTED TO 18TH DECEMBER, 1990]

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. This Act may be cited as the *Community Services (Aborigines) Act Amendment Act 1990*.

2. Principal Act and amended citation. (1) In this Act the *Community Services (Aborigines) Act 1984-1986* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Community Services (Aborigines) Act 1984-1990*.

3. Amendment of s. 6. Meaning of terms. Section 6 of the Principal Act is amended by in subsection (1)—

(a) omitting the definition “Aborigine” and substituting the following definition:—

““Aborigine” means a person of the Aboriginal race of Australia;”;

(b) inserting after the definition “Department” the following definition:—

““Islander” means a descendant of an indigenous inhabitant of the Torres Strait Islands;”;

4. Amendment of s. 11. Visiting justices. The Principal Act is amended by repealing section 11 and substituting the following section:—

“**11. Appointment of Magistrates to trust areas.** (1) The Governor in Council may appoint a stipendary magistrate to be responsible for one or more trust areas and that appointment does not limit the magistrate in exercising his or her functions under any other Act.

(2) Subject to subsection (3), the magistrate appointed to a trust area is to visit that trust area at least once every three months and inspect the records of the Aboriginal Court in the trust area.

(3) If a magistrate appointed to a trust area believes that it is not necessary for him or her to personally visit the trust area, the magistrate is to—

(a) arrange for a clerk of the court of a Magistrates Court to visit the trust area at the times the magistrate would otherwise be required to attend;

and

(b) arrange for a copy of the records of the Aboriginal Court to be forwarded to the magistrate for examination.

(4) The magistrate and a clerk of the court of a Magistrates Court at his or her discretion may communicate with any members of the Aboriginal Court and advise them of his or her opinions as to the harshness or leniency of sentencing by the

Aboriginal Court or on any other matter the magistrate or clerk considers appropriate.

Members of the Aboriginal Court are not bound to follow any such advice or opinion offered by a magistrate or clerk of the court.

(5) A clerk of the court of an Aboriginal Court who is requested under this section by a magistrate or clerk of the court of the Magistrates Court to provide a copy of the Aboriginal Court records is to take all reasonable steps to comply with that request.”.

5. Amendment of s. 14. Requirement of Aboriginal Councils. Section 14 of the Principal Act is amended by—

- (a) omitting from subsection (1) the expression “(1)”;
- (b) omitting subsection (2).

6. Repeal of s. 23. Executive officer of Aboriginal Councils. The Principal Act is amended by repealing section 23.

7. Repeal of s. 24. Role of Executive Officer. The Principal Act is amended by repealing section 24.

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

- (a) inserting after subsection (2) the following subsection:—

“(2A) Without limiting the functions and powers of an Aboriginal Council, a council may make by-laws for the purpose of regulating and controlling the possession or consumption of alcohol in the area for which it is established.”;

- (b) inserting after subsection (3) the following subsection:—

“(3A) For the purpose of exercising its powers and discharging its functions an Aboriginal Council has, and it is hereby declared always has had, the power to commence and carry on any business enterprise that, in the opinion of the Council, can be profitably or effectually carried on.”.

9. New s. 27A. The Principal Act is amended by inserting after section 27 the following section:—

“**27A. Disclosure of interests at meetings.** (1) A member of an Aboriginal Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the council must, as soon as possible after the relevant facts have come to the member of the council’s knowledge, disclose the nature of the interest at a meeting of the council.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting of the council and the member of the council should not—

- (a) be present during any deliberation of the council with respect to that matter;
- or
- (b) take part in any decision of the council with respect to that matter.”.

10. Repeal of s. 29. Budget of Aboriginal Councils, and new ss. 29 to 29G. The Principal Act is amended by repealing section 29 and substituting the following sections:—

“29. Annual budget to be prepared. On or before the first ordinary meeting in the month of August in each year every Aboriginal Council is to cause to be framed the budget for the current year commencing on 1 July in the form and manner prescribed.

29A. Separate budgets for funds. Subject to section 29E, every Aboriginal Council is to cause to be framed a separate budget for each fund established and kept by it pursuant to the prescribed provisions.

29B. Adoption of budget. Every budget is to be adopted by the Aboriginal Council concerned on or before the thirty-first day of August in the year for which the budget is framed, and the rates or charges or both to be made and levied by the Aboriginal Council concerned for such year is to be founded thereon.

