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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT
BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Aboriginal and Torres Strait Islander
Affairs Senator the Hon Dr John Herron)

**ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT
BILL 1996**

OUTLINE

The Bill makes provision for the following amendments to the *Aboriginal and Torres Strait Islander Commission Act 1989*:

- provisions relating to Regional Councils:- 1. a reduction in the size of the membership of Regional Councils, 2. members of Regional Councils to cease to hold office in specified circumstances, 3. Regional Council meetings and specified documents to be open to the public, 4. a public register of financial interests of Regional Councillors, 5. determinations relating to pecuniary interests of Regional Councillors to be public documents, 6. the Australian Electoral Commission to be able to seek injunctions in relation to ATSIC elections, 7 the making of a false statement as to an entitlement to vote and the procuring of people who are not entitled to vote in elections to be offences, 8. Deputy Regional Council Chairpersons and alternate Deputy Regional Council Chairpersons to be taken to have resigned from those offices when they are elected to higher offices of the Regional Council, 9. region and ward boundary changes to have effect for the next full round of Regional Council elections following the date of the relevant determination under section 91 of the Act or amendment to the Regional Council Election Rules, , and 10. Chairpersons of Councils not disqualified to stand for election in certain circumstances;
- provisions for the management of the Commission:- 1. power to appoint an administrator to manage, investigate and report on the affairs and property of ATSIC in specified circumstances, 2. the Commission Chairperson to be chosen and appointed by the Minister, 3. the election of a Deputy Commission Chairperson only to be required following a full round of zone elections, or when there is otherwise a vacancy in that office, 4. election of an alternate Deputy Chairperson of the Commission where there is a vacancy in the office of alternate Deputy Chairperson, 5. alternate Deputy Commission Chairperson to act as Commission Chairperson in specified circumstances, 6. resignation of alternate Deputy Commission Chairperson, 7. allow the Minister to appoint an acting Commissioner during a vacancy in the office of Commissioner or where the Commissioner is otherwise unable to perform duties, 8. allow the Minister to suspend a Commissioner without consulting the Commission, and 9. certain Commissioners to be subject to the same requirement to disclose interests as Regional Councillors;
- amend provisions relating to the restriction on the right to dispose of property so that such a restriction is an interest in land that can be registered against the title of that property;

power to appoint an administrator to manage, investigate and report on the affairs and property of Torres Strait Regional Authority (TSRA) in specified circumstances;

- remove as a function of the Office of Torres Strait Islander Affairs the requirement to monitor the conduct and development of programs and policies by the TSRA ;
- allow the TSRA to request the Office of Evaluation and Audit (OEA) to evaluate and audit TSRA operations;

give OEA the same compulsive powers in investigations requested by Aboriginal Hostels Limited, the Commercial Development Corporation and the TSRA as OEA has in investigations requested by ATSIC or the Minister;

amend section 90 for the avoidance of doubt to enable a person to authorise a solicitor or agent to obtain from the Commission information otherwise prohibited from disclosure by the Act;

require the General Manager of the Aboriginal and Torres Strait Islander Commercial Development Corporation (CDC) to give to the Minister and Chairperson of the Board of CDC written notice of pecuniary interests in any business and in any matter being considered or about to be considered by the Board;

formal amendments.

FINANCIAL IMPACT STATEMENT

Any financial outlay necessitated as a result of this Bill would be absorbed from within global allocations. There will be savings as a result of the reduction in the number of Regional Councillors. If the powers of appointment of Administrators are exercised costs will be incurred.

NOTES ON CLAUSES

Clause 1 - Short Title

1 This clause would provide for the Act to be cited as the Aboriginal and Torres Strait Islander Commission Amendment Act 1996.

Clause 2 - Commencement

2 This clause would provide that the Act commence on Royal Assent except for Item 55 in Schedule 1 which commences on the 28th day after the day on which the Act receives Royal Assent.

Clause 3 - Schedule(s)

3 This clause would provide that each Act that is specified in a Schedule to the Aboriginal and Torres Strait Islander Commission Amendment Act 1996 is amended or repealed as set out in the Schedule concerned and any other item in a Schedule has effect according to its terms. There are 2 Schedules to the Act - Schedule 1 and Schedule 2. These Schedules provide as follows.

Schedule 1 Item 1 - Definitions - Commission Administrator

4 Item 1 provides that *Commission Administrator* means a person appointed under section 78B.

Schedule 1 Item 2 - Definitions - Torres Strait Administrator

5 Item 2 provides that *Torres Strait Administrator* means a person appointed under section 144ZR.

Schedule 1 Item 3 - Definitions - Number of Regional Councillors

6 Item 3 omits the table from the definition of "prescribed number" in subsection 4(1) and inserts a new table in its stead. This has the effect of reducing the number of Regional Councillors.

