

# **COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 2001**

*A Bill to amend the Community Services (Aborigines) Act 1984 and the  
Community Services (Torres Strait) Act 1984*

## **EXPLANATORY NOTES**

### **POLICY OBJECTIVES OF THE BILL**

The policy objectives of the Bill are to provide clarification in relation to the current uncertainty as to the exact circumstances where Aboriginal and Island Councils have power to make loans, to provide a legislative framework which assists Councils to make loans in an accountable manner consistent with established standards of financial management, to increase the maximum penalty that can be stipulated for breach of an Aboriginal or Island Council by-law so that penalties become and remain commensurate with the by-laws offences, and to improve the corporate governance and the commercial prospects of the Island Industries Board (IIB).

The objectives of the Bill will be achieved by:

- (a) clarifying any uncertainty as to the power of Aboriginal and Island Councils to make loans by providing that an Aboriginal or Island Council can make loans to adult residents of its council area;
- (b) ensuring that an Aboriginal or Island Council will only be able to make loans in accordance with an adopted lending policy which has been approved by the Minister;
- (c) regulating the content of Aboriginal and Island Council lending policies through an accounting standard in the proposed Aboriginal Council Accounting Standards and the proposed Island Council Accounting Standards;

- (d) increasing the maximum penalty that can be stipulated for breach of an Aboriginal or Island Council by-law from the existing 7 penalty units (currently \$525) to 20 penalty units (currently \$1500);
- (e) requiring all Island Industries Board members and the Chairperson be appointed by the Governor-in-Council;
- (f) requiring that recommendations on appointments have regard to the needs of the Island Industries Board for commercial viability and sound governance;
- (g) changing the number of Island Industries Board members from the current prescribed 8 members, to a minimum of 5 in number with the capacity to appoint additional specific expertise up to a maximum of 8 as required;
- (h) providing for a panel of 5 potential members to be proposed by the Island Co-ordinating Council (ICC) to the Minister for consideration for appointment of 2 from that panel;
- (i) requiring appointees to have commercial, management or other relevant skills and experience;
- (j) introducing terms of appointment for up to 4 years;
- (k) limiting the number of successive appointments of a person as Chair to two;
- (l) removing the 'executive officer' role from the Chair and provide for a Chief Executive Officer who will be responsible to the Island Industries Board; and
- (m) requiring the Island Industries Board to seek the Minister's approval in regard to any intended transfer of Board business to an Island Council or community member.

## **CONSISTENCY WITH LEGISLATIVE PRINCIPLES**

Two clauses may appear to be inconsistent with the fundamental legislative principle: *Whether legislation has sufficient regard to rights and liberties of individuals.*

Clause 26 amends section 56 of the *Community Services (Torres Strait) Act 1984* by removing the requirement to appoint a secretary to the board and replacing it with a requirement to appoint a chief executive officer.

However, a secretary to the board has never been appointed, making the inclusion of transitional provision in relation to this matter unnecessary.

Clause 32 amends the *Community Services (Torres Strait) Act 1984* by inserting a new section 84A which provides that, on the commencement, the existing members of the Island Industries Board go out of office and no compensation is payable to an existing member of the Board because of the removal from office. The question of the expectations of the Board members to continue in their role may be considered a possible breach. This expectation to remain on the Board however does not amount to a right. It is however, the right of the Executive to set policy and to introduce legislation into the Parliament with the intention of giving effect to that policy. This provision is regarded as justifiable on the basis that existing members of the Board have been given substantial advance notice of the change in membership of the Board and are aware that the changes are a crucial part of the strategy for the Island Industries Board's recovery and improved future management.

## **EXTENT OF CONSULTATION**

### Loans

The Aboriginal and Torres Strait Islander Commission (ATSIC) and the Torres Strait Regional Authority (TSRA) were advised of the proposed amendments and invited to comment. No comments were received.