Every budget adopted by an Aboriginal Council is to be open to inspection by persons resident in the trust area concerned.

29C. Framing of budget. (1) In framing the budget for the general fund, the Aboriginal Council is to estimate for the current year—

- (a) the amounts to be disbursed upon the several works, matters and things to which the general fund is applied as prescribed;
- and
- (b) the amounts expected to be received from the general rate and all other moneys to be paid into the general fund as prescribed.

(2) The estimates of receipts are to be set out as nearly as may be separately in accordance with the several sources of receipts and disbursements and as nearly as may be in accordance with each particular function, and where receipts and disbursements are for corresponding functions, such receipts and disbursements are to be set out opposite each other in the budget.

(3) The Aboriginal Council is, subject to this Act, to observe the budget by taking all reasonable steps to expend monies in accordance with the budget and to ensure a balanced budget.

(4) If at the end of any year there is a surplus or deficit in any fund, that surplus or deficit is to be carried forward and in

the case of an applicable fund is to be taken into account when framing the budget and when making and levying rates and charges in respect of that fund for the next ensuing year.

29D. Unexpended votes to lapse. (1) At the close of each year terminating on 30 June all authorizations of expenditure and votes of money therefor shall lapse.

Any vote so lapsing may be revoked.

(2) Any ordinary disbursement of an Aboriginal Council in the months of July and August in any year is authorized and is to be included in the budget for that year.

29E. Budget provisions apply to other funds. The provisions of sections 29 to 29D, both inclusive, are to apply and be observed in framing the estimates of receipts and disbursements in all other funds established and kept by an Aboriginal Council in pursuance of the prescribed provisions: Provided that in respect of an enterprise fund, nothing in this section shall prevent or be taken to prevent the transfer of any surplus or deficit as provided in the prescribed provisions.

29F. Provisions in respect of loan repayments. In framing the budget in respect of any established fund, an Aboriginal Council is to make provision for interest and redemption of any loan liability incurred by that Aboriginal Council.

29G. Illegal expenditure. If an Aboriginal Council makes any disbursement in any year from any fund which disbursement has not been provided for in the budget relating to such fund for such year, except in emergent or extra-ordinary circumstances, all the members of the Aboriginal Council who have knowingly voted for such expenditure shall be jointly and severally liable to repay to the Aboriginal Council the amount involved in such illegal disbursement, and any such amount may be recovered from such members or any of them by action in any court of competent jurisdiction at the suit of any elector of the trust area concerned or any creditor of the Aboriginal Council who, on recovery of the same, must pay the amount into the general fund or other such fund of the Aboriginal Council, but shall be personally entitled to full costs of suit, including costs as between solicitor and client.”

11. Repeal of s. 30. Illegal expenditure. The Principal Act is amended by repealing section 30.

11A. Repeal of s. 31. Expenditure pending budget. The Principal Act is amended by repealing section 31.

12. Amendment of s. 32. Accounts and audit. Section 32 of the Principal Act is amended by—

- (a) omitting from the note to the section the words “and audit”;
- (b) omitting from subsection (1) the expression “(1)”;
- (c) omitting subsections (2) to (5), both inclusive.

13. New ss. 32A to 32H. The Principal Act is amended by inserting after section 32 the following sections:—

“32A. Preparation of financial statements. Every Aboriginal Council must, as soon as practicable after 30 June but before 31 August in each year, prepare in respect of the year ended on the 30th June annual financial statements in a form as prescribed and submit such statements to the auditor appointed for that council pursuant to this Act.

32B. Certification of annual financial statements. The chairman and the clerk of the Aboriginal Council concerned must certify—

- (a) that the annual financial statements with other information and notes to and forming part thereof are in agreement with the accounts and records of the council;
- (b) whether in their opinion—
 - (i) the prescribed requirements in respect of the establishment and keeping of accounts have been complied with in all material respects; and
 - (ii) the statements have been drawn so as to present a true and fair view, on a basis consistent with that applied in the year last preceding, of the transactions of the council for the year and the financial position as at the close of that year.

32C. Auditor-General to audit accounts of council. (1) The accounts of every Aboriginal Council are to be audited by the Auditor-General who shall have, with respect to such audit and accounts, all the powers and authorities conferred on him or her by the *Financial Administration and Audit Act 1977-1988*.