Schedule 1 Item 4 - Commission interest in land

7 Item 4 inserts a new section 21A after section 21.

8 The new subsection 21A(1) would provide that any liability to the Commission arising out of a grant or a loan made by the Commission or under a section 20 or 21 is taken to be an interest of the Commission in land to which it relates.

9 The new subsection 21A(2) would provide that the land is charged with the payment of all costs and expenses incurred by the Commission in respect of its enforcement of the liability.

Schedule 1 Item 5 - Election of Commission Deputy Chairperson

10 Section 32(1) currently provides that at the first meeting of the Commission after each Zone election the Commissioners shall elect one of their number to be the Deputy Chairperson of the Commission. Item 5 would amend subsection 32 (1) to provide that this obligation only arises after each round of Zone Elections.

Schedule 1 Item 6 - Election of Alternate of Deputy Commission Chairperson where vacancy

11 Item 6 would add at the end of Division 3 of Part 2 a new section 32A.

12 The new section 32A would provide that if there is a vacancy in the office of alternate of the Deputy Chairperson of the Commission, the Commissioners may elect one of them to be the alternate of the Deputy Chairperson.

Schedule 1 Item 7 - Alternate of Deputy Commission Chairperson - Period of Office

13 Item 7 would insert a new subsection 33(1BA) after subsection 33(1B) .

14 The new subsection 33 (1BA) would provide that the alternate of the Deputy Chairperson of the Commission is to be elected for a period determined by the Commission and holds office until the end of that period, until he or she is elected as Deputy Chairperson or until he or she ceases to be a Commissioner whichever happens first. However the new subsection also provides that if he or she ceases to hold office of alternate Deputy Chairperson because the term of the office expires he or she and is still a Commissioner he or she may be re-elected as Alternate Deputy Chairperson.

Schedule 1 Item 8 - Leave of Absence for Commissioners

15 Formal.

Schedule 1 Item 9 - Deputy Chairperson to act as Commission Chairperson

16 Item 9 would insert new subsections 1A, 1B and 1C after subsection 36(1).

17 The new subsection 1A would provide that the alternate of the Deputy Chairperson is to act as the Commission Chairperson where there is a vacancy in the office of Commission Chairperson or where the Commission Chairperson is absent from duty or from Australia or is unable to perform his or her duties. However the alternate Deputy Chairperson can only so act if there is a similar vacancy, absence or inability in the office of Deputy Chairperson.

18 The new subsection 1B would provide that the alternate of the Deputy Chairperson is to act as the Deputy Chairperson where there is a similar vacancy, absence or inability in the office of Deputy Chairperson provided the alternate is not acting as Commission Chairperson.

19 The new subsection 1C would provide that anything done by a person purporting to act under subsections 1, 1A, or 1B is not invalid merely because the occasion to act had not arisen or had ceased.

Schedule 1 Item 10 - Acting Deputy Commission Chairperson

20 Item 10 would insert a new subsection 2A after subsection 36(2).

21 The new subsection 2A would provide that a person appointed to act as the Deputy Chairperson of the Commission may not act if there is an alternate of the Deputy Chairperson.

Schedule 1 Item 11 - Acting Commissioners

22 Item 11 would repeal subsection 36(6) and insert a new subsection (6) in its stead.

23 The new subsection (6) would provide that the Minister may appoint a person to act in the office of Commissioner during a vacancy or absence in the Office of Commissioner or inability to perform the duties of the office of Commissioner.

Schedule 1 Item 12 - Disclosure of interests

24 Item 12 would repeal section 38 and insert a new section 38 which would oblige a Commissioner or Acting Commissioner who is not a Regional Councillor to comply with the new section 119A as if he or she were a Regional Councillor.

Schedule 1 Item 13 - Resignation of Alternate of Deputy Commission Chairperson

25 Item 13 would insert after subsection 39(1B) a new subsection 39(1C).

26 The new subsection would provide that the alternate of the Deputy Chairperson may resign the office of alternate of the Deputy Chairperson by writing sent to the Commission Chairperson.

Schedule 1 Item 14 - Termination of Appointment of Commissioners

27 Item 14 would repeal subsection 40(2) and substitute a new subsection.

28 The new subsection would provide that the Minister must not suspend a Commissioner unless the Minister has given the Commissioner 7 days within which to show cause why the Commissioner should not be suspended. The effect of this amendment is to remove the requirement to consult the Commission before suspending the Commissioner.

