

1993

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aboriginal and Torres  
Strait Islander Affairs.  
The Honourable Robert Tickner MP)

## ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 1993

### OUTLINE

This Bill gives effect to changes to the number of Commissioners and Regional Councils and to the basis upon which Commissioners and Chairpersons of Regional Councils hold office.

The *Aboriginal and Torres Strait Islander Commission Act 1989* established 60 Regions and a Regional Council for each Region. The Aboriginal and Torres Strait Islander people elect members of Regional Councils. The Regional Councillors then elect a part time Chairperson for each of their respective Regional Councils.

Regional Councils are grouped into zones and the members of the Regional Councils in each zone elect a part time Commissioner to represent the zone. The Commission consists of these Commissioners and three other Commissioners (including the full time Chairperson) chosen and appointed by the Minister.

The Bill provides for a reduction in the number of Regional Councils to 36. Under the Bill the Commission would consist only of 17 elected Commissioners and the Chairperson and Deputy Chairperson would be elected by the Commissioners from among the Commissioners. Under the Bill the Minister would no longer have a role in choosing any Commissioners.

The Bill provides that all Commissioners and Regional Council Chairpersons hold office on a full time basis.

The Bill provides for consequential amendments.

### FINANCIAL IMPACT STATEMENT

The financial impact of the Bill is expected to be neutral.

## NOTES ON CLAUSES

### Clause 1 - Short Title

1. This clause provides for the Act to be cited as the *Aboriginal and Torres Strait Islander Commission Amendment Act 1993*.

### Clause 2 - Commencement

2. This clause provides that the Act shall come into operation on the day on which it receives Royal Assent but that section 7 commences on a date to be fixed by proclamation. Sub-clause 3 provides that if section 7 is not proclaimed within 6 months from Royal Assent it commences at the end of that 6 months.

### Clause 3 - Interpretation

3. This clause omits the definitions of "elected Commissioner" and "non-elected Commissioner". This is a formal amendment consequential upon clause 5.

### Clause 4 - Review of Operation of Act

4. This is a formal amendment consequential upon clause 5.

### Clause 5 - Repeal of section and substitution of new section - Constitution of the Commission

5. This clause amends section 27 by removing the power of the Minister to choose or appoint the Chairperson or any other member of the Commission and by providing that the Commission consists of 17 members elected by members of the Regional Councils to represent the zones. This clause contains a transitional provision that the former non elected Commissioners (including the Chairperson) continue to hold office until their appointments expire or until the first meeting after the next zone election whichever is the sooner.

### Clause 6 - Repeal of section 28

6. Section 28 which deals with the constitution of the first Commission no longer has any effect. Accordingly, this clause repeals section 28.

#### **Clause 7 - Repeal of section and substitution of new section - Basis of holding office**

7. This clause repeals section 30 which provides, amongst other things, that elected Commissioners hold office on a part time basis. The effect of the clause is to provide that Commissioners hold office on a full time basis and to ensure that a Commissioner is not prevented from holding office as a Regional Councillor on a part time basis. The clause also contains a transitional provision enabling a former part time Commissioner to elect not to become full time until the next zone elections.

#### **Clause 8 - Repeal of section and substitution of new section - Chairperson and Deputy Chairperson of the Commission**

8. This clause repeals section 32 which empowers the Commission to elect a new Deputy Chairperson at any time. The clause substitutes a new section which obliges the Commission to elect both the Chairperson and the Deputy Chairperson from among the Commissioners. Sub-clause 2 provides that no election can take place until the first meeting after the next zone elections. Sub-clause 3 provides that the new provisions do not affect the validity of any existing appointment to the office of Chairperson or Deputy Chairperson. Sub-clause 4 (a transitional provision) empowers the Minister to make an appointment of the Chairperson if a vacancy in the Office of Chairperson occurs before the next Commission meeting after the next zone elections. Sub-clause 5 provides that such an appointment ceases to have effect when the Chairperson is elected.

#### **Clause 9 - Periods of Appointment**

9. Sub-clause 9(1) amends section 33 by omitting s33(1) (which relates to former non-elected Commissioners) and by adding sub-sections 1 and 1A which provide that the Chairperson and Deputy Chairperson hold office until ceasing to be Chairperson or Deputy Chairperson or until another person is elected under section 32.
10. Sub-clause 9(2) is a formal provision consequential upon clause 5.

#### **Clause 10 - Leave of Absence**

11. This clause effects a formal amendment consequential upon clause 7.

## **Clause 11 - Acting Commissioners**

12. This clause amends section 36 by omitting sub-sections (4) and (5). This is a formal amendment consequential upon clause 5. The clause also omits sub-section (6) and substitutes a new sub-section. The effect of this amendment is to oblige the Minister to consult with the Commission before appointing an acting Commissioner.

## **Clause 12 - Resignation**

13. This clause makes formal amendments consequential upon clause 5 and empowers the Chairperson and the Deputy Chairperson to resign their offices by writing to the Minister.