(2) The Auditor-General may appoint a person who in the opinion of the Auditor-General is appropriately qualified to perform the audit of any Aboriginal Council that is required under this Act.

(3) The auditor or auditors for an Aboriginal Council are to be paid out of the general fund of the council such remuneration as the Auditor-General may fix.

When an officer of the Department of the Auditor-General is appointed to be the auditor for an Aboriginal Council the amount fixed as his or her remuneration shall be paid by the Aboriginal Council to the Auditor-General.

32D. Auditor-General to certify annual financial statements. (1) The Auditor-General is to certify on and in respect of the annual financial statements and may certify in respect of other statements of account prepared on behalf of every Aboriginal Council whether or not—

- (a) he or she has received all the information and explanation required by him or her;

- (b) such statements are in the form required by the prescribed requirements and are in agreement with the accounts;
and
- (c) in his or her opinion—
 - (i) the requirements of this Act have been complied with in all material respects in respect of the establishment and keeping of accounts;
and
 - (ii) the statements have been drawn up so as to present a true and fair view, on a basis consistent with that applied in the year last preceding, of the transactions of the council for the year then ended and of the financial position as at the close of that year.

(2) The Auditor-General is to transmit the certified annual financial statements and other certified financial statements to the Aboriginal Council concerned.

32E. Presentation of annual financial statements. (1) The annual financial statements of an Aboriginal Council in respect of a particular year, as soon as practicable after certification by the Auditor-General, must be—

- (a) reproduced in the same form and content as the documents certified and must include the management and audit certificates, names of signatories and dates that certificates were signed;

and

- (b) tabled at the next ordinary meeting of the Aboriginal Council and be made available for and remain open to inspection by persons resident in the trust area during such reasonable times and at such place as are determined by the council.

(3) No annual financial statement or copy of it is to be made available to any person other than the Auditor-General or person acting on his or her behalf or a councillor or officer of the council until such statement has been audited and certified.

32F. Access to accounts. (1) Without prejudice to the powers conferred by any other provision of this Act or by any other Act or law, the Auditor-General or an auditor appointed by him or her shall, at all reasonable times, have full and free access to all accounts required by this Act to be audited by the Auditor-General and to all moneys and property relating to such accounts that are in the possession of any person and may make copies of or extracts from those accounts.

(2) A person who has in his or her possession any accounts, moneys or property referred to in subsection (1) must, at all reasonable times, upon request by the Auditor-General or an auditor appointed by him or her, produce to the Auditor-General

or the auditor such accounts, moneys or property as are specified in the request.

32G. Power to require furnishing of information and the like. (1) The Auditor-General or an auditor appointed by him or her may require any person having responsibility with respect to accounts that are subject to audit by the Auditor-General to furnish to him or her such information, advice or explanation as he or she thinks necessary with respect to the audit and a person so required must furnish the information, advice or explanation required to be furnished.

(2) The Auditor-General may at any time cause a search to be made of and extracts taken from any account, book, document or record in the custody of an Aboriginal Council without payment of any fee.

32H. General reporting provisions. (1) The Auditor-General may prepare a report on any audit performed under this Act by him or her or by an auditor appointed by him or her in accordance with this Act.

(2) A person appointed by the Auditor-General under section 32C(2) is to prepare a report on every audit performed by him or her under this Act and forward it to the Auditor-General.

(3) Where the Auditor-General is of the opinion that any observations or suggestions made in a report under this section require attention or further consideration he or she is to forward the observations and suggestions and his or her comments to the chairman of the Aboriginal Council who must table them at the next ordinary meeting of the council.

(4) Where the Auditor-General is of the opinion that the observations and suggestions made under subsection (3) are of major significance the Auditor-General is to forward the report and his or her comments to the Minister.”.

14. Amendment of s. 33. Financial statements. Section 33 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) The clerk of an Aboriginal Council must cause to be prepared and furnish to the chairman of the Aboriginal Council at the beginning of each month a statement of receipts and disbursements with respect to each fund of the council during the month.”;

(b) in subsection (2), omitting the word “chairman” and substituting the word “clerk”.