Schedule 1 Item 15 - Termination of Appointment of Commissioners

29 Item 15 would insert after subsection 40(6) a new subsection 6A.

30 The new subsection would provide that a person ceases to be a Commissioner if the Federal Court orders that he or she is taken not to have been duly elected as a member of a Regional Council. This would remove the requirement on the Minister to terminate the person's appointment as Commissioner.

Schedule 1 Item 16 - Regional Land Fund

31 Item 16 would repeal subsection 68(4). Subsection 68(4) provides that where the Minister refuses to approve a proposal made by a Regional Council relating to an acquisition of land, the Minister shall cause to be laid before each House of the Parliament, within 15 sitting days of that House after so refusing, a statement giving the Minister's reasons for so refusing. Following amendment of the Act in 1993 the Minister no longer has the function of giving such approvals.

Schedule 1 Item 17 - Functions of Office of Evaluation and Audit

32 Item 17 would insert a new paragraph (db) after paragraph 76(1)(da).

33 This amendment would empower the Office of Evaluation and Audit to evaluate or audit particular aspects of the operations of the Torres Strait Regional Authority when requested to do so by the Authority.

Schedule 1 Item 18 - Examination of Documents

34 Formal

Schedule 1 Item 19 - Commission Administrator

35 Item 19 would insert a new Division 9A (containing new sections 78B to 78G) after Division 9. Division 9A provides for the Minister to appoint a Commission Administrator of the Commission in certain circumstances.

78B Appointment of Commission Administrator

36 Section 78B would provide for the Minister to appoint a Commission Administrator of the Commission if the Minister is satisfied that:

the administration by the Commission of the Commission's funding has involved fraud or gross mismanagement;

the Commission has intentionally failed to comply with a general direction given by the Minister (under section 12 of the Act) or a Ministerial Finance Direction about the administration of the Commission's finances (under section 74 of the Act); or

the Commission has failed to take reasonable steps to prevent a contravention of a direction in force under section 12 or 74 of the Act.

37 Sub-section 78B(2) would provide that the appointment of the Administrator shall be for a period of 18 months unless the instrument of appointment specifies a lesser period.

38 Sub-section 78B(3) would ensure that the period of appointment of a Commission Administrator does not exceed 18 months even when two or more Administrators are appointed consecutively. An example might be where an Administrator resigns and another person is appointed in his or her place.

78C Role of Commission Administrator

39 Section 78C would prescribe the role of the Commission Administrator which is to control and manage the Commission's property and affairs and to perform any function and exercise any power of the Commission. The full range of Commission operations may therefore continue after appointment of an Administrator.

40 In particular, the Administrator may give a delegation, execute a document, bring or defend proceedings, or do anything else in the Commission's name and on its behalf.

41 Subsection 78C(2) would specify that the Commission Administrator is acting as the Commission's agent.

42 Sub-section 78C(3) confirms that even though the Commission Administrator assumes the powers and functions of Commissioners, he or she does not take up ex officio membership of any other body which is conferred on a Commissioner.

78CA Effect of appointment of Commission Administrator

43 Section 78CA would provide for the position of the Commission and the Commissioners while an appointment of a Commission Administrator is in force. The Commission may not hold any meeting and no person other than the Commission Administrator may perform a function or exercise a power as a Commissioner during the appointment of the Commission Administrator. Therefore, although the Commissioners are not removed, they may not carry out their functions to be carried out by the Administrator. It is intended that the Administrator exercise the powers of the Commission Chairperson.

44 Paragraph 78CA(1)(c) would provide that while an appointment of a Commission Administrator is in force, any delegation of the Commission's functions or powers in force immediately before the appointment continues until revoked by the Commission Administrator. This would allow the day to day functions of the Commission to continue being performed by Commission staff unless prevented by the Commission Administrator. Paragraph 78CA(1)(d) provides that (during the appointment of a Commission Administrator a Commissioner must not participate as an ex officio member of another body unless the Minister otherwise determines. Paragraph 78CA(1)(e) provides that during the appointment of a Commission Administrator where a position on another body must be held by a Commissioner, the membership of the

person appointed to that position may continue unless the Minister otherwise determines.

45 Sub-section 78CA(2) would provide that the Commissioners are not to be remunerated or to receive allowances during the appointment of an Administrator unless the Minister determines that remuneration or allowances should be paid. The Minister may determine that remuneration and allowances are paid to some Commissioners only but may not determine remuneration or allowances to be paid to any Commissioner in excess of the relevant Remuneration Tribunal determination in relation to the Commissioner.

46 Paragraph 78CA(2)(c) would provide for the remuneration and allowances determined by the Minister to be paid from funds legally available to the Commission for the purpose of paying Commissioners' remuneration and allowances.

Section 78D Commission Administrator to investigate Commission's Affairs

47 Subsection 78D(1)(a) would provide that the Commission Administrator may review any audits and evaluations previously undertaken under the provisions of the Act within the previous three years in relation to the Commission's affairs and operations.