Consultation on the issue of regulating the loan making powers of Aboriginal Councils has been undertaken with the Aboriginal Co-ordinating Council (ACC) through the Aboriginal Councils' Financial Accountability Improvement Program Steering Committee of which the ACC is a member. The Minister also advised her intention to amend Council's loan making provisions at a meeting of the ACC at which all elected members of Aboriginal Councils were present.

Consultation on the issue of regulating the loan making powers of Island Councils has been undertaken with the Island Co-ordinating Council (ICC) through the Island Councils' Financial Accountability Improvement Program Steering Committee, of which the ICC is a member.

Neither the Aboriginal Co-ordinating Council nor the Island Co-ordinating Council has expressed any opposition to the proposal to regulate Councils' loan making powers.

The Department of the Premier and Cabinet, Treasury Department, the Department of Local Government and Planning, the Department of

Housing, Crown Law, and the Queensland Audit Office have been consulted regarding the amendments to Council's loan making powers.

The Department will undertake consultation with the ACC, the ICC, Aboriginal and Island Councils, and the Queensland Audit Office in relation to the loans policy provisions to be incorporated in the Aboriginal and Island Council Accounting Standards.

### Penalties

Given the technical and non-controversial nature of the amendment to increase the maximum penalty for offences under the by-laws of Aboriginal and Island Councils, no direct consultation has taken place with Aboriginal and Torres Strait Islander communities although the amendment was initiated at the request of the Bamaga Island Council.

The Department of the Premier and Cabinet and the Department of Justice and Attorney-General have been consulted over the amendment to increase maximum penalties for by-laws offences.

### Island Industries Board

The IIB was consulted on the preparation of the changes to the legislation and supported the changes. The proposed changes to the Act were also forwarded to the Island Co-ordinating Council (ICC) for their information and comment. Recent meetings with ICC representatives have not identified any areas of concern.

The draft Bill was discussed with the Community Services Branch of Treasury Department and with the Social Policy Directorate of the Department of the Premier and Cabinet.

The Bill as proposed incorporates the views, advice and requirements of all the government agencies consulted.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

*Clause 1* provides that the name of the Act is the *Community Services Legislation Amendment Act 2001*.

*Clause 2* provides that the clauses concerning the making of loans by Aboriginal and Island Councils, 6(1), 7, 8, 16(1), 17 and 18, are to commence by proclamation. This will allow the Department and the Councils to make any necessary arrangements pursuant to the provisions of section 17 of the *Acts Interpretation Act 1954*, prior to commencement.

## **PART 2— AMENDMENT OF THE COMMUNITY SERVICES (ABORIGINES) ACT 1984**

*Clause 3* provides that Part 2 amends the *Community Services (Aborigines) Act 1984*.

*Clause 4* amends section 6 (Definitions) to include a reference to Aboriginal Council Accounting Standards as the section on Aboriginal Council Accounting Standards and their application to a Council's power to lend (27AA) appears before the section which provides a head of power to the Minister to make Accounting Standards (27B).

*Clause 5* amends section 17 (Times for election of councillors) to correct an incorrect cross-reference arising from a previous renumbering of the subsections (1999 No. 53 s 35 sch) and to correct a reference that was missed in a previous amendment (1999 No. 59 s 60 sch).

*Clause 6* amends section 25 (Functions of Aboriginal councils). *Clause 6(1)* clarifies Aboriginal Councils' existing loan making powers by providing Councils with a definite head of power to make loans to adult residents of a Council's area. *Clause 6(2)* increases the maximum penalty that can be stipulated for breach of the by-laws of Aboriginal Councils from the existing 7 penalty units to 20 penalty units.

*Clause 7* inserts a new section, section 27AA (Power of council to lend an amount to an adult resident) to provide for the conditions under which an Aboriginal Council may make a loan to an adult resident of its area. Subsection (1) requires that a loan may only be made if a Council has adopted a lending policy and the lending policy has been approved by the Minister in writing given to the Council. The section also provides that the only ground on which the Minister may refuse to approve an adopted lending policy is that the policy does not comply with the Aboriginal Council Accounting Standards. The Minister must make a decision on whether to approve an adopted lending policy submitted for approval as

soon as practicable. The Minister, in the event of a policy not being approved, must inform an Aboriginal Council how its adopted lending policy does not comply with the Aboriginal Council Accounting Standards.