15. Repeal of and new s. 38. Places in trust areas etc. deemed to be public places. The Principal Act is amended by repealing section 38 and substituting the following section:—

“**38. Application to trust areas of laws relating to public places.** (1) For the purpose only of applying the provisions of

laws in force in respect of any public place in Queensland to trust areas—

- (a) the right of access to or use of any place in an area by the general body of persons resident in the area is to be taken to have effect in law as if it were a right of access or use by the public;
and
 - (b) where any place would, but for its being in such an area, be taken in law to be a public place, road, park or place of any other description it is to be taken so to be notwithstanding that it is in the area in question.
- (2) This section is not to be construed as conferring on any person a right of entry to trust areas.”

16. Repeal of and new s. 44. Limitation of jurisdiction over persons. The Principal Act is amended by repealing section 44 and substituting the following section:—

“**44. Limitation of jurisdiction.** On and after the date of commencement of section 16 of the *Community Services (Aborigines) Act Amendment Act 1990* the jurisdiction of an Aboriginal Court extends to any persons, whether Aborigines or not, who are in or enter upon the area for which the court is constituted.”

17. New Division 4 of Part III. Authorized Officers, and new ss. 45A and 45B. The Principal Act is amended by inserting in Part III after section 45 the following heading and sections:—

“Division 4—Authorized Officers

45A. Authorized officers. (1) An Aboriginal Council may appoint any person to be an authorized officer for the trust area for such period as the council specifies, to protect the natural and cultural resources of the area.

(2) An authorized officer appointed under subsection (1) is to perform such functions and duties and may exercise such powers as are prescribed in the by-laws for the area in which the authorized officer is appointed, which by-laws may have regard to Aboriginal custom, tradition and belief.

45B. General powers of authorized officers. (1) An authorized officer, in addition to such other powers and duties as from time to time devolve upon that officer under this Act or the by-laws for the area may—

- (a) call to his or her aid any member of the Queensland Police Service or of the Aboriginal police for the area where he or she has reasonable cause to apprehend any obstruction in the exercise of his or her powers or in the execution of his or her duties;
- (b) be accompanied and aided by any person the officer may think competent to assist him or her in making

any inspection or examination for the purposes of the by-laws for the area;

- (c) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act or the relevant by-laws have been or are being complied with by any person or in respect of the area concerned;
 - (d) at any time, stop any vehicle or vessel that he or she suspects on reasonable grounds to be used in the commission of a breach of the by-laws for the area and search and examine that vehicle or vessel and all containers or other receptacles for any evidence of such a breach, and for that purpose may require the owner or person in charge thereof to open any such vehicle, vessel, container or other receptacle and expose its contents to view;
 - (e) perform such other functions and duties and exercise such other powers and authorities as may be prescribed in the by-laws for the area concerned.
- (2) An authorized officer who—

- (a) finds any person committing or believes on reasonable grounds that any person has committed an offence against this Act or the relevant by-laws;
or
- (b) is making inquiries or investigations with a view to establishing whether or not an offence against this Act or those by-laws has been committed by any person;
or
- (c) is of the opinion that the name, age and address or place of residence of any person is required for the purpose of giving effect to any provision of this Act or the relevant by-laws, or for the purpose of enabling the authorized officer to carry out his or her powers and duties under this Act or the relevant by-laws;

may require such person to state his or her name, age and address or place of residence, and, if the authorized officer believes on reasonable grounds that any information given in this regard is false, may require evidence of the correctness thereof.

(3) A person who fails to comply with a request of an authorized officer under subsection (2) commits an offence against this Act.

Penalty: \$200.”.

18. Amendment of s. 75. Administration of Aborigines' estates.
Section 75 of the Principal Act is amended by—

- (a) omitting subsection (1);

(b) omitting subsection (2);

(c) renumbering subsections (3), (4) and (5) as subsections (1), (2) and (3) respectively;

(d) in subsection (1) as so renumbered, omitting the words “, whether or not he is administering the estate,”.

19. Transitional provision. On and after the commencement of the *Community Services (Aborigines) Act Amendment Act 1990*, all estates of Aborigines that are being administered by the Director-General are to be administered by the Public Trustee, as if the Director-General had, immediately prior to that commencement, renounced the rights conferred on him or her under section 75 of the Principal Act in relation to those estates.

20. Amendment of s. 82. Regulations. Section 82 of the Principal Act is amended by omitting the words “3. the development, assimilation and integration of Aborigines;” and substituting the words “3. the self-management and good government of Aborigines;”.