48 Paragraph 78D(1)(b) would provide that the Commission Administrator may review any audits and evaluations previously undertaken under the provisions of the Act in relation to any person to whom the Commission has made a grant or loan in the previous three years, or at a time prior to this that the Administrator considers appropriate

49 Subsection 78D(2) makes it clear that the Commission Administrator also has the power to exercise the Commission's functions to initiate audits or evaluations.

Section 78E Report by the Commission Administrator

50 Section 78E would provides for the Commission Administrator to report to the Minister on any changes necessary to the structure and operation of the Commission to ensure either of the following:

the proper provision of services to Aboriginal peoples and Torres Strait Islanders.

full accountability for the Commission's expenditure on services.

Such a report might go to the matter (fraud, gross mismanagement or contravention of a direction) which led to appointment of the Commission Administrator.

Section 78F Terms and conditions of appointment of Commission Administrator

51 Sub-section 78F(1) would provide for the Commission Administrator to receive remuneration and allowances in accordance with section 194 of the Act, that is, either as determined by the Remuneration Tribunal or by the Minister in writing.

52 Sub-section 78F(2) would provide for the resignation of the Commission Administrator in writing to the Minister and signed by the Administrator.

53 Sub-section 78F(3) would provide that the Minister may terminate the appointment of Commission Administrator if:

- the Commission Administrator is found guilty of misbehaviour or becomes physically or mentally incapable of performing the duties of Commission Administrator;
- the Commission Administrator becomes bankrupt, applies to benefit from law relating to bankrupt or insolvent debtors, or compounds with creditors, or attempts to seek remuneration for their benefit;
- the Minister finds the performance of the Commission Administrator unsatisfactory.

The termination must be in writing and signed by the Minister. Subsections 78F(5) and (6) confirm that the Commission Administrator holds office under the terms and conditions determined by the Minister and is paid remuneration and allowances from the Commission's funds.

54 Sub-section 78F(4) would provide that the Minister may not make a determination under section 4A as to what may be taken to be misbehaviour warranting termination of the Commission Administrator.

Section 78G Exemption from suit

55 Section 78G would provide that the Commission Administrator is exempt from suit in relation to actions or omissions made in good faith in the performance of his or her duties as Commission Administrator.

Schedule 1 Item 20 - Office of Torres Strait Islander Affairs

56 Item 20 amends paragraph 81(1) (a) by removing the power of the Office of Torres Strait Islander Affairs to monitor the conduct of programs by the Torres Strait Regional Authority affecting Torres Strait Islanders.

Schedule 1 Item 21 - Office of Torres Strait Islander Affairs

57 Item 21 amends paragraph 81(1)(b) by removing the power of the Office of Torres Strait Islander Affairs to monitor the development by the TSRA of programs and policies affecting Torres Strait Islanders;

Schedule 1 Item 22 - Office of Torres Strait Islander Affairs

58 Item 22 amends paragraph 81(1)(c) by removing the function of the Office of Torres Strait Islander Affairs to report to the TSRA on the results of the performance of the functions of the Office.

Schedule 1 Item 23 - Secrecy

59 Item 23 amends section 90 by inserting a new subsection 2A after subsection 90(2).

60 Section 90 makes it an offence for a person to divulge information to any person, any information concerning the affairs of another person acquired by the first-mentioned person in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee under the Act. The new subsection 2A would provide that for the avoidance of doubt a person to whom section 90 applies may divulge information to anyone who is authorised in writing to receive the information and may produce a document to anyone who is authorised in writing to receive the document.

Schedule 1 Item 24 - Regional Council boundaries

61 Item 24 would repeal paragraph 91(7)(a) and substitute a new paragraph 91(7)(a) in its stead.

62 The new paragraph 91(7)(a) would provide that a determination changing Regional Council boundaries has effect for the purposes of the first round of Regional Council elections held after the date of the determination.

Schedule 1 Item 25 - Application

63 Item 25 would provide that the amendment effected by the previous item applies to determinations made after the commencement of that item.

Schedule 1 Item 26 - Regional Council election rules

64 Item 26 would repeal paragraph 100A(5)(a) and substitute a new paragraph 100A(5)(a).

65 The new paragraph would provide that Regional Council election rules made for the purposes of section 100A have effect for the purposes of the first round of Regional Council elections held after the commencement of the rules.