*Clause 8* amends section 27B (Issue of standards) to clarify that accounting standards may include provisions about lending policies which Aboriginal Councils must adopt and comply with before making a loan to an adult resident of its area. A standard about the content of a lending policy may include a model lending policy or model provisions of a lending policy.

*Clause 9* amends section 50 (Divisions of Aboriginal communities) to correct an incorrectly cited reference to section 48(1)(c).

*Clause 10* amends section 51 (Selection of board members) to correct incorrectly cited references. In section 51(1) an incorrectly cited reference to section 48(1)(c) is corrected and in section 51(1A) an incorrectly cited reference to section 48(1)(d) is corrected.

*Clause 11* amends section 66 (General authority to be in area) to correct a numbering error.

*Clause 12* amends section 84 (Use of churches etc. for provision of assistance) to correct a numbering error.

### **PART 3—AMENDMENT OF THE COMMUNITY SERVICES (TORRES STRAIT) ACT 1984**

*Clause 13* provides that Part 3 amends the *Community Services (Torres Strait) Act 1984*.

*Clause 14* amends section 6 (Definitions) to include a reference to Island Council Accounting Standards as the section on Island Council Accounting Standards and their application to a Council's power to lend (25AA) appears before the section which provides a head of power to the Minister to make Accounting Standards (25B).

*Clause 15* amends section 17 (Times for election of councillors) to correct an incorrect cross-reference arising from a previous renumbering of the subsections (1999 No. 53 s 35 sch) and to correct a reference that was missed in a previous amendment (1999 No. 59 s 60 sch).

*Clause 16* amends section 23 (Functions of Island councils). *Clause 16(1)* clarifies Island Councils' existing loan making powers by providing Councils with a definite head of power to make loans to adult residents of a Council's area. *Clause 16(2)* increases the maximum penalty that can be stipulated for breach of the by-laws of Island Councils from the existing 7 penalty units to 20 penalty units.

*Clause 17* inserts a new section, section 25AA (Power of council to lend an amount to an adult resident) to provide for the conditions under which an Island Council may make a loan to an adult resident of its area. Subsection (1) requires that a loan may only be made if a Council has adopted a lending policy and the lending policy has been approved by the Minister in writing given to the Council. The section also provides that the only ground on which the Minister may refuse to approve an adopted lending policy is that the policy does not comply with the Island Council Accounting Standards. The Minister must make a decision on whether to approve an adopted lending policy submitted for approval as soon as practicable. The Minister, in the event of a policy not being approved, must inform an Island Council how its adopted lending policy does not comply with the Island Council Accounting Standards.

*Clause 18* amends Section 25B (Issue of standards) to clarify that accounting standards may include provisions about lending policies which Island Councils must adopt and comply with before making a loan to an adult resident of its area. A standard about the content of a lending policy may include a model lending policy or model provisions of a lending policy.

*Clause 19* is a consequential amendment to section 46 (Functions of Council) arising from the change in the number and way in which members of the Island Industries Board will be selected. Currently there are five who come from the Island Co-ordinating Council. This clause deletes the reference to the five members in section 46(1)(c)

*Clause 20* amends section 48 (Divisions of Torres Strait) by deleting reference to the Island Industries Board in section 48(1) in accordance with the new way of nominating and appointing Board members.

*Clause 21* amends section 49 (Selection of Board Members) by omitting reference to the Board in accordance with the new appointment arrangements but leaves the existing arrangements for the executive committee of the Island Co-ordinating Council intact.

*Clause 22* amends section 50 (Casual vacancy in office of selected member) by omitting reference to the Board in relation to the filling of casual vacancies.

*Clause 23* amends section 51 (Particular functions of council) to remove redundant provisions applying to the Island Co-ordinating Council.

