EXPLANATORY MEMORANDUM

Aboriginal Affairs Planning Authority Amendment Bill 2012

Part IV of the Aboriginal Affairs Planning Authority Act 1972 (the AAPA Act) provides a separate scheme for the administration of deceased estates of persons of Aboriginal descent from that of non-Aboriginal persons.

The scheme has been criticised for being administratively burdensome and potentially discriminatory to Aboriginal people. For example, the qualification requirement in section 33 of the AAPA Act that a person of Aboriginal descent be ‘full blood descended from the original inhabitants of Australia or more than one-fourth of the full blood’ is difficult to apply in practice and may cause offence to Aboriginal people. The automatic vesting of an estate in the Public Trustee under section 35 of the AAPA Act denies the right of families to administer the estate of a deceased Aboriginal relative.

The purpose of this Bill is to achieve parity at law for Aboriginal people in this area by applying the same scheme of distributing intestate estates to Aboriginal people as non-Aboriginal people.

Part 1 – Preliminary

Clause 1. Short title

Provides that the name of the Bill when enacted is the Aboriginal Affairs Planning Authority Amendment Act 2012 (the Act).

Clause 2. Commencement

Provides that:

a) Sections 1 and 2 of the Act come into operation when the Act receives Royal Assent; and
b) The rest of the Act comes into operation on a date fixed by proclamation.

Part 2 – Aboriginal Affairs Planning Authority Act 1972 amended

Clause 3. Act amended

This Part amends the AAPA Act.
Clause 4. Part IV deleted

This section deletes Part IV of the AAPA Act.

The effect of repeal of section 35 of the AAPA Act will be such that after the commencement date of the amending Act, all estates previously administered under Part IV will be administered under the Administration Act 1903.

As there is no evidence to suggest the Department of Indigenous Affairs (DIA) or the Public Trustee has ever received money or property under section 36 of the AAPA Act, the repeal of this section is necessary.

By repealing section 37 of the AAPA Act, any money or property held by the Public Trustee or the Chief Executive Officer of DIA on behalf of a person of Aboriginal descent, will no longer vest in the Aboriginal Affairs Planning Authority (the Authority). By virtue of section 37(1)(c) of the Interpretation Act 1984, any rights and entitlements that may have accrued before repeal of section 37 of the AAPA Act will be preserved.

Clause 5. Part VII inserted


52. Estates of persons who died before commencement day

Subsection (1) provides in this section -

commencement day means the day on which the Aboriginal Affairs Planning Authority Amendment Act 2012 section 4 comes into operation;

former provisions means Part IV of this Act as it was in force immediately before its deletion by the Aboriginal Affairs Planning Authority Amendment Act 2012.

There will be a number of deceased estates already vested in the Public Trustee as at the commencement date. The Bill contains saving provisions to ensure that these estates continue to be processed under Part IV of the AAPA Act. This provides for an uncomplicated transition between the old and new legislative scheme.
Part 3 – Unclaimed Money Act 1990 amended

Clause 6. Act amended

This Part amends the Unclaimed Money Act 1990.

Clause 7. Section 9 amended

This section deletes section 9(1)(a) of the Unclaimed Money Act 1990.

Repeal of section 37 of the AAPA Act requires consequential amendments to section 9 of the Unclaimed Money Act 1990. Amendment to section 9 of the Unclaimed Money Act 1990 will remove from the definition of ‘prescribed unclaimed money’, any money which comes under Part IV of the AAPA Act but has not yet been vested in the Authority.

By virtue of section 37(1)(c) of the Interpretation Act 1984 any rights and entitlements that may have accrued before repeal of section 37 of the AAPA Act will be preserved.