Schedule 1 Item 27 - Regional Council election rules

66 Item 27 would provide that the amendment made by item 26 would apply to rules made after the commencement of item 26.

Schedule 1 Item 28 - Disqualification from standing for election to Regional Councils

67 Item 28 would repeal paragraph 102(1)(c) and substitute a new paragraph 102(1)(c).

68 The new paragraph 102(1)(c) would provide that a person is not qualified to stand for election, or to be elected, as a member for a Regional Council ward if the person is a member of the staff of the Commission or the TSRA, is a consultant to the

Commission or the TSRA or is a director of or has a controlling interest in a body corporate that is a consultant to the Commission or the TSRA.

Schedule 1 Item 29 - Disqualification from standing for election to Regional Councils

69 Item 29 would amend subsection 102(1A) to provide that a Chairperson of a Regional Council covered by a determination under subsection 121(1B) is not disqualified to stand for election, or to be elected, as a member for a Regional Council ward. (Section 121 provides that where the Commission is satisfied that a member for a Regional Council ward does not live in the ward and has not lived in the ward at all during the immediately preceding period of 6 months the Commission may, in writing, declare that it is so satisfied and upon the making of such a declaration the member ceases to hold office. Subsection 121(1B) provides that this provision does not apply to the Chairperson of a Regional Council if the Commission makes a determination that it is satisfied that the Chairperson lives within reasonable daily commuting distance of an office of the Commission that serves the region concerned.)

Schedule 1 Item 30 - Minister may defer elections if Commission Administrator appointed

70 Item 30 would provide that if a Commission Administrator has been appointed for a term which includes the date by which Regional Council elections are required to be held, the Minister may delay the holding of those elections but may not delay the elections for more than 12 months.

Schedule 1 Item 31 - Pecuniary Interests of Regional Councillors

71 Item 31 would insert a new subsection (2A) after subsection 119(2).

72 The new subsection 119(2A) would provide that the Minister must cause a copy of each pecuniary interest determination made under subsection (2) to be published in the *Gazette*.

Schedule 1 Item 32 - Register of Interests

73 Item 32 would insert a new section 119A after section 119. The new section provides for a register of Regional Councillor's interests.

74 Subsection 119A(1) would oblige Regional Councillors to make to the Commission a disclosure of their interests in accordance with a Ministerial Determination under subsection 119(4).

75 Subsection 119A (2) would oblige the Commission to keep a register of interests disclosed.

76 Subsection 119A (3) would oblige the Commission to allow any person to inspect the register at any reasonable time and without charge

77 Subsection 119A (4) would empower the Minister to make a determination specifying the content of disclosures.

78 Subsection 119A (5) would provide that a determination is a disallowable instrument under the *Acts Interpretation Act 1901*.

Schedule 1 Item 33 - Regional Councillors ceasing to hold office

79 Item 33 would repeal subsection 121(3) and substitute a new subsection 121(3).

80 The new subsection 121(3) would provide that if the Commission is satisfied that a member of a Regional Council has become member of the staff of the Commission or the TSRA, a consultant to the Commission or the TSRA or a director of or has a controlling interest in a body corporate that is a consultant to the Commission or the TSRA, or a director of or has a controlling interest in a body corporate that has become a consultant to the Commission or the TSRA the Commission must declare that it is so satisfied. When the Commission makes such a declaration the Regional Councillor ceases to be a Regional Councillor.

Schedule 1 Item 34 - Regional Councillors ceasing to hold office

81 Item 34 would repeal paragraphs 122(1)(a) and (b) and substitute paragraphs (a),(aa),(b) and (bb).

82 The effect of the amendment is that the Commission would be obliged to make a declaration where a Regional Councillor:-

has been convicted of 2 or more offences and sentenced in respect of all of them to a single penalty of imprisonment of one year or longer; or

has been convicted of 2 or more offences involving dishonesty and sentenced to a single penalty of imprisonment of 3 months or longer.

Where such a declaration is made the Regional Councillor ceases to hold office.

Schedule 1 Item 35 - Regional Councillors ceasing to hold office

83 Item 35 would repeal paragraph 122(1)(c) and substitute a new paragraph 122(1)(c).

84 The new paragraph 122(1)(c) would provide that the Commission would be obliged to make a declaration where a Regional Councillor has failed, without reasonable excuse, to comply with section 119 which obliges a Regional Councillor to declare pecuniary interests at meetings and section 119A which obliges Regional Councillors to disclose pecuniary interests. Where the Commission makes either such a declaration the Regional Councillor ceases to hold office.

Schedule 1 Item 36 - Suspension and removal from office of Regional Councillor

85 Formal

Schedule 1 Item 37 - Chairpersons of Regional Councils ceasing to hold office

86 Item 37 relates to section 127C.

87 Item 37 would insert a new subsection 6A after subsection 127C(6).

88 The new subsection 6A would provide that a person ceases to be a Chairperson of a Regional Council if the Federal Court orders that he or she is taken not to have been duly elected as a member of a Regional Council. This would remove any requirement for the Minister to terminate the person's appointment as Regional Council Chairperson.