## **Clause 13 - Termination of Appointment**

- 14 This clause makes formal amendments consequential upon clauses 5 and 7.

## **Clause 14 - Regions**

15. This clause amends section 91 to provide that the new number of Regions is 36. It follows that the new number of Regional Councils will be 36. The clause also provides that in lieu of publication of the actual determination of boundaries in the Gazette a notice of the determination must be gazetted. The clause also omits sub-section 91(3) which limits the period within which the Minister may determine changes to boundaries.

## **Clause 15 - Persons qualified to be elected to Regional Councils**

16. This clause amends section 102, paragraph 102(1)(b) of which provides that a person is not qualified to stand for election or to be elected as a member of a Regional Council if the person does not live in the region for which the Regional Council is established. The amendment provides that paragraph 102(1)(b) does not apply to the Commission Chairperson who, owing to his or her duties, may be living away from the region for significant periods.

## **Clause 16 - Polling Places**

- 17 This clause omits subsection 105(2) which determines the periods within which the Australian Electoral Commission shall appoint polling places under sub-section 105(1). (Sub-section 105(2) is operationally too restrictive). The obligation to appoint polling places is not affected by this amendment.

**Clause 17 - Fixing of election days, and location of polling places to be notified in the Gazette**

18. Sub-section 106(2) obliges the Minister to cause a copy of the notice fixing a polling day for Regional Council elections to be published in the Gazette at least 90 days before the polling day. This clause provides that in respect of the 1993 Regional Council Elections the period is 60 days instead of 90 days.

**Clause 18 - Rules for conduct of elections**

19. This clause omits sub-section 113(9) of the Act which provides that Regional Council election rules take effect on the first day on which the rules are no longer liable to be disallowed or to be deemed to have been disallowed by either house of Parliament under s48 of the Acts Interpretation Act 1901. The effect of this amendment is that Regional Council election rules will take effect on date of notification of the rules in the Gazette. The amendment does not affect the right of either House to disallow the rules after notification in the Gazette. The amendment will bring Regional Council Election rules into line with most other delegated legislation.

**Clause 19 - Persons taken to have resigned from Regional Councils in certain circumstances**

20. Sub-section 121(1) empowers the Commission to, in effect, deem a member of a Regional Council to have resigned if the member does not live in the region and has not lived in the region at all during the immediately preceding 6 months. This clause provides that the Commission has no such power in respect of the Commission Chairperson who, owing to his or her duties, may be living away from the region for significant periods.

**Clause 20 - Chairperson and Executive Committee**

21. This clause prevents a Regional Council from electing one of its members who is a Commissioner to be the Chairperson of a Regional Council. This amendment is consequential upon Commissioners becoming full time office holders. The clause also ensures that this amendment does not affect the validity of any election of a Chairperson before the Bill commences.

**Clause 21 - Insertion of new sections - Chairperson  
Resignation of Chairpersons - Termination of Appointment of  
Chairperson**

22. Sub-clause 20(1) inserts new section s127A, 127B, 127C and 127D.

23. The new sub-section 127A(1) provides that the Chairperson of a Regional Council holds office on a full time basis. Sub-section 127A(2) provides that if the chairperson of a Regional Council becomes a Commissioner he or she ceases to be the Chairperson of the Regional Council. The new sub-section 127A(3) provides that a Regional Council Chairperson holds office from election to the outcome of the next Regional Council election.
24. The new sub-section 127B(1) empowers a Regional Council Chairperson to resign. The new sub-section 127B(2) provides that the Chairperson of a Regional Council is taken to have resigned if he or she resigns or if section 121 applies.
25. The new section 127C contains provision for termination of appointment of Chairperson. This new section is similar to section 40 which makes provision for termination of appointment of Commissioners.
26. The new section 127D makes provision for leave of absence for Regional Council Chairpersons.
27. Sub-clause 20(2) provides that the new sections 127A, 127B, 127C and 127D 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.

#### **Clause 22 - Zone elections**

28. This clause effects a formal amendment to provide the conduct by the Australian Electoral Commission of zone elections is subject to ordinary zone election rules as well as casual vacancy zone election rules.

#### **Clause 23 - Rules for Conduct of Elections**

29. This is a formal amendment consequential upon clause 5.

#### **Clause 24 - Schedule 1**

30. This clause repeals Schedule 1 to the Act which lists the places included in the 60 regions and which groups regions into 17 zones. The clause inserts a new Schedule 1 listing the places included in the 36 regions and grouping those regions into 17 zones.

**Clause 25 - Transitional provision for the original 60 Regional Councils**

31. This clause ensures that the 60 Regions, their boundaries and Regional Councils continue in existence until the outcome of the 1993 Regional Council elections and that Divisions 1 (Regions), 2 (Regional Councils), 3 (Functions of Regional Councils), 5 (Administrative Provisions) and 6 (Operations of Regional Councils) are taken to apply until that outcome.

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