

HOUSE OF REPRESENTATIVES

(As read a first time)

**ABORIGINAL AND TORRES STRAIT ISLANDER
COMMISSION AMENDMENT BILL 1993**

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1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 5 May 1993

(Minister for Aboriginal and Torres Strait Islander Affairs)

A BILL

FOR

An Act to amend the *Aboriginal and Torres Strait Islander Commission Act 1989*, and for related purposes

The Parliament of Australia enacts:

Short title etc.

1 (1) This Act may be cited as the *Aboriginal and Torres Strait Islander Commission Amendment Act 1993*.

5 (2) In this Act, “**Principal Act**” means the *Aboriginal and Torres Strait Islander Commission Act 1989*¹.

Commencement

2 (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), section 7 commences on a day to be fixed by Proclamation.

(3) If section 7 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period. 5

Interpretation

3. Section 4 of the Principal Act is amended by omitting from subsection (1) the definitions of “elected Commissioner” and “non-elected Commissioner”.

Review of operation of Act 10

4. Section 26 of the Principal Act is amended:

(a) by omitting from paragraph (2)(a) “elected”;

(b) by omitting from subsection (4) “elected Commissioner” and substituting “Commissioner elected under Division 7 of Part 3 to represent a zone”. 15

Repeal of section and substitution of new section

5.(1) Section 27 of the Principal Act is repealed and the following section is substituted:

Constitution of Commission

“27.(1) The Commission consists of 17 members. 20

“(2) The members are to be the persons elected under Division 7 of Part 3 to represent the several zones.”.

(2) If, immediately before the commencement of this section, an office of Commissioner was held by a person who is not a person of a kind referred to in subsection 27(2) of the Principal Act as amended by this Act: 25

(a) subject to subsection 7(2) of this Act, that person continues to hold office, on the terms and conditions of appointment in force immediately before that commencement, until:

(i) that appointment expires or comes to an end under the Principal Act as amended by this Act; or 30

(ii) the first meeting of the Commission held after the first zone elections occurring after the Regional Council elections for 1993 have been conducted;

whichever is the earlier; and

(b) the number of members of the Commission is taken to be adjusted 35 accordingly.

Repeal of section 28

6. Section 28 of the Principal Act is repealed.

Repeal of section and substitution of new section

5 7.(1) Section 30 of the Principal Act is repealed and the following section is substituted:

Basis of holding office

“30.(1) Commissioners hold office on a full-time basis.

“(2) This section does not prevent a Commissioner holding office as a member of a Regional Council on a part-time basis.”.

10 (2) Subject to subsection (3), a Commissioner who, immediately before the commencement of this section, held the office of Commissioner on a part-time basis continues to hold the office after that commencement as if, on that commencement, he or she had been appointed on a full-time basis.

15 (3) Subsection (2) does not apply to a Commissioner who, by written notice given to the Minister, elects to continue to hold office on a part-time basis.

Repeal of section and substitution of new section

8.(1) Section 32 of the Principal Act is repealed and the following section is substituted:

20 **Chairperson and Deputy Chairperson of the Commission**

“32.(1) At the first meeting of the Commission after a zone election, the Commissioners must:

- 25 (a) elect one of their number to be the Commission Chairperson; and
(b) elect one of their number to be the Deputy Chairperson of the Commission.

“(2) At any subsequent meeting of the Commission, the Commissioners must:

- 30 (a) elect one of their number to be the Commission Chairperson if there is a vacancy in the office of Commission Chairperson; and
(b) elect one of their number to be the Deputy Chairperson of the Commission if there is a vacancy in the office of Deputy Chairperson of the Commission.”.

(2) Subsection 32(1) and paragraph 32(2)(a) of the Principal Act as amended by this Act do not apply until the first meeting of the Commission after the first zone elections occurring after the Regional Council elections for 1993 have been conducted.

(3) This section does not affect the validity of any appointment or election made before the commencement of this Act to the office of Commission Chairperson or Deputy Chairperson of the Commission. 5

(4) If, for any reason, a vacancy occurs in the office of Commission Chairperson during the period between the commencement of this section and the first meeting of the Commission after the first zone elections occurring after the Regional Council elections for 1993 have been conducted, the Minister may appoint another person to be Commission Chairperson under subsection 27(2) of the Principal Act as if that subsection had not been repealed by this Act. 10

(5) An appointment under subsection (4) ceases to have effect immediately upon the election of a Commissioner to be Commission Chairperson at the first meeting of the Commission after the first zone elections occurring after the Regional Council elections for 1993. 15

Periods of appointment

9.(1) Section 33 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections: 20

“(1) The Commission Chairperson holds office as Commission Chairperson until:

(a) he or she ceases to be a Commissioner; or

(b) another person is elected as the Commission Chairperson under section 32; 25

whichever happens first.