Schedule 1 Item 38 - Council Deputy Chairpersons - ceasing to hold office

89 Item 38 would amend subsection 127E(2) to provide that if the Deputy Chairperson of a Regional Council becomes a Chairperson of a Regional Council, he or she ceases to be the Deputy Chairperson of the Regional Council.

Schedule 1 Item 39 - Deputy Chairpersons of Regional Councils ceasing to hold office

90 Item 39 would insert a new subsection 6A after subsection 127G(6).

91 The new subsection 6A would provide that a person ceases to be a Deputy Chairperson of a Regional Council if the Federal Court orders that he or she is taken not to have been duly elected as a member of a Regional Council. This would remove any requirement for the Minister to terminate the person's appointment as Regional Council Deputy Chairperson.

Schedule 1 Item 40 - Alternate of the Deputy Chairperson of Regional Councils ceasing to hold office

92 Item 40 would amend subsection 127J(4) to provide that if the alternate of the Deputy Chairperson of a Regional Council becomes a Chairperson of a Regional Council or the Deputy Chairperson of a Regional Council, he or she ceases to be the alternate of the Deputy Chairperson.

Schedule 1 Item 41 - Regional Council Meetings

93 Item 41 would insert new subsections 4A, 4B and 4C after subsection 128(4).

94 The new subsection 128(4A) would provide that when a meeting of the Regional Council is called the Chairperson of the Regional Council, or if the Regional Council does not have a Chairperson, the Commission Chairperson must cause notice of the

proposed date time and place of the meeting to be publicly notified at least 7 days before the proposed date of the meeting in any manner that the Chairperson thinks appropriate.

95 The new subsection 128(4B) would provide that a Regional Council must make available at a meeting of the Council for inspection copies of the agenda and any other business papers prepared for the meeting except papers that in the opinion of the Chairperson of the Council are likely to be considered by the Council at the meeting at a time when it is closed to the public.

96 The new subsection 128(4C) would provide that a Regional Council must make available for inspection any documents presented to a Regional Council meeting other than documents presented at a time when the meeting was closed to the public.

Schedule 1 Item 42 - Regional Council Meetings

97 Item 42 would insert after section 128 new sections 128A, 128B and 128C.

98 Subsection 128A(1) would provide that anyone is entitled to be present at a meeting of a Regional Council.

99 Subsection 128A (2) would provide that a person is not entitled to be present at a Regional Council meeting if the Council has passed a resolution to that effect or to the effect that the presiding member may give a direction excluding persons and the presiding member has in fact given such a direction.

100 Subsection 128A (3) would provide that a person is not entitled to be present at a Regional Council meeting if the Council is considering an excludable matter and the Council has resolved that the meeting be closed to the public.

101 Subsection 128A (4) would provide that a resolution that the meeting must be closed to the public must identify the matter concerned and must be recorded in the minutes of the meeting.

102 Section 128B would provide that a Regional Council must allow any person to inspect, at any reasonable time, without charge, any documents described in the following paragraphs that are in its possession:

- (a) a document setting out a code of conduct to be observed by the Council or its members;

- (b) rules for the conduct of proceedings at meetings of the Council;

- (c) a regional or other plan formulated by the Council;

- (d) a determination of, or any other document relating to, remuneration or allowances for members;

- (e) a document identifying any of the facilities that are provided for members;

(f) the minutes of proceedings at meetings of the Council other than any part of the minutes that relates to an excludable matter;

(g) a pecuniary interest determination made by the Minister under subsection 119(2);

(h) any other document to which the person is entitled to access under the *Freedom of Information Act 1982*.

103 Section 128C would provide that the following are excludable matters for the purposes of sections 128A and 128B:

(a) a matter relating to a member of the staff of the Regional Council or to any other person assisting the Council in the performance of its functions:

(b) a matter involving personal hardship suffered by a person:

(c) any of the following:

(i) a trade secret:

(ii) other information having a commercial value the disclosure of which would, or could reasonably be expected to, affect a person adversely in respect of the person's lawful business, professional, commercial or financial affairs;

(iii) information (other than a trade secret or information to which subparagraph (ii) applies) that would, or could reasonably be expected to, confer a financial advantage on a competitor of the Regional Council;:

(d) a proposal for the making of a grant or loan, or the giving of a guarantee, by the Regional Council;

(e) any matter the divulging of which is prohibited by section 90;

(f) information the disclosure of which would found an action for breach of confidence;

(g) information of such a nature that it would be privileged from being disclosed in legal proceedings on the ground of legal professional privilege;

(h) information the disclosure of which would, or could reasonably be expected to, prejudice the enforcement or proper administration of the law;

(i) a matter affecting the security of the Regional Council, its members, its staff or its property;

(j) a motion to close the meeting to the public.