*Clause 24* amends section 52 (The board) by deleting provisions which refer to the membership of the Board.

*Clause 25* replaces sections 53, 54, 55 and inserts new sections 55A, 55B, 55C, 55D, 55E, 55F, 55G, 55H, 55I, 55J, 55K, 55L, which make provision for the new Board arrangements.

These include setting the size of the Board to a minimum of 5 and a maximum of 8 members all of whom are appointed by the Governor-in-Council. It provides that for persons to be qualified for nomination by the Minister the person must have either commercial or management skills and experience or other skills and experience relevant to the performance of the Board's functions. A person must not be one who is disqualified by virtue of the new provision relating to bankruptcy. It further provides that the Board must include 2 members nominated by the Minister from a panel of not less than 5 qualified persons proposed by the Island Co-ordinating Council.

The Minister must give the Council reasonable time to consider and propose their panel of 5 qualified persons for Board membership.

In the event that the Council does not propose a panel within the period set by notice by the Minister or the Council proposes a panel of less than 5 or some or all of the panel are not qualified to be appointed then the Minister must nominate 2 qualified persons who shall be regarded as being persons included in the Council's panel.

The Governor-in-Council appoints the Chairperson. The term of office of the Chairperson cannot exceed their term of appointment as a member. A person cannot be appointed as Chairperson for more than two consecutive terms.

The Board must appoint a Deputy Chairperson from amongst its members and ensure that there is a Deputy Chairperson available to act as chairperson in the absence of the Chairperson during a vacancy in that office or when that person is absent from duty or for another reason cannot perform the functions of the office.

An appointment to the Board cannot exceed 4 years.



Persons will be disqualified from appointment or continuing as a member if they have been affected by bankruptcy, been convicted of either an indictable offence or an offence against this Act. A person is affected by bankruptcy if they are bankrupt, or have compounded with their creditors or as a debtor have taken or applied to take advantage of the bankruptcy laws.

Should a member become the subject of bankruptcy the member will be deemed to have vacated their office. If a member is absent without the Board's permission from 3 consecutive Board meetings, for which due notice has been given, then the member will have vacated their office.

The new sections 55E, 55F and 55G are procedural provisions for the Board's conduct.

The quorum for Board meetings is a simple majority of the members appointed at any time. The Deputy Chairperson will preside at meetings in the Chairperson's absence. If the Deputy Chairperson is also absent the meeting can choose from the members present a person to preside over the meeting.

Decisions of the Board will be decided by a majority of votes. The presiding member will have a casting vote. The Board may meet by teleconference or by other means using technology that allows reasonably contemporaneous and continuous communication between members.

The Board must keep minutes of its meetings and a record of its resolutions.

Members are required to disclose any interests relevant to the Board's activities and interests.

*Clause 26* amends section 56 (Officers and employees of board) to provide for the appointment of a Chief Executive Officer. This replaces the existing provision whereby the Chairperson was 'the executive officer' and therefore effectively an Executive Chairperson. The reference to 'secretary' is also removed.

*Clause 27* amends section 61 (Administrator may replace board members). This is a consequential change to the provision providing for the appointment of an Administrator to replace the Board.

*Clause 28* amends section 62 (Relinquishment of board's assets to local control) provides for a new requirement that the Minister must give prior approval to the terms of any contract, transaction or agreement for the transfer of the conduct of Island Industries Board's business to an Island Council or member of the community. This provision ensures that any

transfers are on a basis that the Minister believes are in the best interests of the Government taking into account for example the transfer of potential risk from one agency to another body such as an Island Council.

*Clause 29* renumbers section 64 (General Authority to be in area) to correct a numbering error.

*Clause 30* amends the heading of Part 10 to account for more than one transitional provision.

*Clause 31* inserts a new division heading for an existing transitional provision.

*Clause 32* inserts a transitional provision that provides for vacation of office of existing members upon the commencement of the Amendment Act and excludes any member from being paid compensation.