“(1A) The Deputy Chairperson of the Commission holds office as the Deputy Chairperson until:

(a) he or she ceases to be a Commissioner; or 30

(b) another person is elected as the Deputy Chairperson of the Commission under section 32;

whichever happens first.”.

(2) Despite the omission of subsection 33(1) of the Principal Act by this section, that subsection continues to apply to persons to whom subsection 5(2) of this Act applies. 35

Leave of absence

10. Section 35 of the Principal Act is amended:

- (a) by omitting from subsection (1) "full-time";
- (b) by omitting subsection (1A) and substituting the following subsection:

5 “(1A) Subject to subsection (2), the Minister may grant a Commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.”.

Acting Commissioners

11. Section 36 of the Principal Act is amended:

- 10 (a) by omitting subsections (4) and (5);
- (b) by omitting subsection (6) and substituting the following subsection:

15 “(6) The Minister may, after consulting with the Commission, appoint a person to act in the office of a Commissioner during any period, or during all periods, when the Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.”.

Resignation

12. Section 39 of the Principal Act is amended:

- 20 (a) by inserting after subsection (1) the following subsections:

 “(1A) The Commission Chairperson may resign the office of Commission Chairperson by writing signed by him or her and sent to the Minister.

25 “(1B) The Deputy Chairperson of the Commission may resign the office of Deputy Chairperson of the Commission by writing signed by him or her and sent to the Minister.”;

- (b) by omitting from subsection (2) "An elected Commissioner", and substituting "A Commissioner".

Termination of appointment

13. Section 40 of the Principal Act is amended:

- 30 (a) by omitting from subsection (6) "an elected Commissioner", and substituting "a Commissioner";
- (b) by omitting from paragraph (7)(c) "being a full-time Commissioner,";
- (c) by adding at the end of paragraph (7)(c) "or";
- 35 (d) by omitting paragraph (7)(d).

Regions

14 Section 91 of the Principal Act is amended:

- (a) by omitting from subsection (1) "60" and substituting "36";
- (b) by omitting from paragraph (1)(b) "by notice published in the *Gazette*" and substituting "in writing";
- (c) by inserting after subsection (1) the following subsections:

“(1A) If the Minister makes a determination under subsection (1), he or she must cause a notice to be published in the *Gazette* that:

- (a) states that the determination has been made; and
- (b) specifies the places where members of the public may buy copies of the determination.

“(1B) The Commission must take all reasonable steps to ensure that, from the time the notice is published or as soon as practicable thereafter, copies of the determination are available to be bought by members of the public at the places specified in the notice.”;

- (d) by omitting subsection (3);
- (e) by omitting from subsections (4), (5) and (7) "notice" and substituting "determination".

Persons qualified to be elected to Regional Councils

15. Section 102 of the Principal Act is amended by inserting after subsection (1) the following subsection: 20

“(1A) Paragraph (1)(b) does not apply to a person who is the Commission Chairperson.”.

Polling places

16. Section 105 of the Principal Act is amended by omitting subsection (2). 25

Fixing of election days, and location of polling places, to be notified in the *Gazette*

17. Section 106 of the Principal Act is amended by inserting after subsection (1) the following subsection: 30

“(1A) The Minister shall cause a copy of the notice under subsection 104(2) fixing a polling day or polling days for the round of Regional Council elections for 1993 to be published in the *Gazette* at least 60 days before the day, or the first of the days, so fixed.”.

Rules for conduct of elections

18. Section 113 of the Principal Act is amended by omitting subsection (9). 35

Persons taken to have resigned from Regional Councils in certain circumstances

19. Section 121 of the Principal Act is amended by inserting after subsection (1) the following subsection:

5 “(1A) Subsection (1) does not apply to a member of a Regional Council who is the Commission Chairperson.”.

Chairperson and Executive Committee

20.(1) Section 127 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

10 “(1A) A Regional Council shall not elect a Commissioner to be the Chairperson of the Regional Council.”;

(b) by omitting from paragraph (3)(a) “may elect a new Chairperson, and”.

15 (2) Subsection 127(1A) of the Principal Act as amended by this Act does not affect the validity of any election of a person to be the Chairperson of a Regional Council that took place before the commencement of this section.

Insertion of new sections

21.(1) After section 127 of the Principal Act the following sections are inserted:

20 **Provisions relating to Chairpersons**

“127A.(1) The Chairperson of a Regional Council holds office on a full-time basis.

“(2) If the Chairperson of a Regional Council becomes a Commissioner, he or she ceases to be the Chairperson of the Regional Council.

25 “(3) The Chairperson of a Regional Council holds office for the period starting when he or she is elected and ending at the end of the next election period of the Regional Council.

Resignation of Chairpersons

30 “127B.(1) The Chairperson of a Regional Council may resign by writing signed by him or her and sent to the Minister.