Schedule 1 Item 43 - Injunctions

104 Item 43 would insert a new section 139A at the end of Division 7 of Part 3.

105 The new section 139A would provide that a Supreme Court of a State or Territory may issue injunctions in relation to elections under the Act.

106 Subsection 139A (1) would provide that if a person has engaged, is engaging or is proposing to engage in any conduct that constitutes a contravention of, or an offence against, the Act in its application to an election, a Supreme Court may, on the application of the Australian Electoral Commission, grant an injunction restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to do something.

107 Subsection 139A(2) would provide that if:

(a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do something; and

(b) the refusal or failure is a failure to comply with, or an offence against, this Act in its application to an election held under the Act;

a Supreme Court may, on the application of the Australian Electoral Commission, grant an injunction requiring the person to do the thing.

108 Subsection 139A (3) would provide that if an application is made to a Supreme Court for an injunction the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct pending the determination of the application.

109 Subsection 139A (4) would provide that a Supreme Court may discharge or vary an injunction.

110 Subsection 139A(5) would provide that, if an application is made to a Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the court to grant the injunction may be exercised:

(a) if the court is satisfied that the person has engaged in conduct of that kind whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind - whether or not the person has previously engaged in conduct of that kind and whether or not there is

an imminent danger of substantial damage to anyone if the person engages in conduct of that kind.

111 Subsection 139A(6) would provide that if an application is made to the Supreme for the grant of an injunction requiring a person to do something, the power of the court to grant the injunction may be exercised:

- (a) if the court is satisfied that the person has refused or failed to do the thing - whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the thing; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do the thing - whether or not the person has previously refused or failed to do the thing and whether or not there is an imminent danger of substantial damage to anyone if the person refuses or fails to do the thing.

112 Subsection 139A(7) would provide that if the Australian Electoral Commission applies to a Supreme Court for the grant of an injunction under section 139A, the court must not require the applicant or anyone else, as a condition of the granting of an interim injunction, to give any undertakings as to damage.

113 Subsection 139A(8) would provide that The Supreme Court of each State is invested with federal jurisdiction and, to the extent that the Constitution permits, jurisdiction is conferred on the Supreme Court of each Territory, with respect to all matters arising under section 139A.

114 Subsection 139A(9) would provide that an appeal lies to the Federal Court of Australia from a judgment or order of a Supreme Court exercising jurisdiction under section 139A.

115 Subsection 139A(10) would provide that the powers conferred on a Supreme Court under section 139A are in addition to, and not in derogation of, any other powers of the court, whether conferred by the Act or otherwise.

Schedule 1 Item 44 - Torres Strait Regional Authority's interest in land

116 Item 44 would insert after section 142J a new section 142JA.

117 The new section would provide that any liability to the Torres Strait Regional Authority arising out of a grant or a loan made by the Authority is taken to be an interest of the Authority in land.

118 The new subsection 142JA(2) would provide that the land is charged with the payment of all costs and expenses incurred by the Authority in respect of its enforcement of the liability.

Schedule 1 Item 45 - Timing of TSRA elections - Minister may defer elections if a Commission Administrator or a Torres Strait Administrator appointed

119 Item 45 would add at the end of section 142Y new subsections 142Y(5) and (6).

120 If a Commission Administrator or a Torres Strait Administrator has been appointed for a term which includes the date by which TSRA elections are required to be held, the Minister may delay the holding of those elections but may not delay the elections for more than 12 months.

Schedule 1 Item 46 - Torres Strait Administrator

121 Item 46 would insert a new Division 12 after Division 11 of Part 3A. The new Division would contain new sections 144ZR to 144 ZX inclusive.

122 Division 12 would provides for the Minister to appoint a Torres Strait Administrator of the TSRA in certain circumstances and provides for the operation of the Torres Strait Administrator's appointment.

144ZR Appointment of Torres Strait Administrator

123 Section 144ZR would provide for the Minister to appoint a Torres Strait Administrator of the TSRA if the Minister is satisfied that:

the administration of the TSRA's funding has involved fraud or gross mismanagement;

the TSRA has intentionally failed to comply with a general direction given by the Minister (under section 142E of the Act) or a Ministerial Finance Direction about the administration of the TSRA's finances (under section 144ZD of the Act); or

the TSRA has failed to take reasonable steps to prevent a contravention of a direction in force under section 142E or 144ZD of the Act.

124 Sub-section 144ZR(2) would provide that the appointment of the Torres Strait Administrator shall be for a period of 18 months unless the instrument of appointment specifies a lesser period.