“(2) The Chairperson of a Regional Council is taken to have resigned if:

(a) he or she resigns from the Regional Council; or

(b) under section 121, he or she is to be taken to have resigned from the Regional Council.

Termination of appointment of Chairpersons

“127C.(1) Subject to subsection (2), the Minister may suspend the Chairperson of a Regional Council from office because of misbehaviour or physical or mental incapacity.

“(2) The Minister must not suspend the Chairperson from office unless 5
the Minister has:

- (a) by written notice served on the Chairperson, giving the Chairperson 7 days within which to show cause why the Chairperson should not be suspended; and
- (b) consulted the Commission. 10

“(3) The Minister must cause a statement identifying the Chairperson and setting out the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

“(4) If such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Chairperson ought to be restored to office and, if each House so passes such a resolution, the Minister must terminate the suspension. 15

“(5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Minister may terminate the Chairperson’s appointment. 20

“(6) If the Chairperson of a Regional Council ceases to be a member of a Regional Council otherwise than by resigning from the Regional Council, the Minister may terminate the Chairperson’s appointment. 25

“(7) If the Chairperson of a Regional Council:

- (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
 - (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or 30
 - (c) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
 - (d) fails, without reasonable excuse, to comply with section 119; 35
- the Minister must terminate the Chairperson’s appointment.

“(8) If the Minister terminates the appointment of the Chairperson of a Regional Council, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the termination, a statement:

- 5 (a) identifying the Chairperson;
 (b) stating that his or her appointment has been terminated; and
 (c) setting out the ground of the termination.

Leave of absence for Chairpersons

10 “127D.(1) Subject to section 87E of the *Public Service Act 1922*, the Chairperson of a Regional Council has such recreation leave entitlements as are determined by the Remuneration Tribunal.

15 “(2) The Commission Chairperson may grant the Chairperson of a Regional Council leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Commission Chairperson determines in writing.

 “(3) The Commission Chairperson must not grant to the Chairperson of a Regional Council leave of absence for a continuous period of more than 6 months unless the grant of such leave of absence is required or expressly permitted by a law of the Commonwealth.”

20 (2) Sections 127A, 127B, 127C and 127D of the Principal Act as amended by this Act do not apply to the Chairperson of a Regional Council until immediately after the first election of a person as the Chairperson of that Regional Council after the end of the round of Regional Council elections for 1993.

25 Zone elections

 22. Section 132 of the Principal Act is amended by omitting from subsection (2) “paragraph 138(1)(b)” and substituting “section 138”.

Rules for conduct of elections

 23. Section 138 of the Principal Act is amended:

- 30 (a) by omitting from paragraph (1)(b) “elected”;
 (b) by omitting subsection (6).

Schedule 1

 24 Schedule 1 to the Principal Act is repealed and the following Schedule is substituted:

“SCHEDULE 1 Subsections 91(1) and 130(1)

ZONES AND REGIONS

<i>Column A</i> <i>Zone</i>	<i>Column B</i> <i>Places included in regions</i>
Central Australia	Alice Springs Indulkana
New South Wales (East)	Lismore Tamworth
New South Wales (Metropolitan)	Sydney
New South Wales (West)	Bourke Dubbo Queanbeyan Wagga Wagga
Northern Territory (North-East)	Katherine Nhulunbuy Tennant Creek
Northern Territory (North-West)	Darwin Jabiru
Queensland (Far North-West)	Cooktown Mt Isa
Queensland (Metropolitan)	Brisbane
Queensland (North)	Cairns Townsville
Queensland (South)	Rockhampton Roma
South Australia	Adelaide Ceduna Port Augusta
Tasmania	Hobart
Torres Strait	Thursday Island
Victoria	Bendigo Melbourne
Western Australia (Metropolitan)	Perth
Western Australia (North)	Broome Derby Kununurra South Hedland
Western Australia (South)	Geraldton Kalgoorlie Narrogin

Transitional provision for the original 60 Regional Councils

5 **25.(1)** Despite paragraph 14(a) and section 23, the 60 Regional Councils that were in existence immediately before the commencement of this Act continue in existence after that commencement until the end of the election period for the round of Regional Council elections for 1993.

(2) For the purposes of the continued existence of those Regional Councils:

10 **(a)** the regions, and the boundaries of those regions, as they existed immediately before that commencement, are, subject to subsection **(3)**, taken to continue in existence until the end of that election period; and

(b) Divisions 1, 2, 3, 5 and 6 of Part 3 of the Principal Act are taken to apply accordingly until the end of that election period.

15 **(3)** Paragraph **(2)(a)** does not prevent the Minister, under section 91 of the Principal Act as amended by this Act, changing the boundaries of those regions during the period between the commencement of this section and the end of that election period.

NOTE

1. No. 150, 1989, as amended. For previous amendments, see No. 122, 1991.