125 Sub-section 144ZR(3) would ensure that the period of appointment of a Torres Strait Administrator does not exceed 18 months even when two or more Administrators are appointed consecutively. An example might be where an Administrator resigns and another person is appointed in his or her place.

144ZS Role of Torres Strait Administrator

126 Section 144ZS would prescribe the role of the Torres Strait Administrator which is to control and manage the TSRA's property and affairs and to perform any function

and exercise any power of the TSRA. The full range of TSRA operations may therefore continue after appointment of an Administrator.

127 In particular, the Administrator may give a delegation, execute a document, bring or defend proceedings, or do anything else in the TSRA's name and on its behalf.

128 Subsection 144ZS(2) would specify that the Torres Strait Administrator is acting as the TSRA's agent. Subsection 144ZS(3) confirms that even though the Commission Administrator assumes the powers and functions of Commissioners, he or she does not take up ex officio membership of any other body which is conferred on a Commissioner.

144ZT Effect of appointment of TSRA Administrator

129 Section 144ZT would provide for the position of the TSRA and the TSRA members while an appointment of a Torres Strait Administrator is in force. The TSRA may not hold any meeting and no person other than the Torres Strait Administrator may perform a function or exercise a power as a TSRA member during the appointment of the TSRA Administrator. Therefore, although the TSRA members are not removed, they may not carry out their functions to be carried out by the Administrator.

130 Paragraph 144ZT(1)(c) would provide that while an appointment of a Torres Strait Administrator is in force, any delegation of the TSRA's functions or powers in force immediately before the appointment continues until revoked by the Torres Strait Administrator. This allows the day to day functions of the TSRA to continue being performed by TSRA staff unless prevented by the Torres Strait Administrator. Paragraph 144ZT(1)(d) provides that (during the appointment of a Commission Administrator) a Commissioner must not participate as an ex officio member of another body unless the Minister otherwise determines. Paragraph 144ZT(1)(e) provides that (during the appointment of a Commission Administrator where a position on another body must be held by a Commissioner, the membership of the person appointed to that position may continue unless the Minister otherwise determines.

131 Sub-section 144ZT(2) would provide that the TSRA members are not to be remunerated or to receive allowances during the appointment of an Administrator unless the Minister determines that remuneration or allowances should be paid. The Minister may determine that remuneration and allowances are paid to some TSRA members only but may not determine remuneration or allowances to be paid to any TSRA member in excess of the relevant Remuneration Tribunal determination in relation to the TSRA member.

132 Paragraph 144ZT(2)(c) would provide for the remuneration and allowances determined by the Minister to be paid from funds legally available to the TSRA for the purpose of paying TSRA members' remuneration and allowances.

Section 144ZU Torres Strait Administrator to investigate TSRA's Affairs

133 Section 144ZU(1)(a) would provide that the Torres Strait Administrator may review any audits and evaluations previously undertaken under the provisions of the Act within the previous three years in relation to the TSRA's affairs and operations.

134 Section 144ZU(1)(b) would provide that the Torres Strait Administrator may review any audits and evaluations previously undertaken under the provisions of the Act in relation to any person to whom the TSRA has made a grant or loan in the previous three years, or at a time prior to this that the Administrator considers appropriate.

135 Paragraph 144ZU(2) would make it clear that the Torres Strait Administrator also has the power to exercise the TSRA's functions to initiate audits or evaluations.

Section 144ZV Report by the Torres Strait Administrator

136 Section 144ZV would provide for the Torres Strait Administrator to report to the Minister on any changes necessary to the structure and operation of the TSRA to ensure either of the following:

the proper provision of services to Aboriginal peoples and Torres Strait Islanders.

full accountability for the TSRA's expenditure on services.

Such a report might go to the matter (fraud, gross mismanagement or contravention of a direction) which led to appointment of the TSRA Administrator.

Section 144ZW Terms and conditions of appointment of TS Administrator

137 Sub-section 144ZW(1) would provide for the Torres Strait Administrator to receive remuneration and allowances in accordance with section 194 of the Act, that is, either as determined by the Remuneration Tribunal or by the Minister in writing.

138 Sub-section 144ZW(2) would provide for the resignation of the Torres Strait Administrator in writing to the Minister and signed by the Administrator.

139 Sub-section 144ZW(3) would provide that the Minister may terminate the appointment of Torres Strait Administrator if:

the Torres Strait Administrator is found guilty of misbehaviour or becomes physically or mentally incapable of performing the duties of Torres Strait Administrator;
the Torres Strait Administrator becomes bankrupt, applies to benefit from laws relating to the relief bankrupt or insolvent debtors, or compounds with creditors, or attempts to seek remuneration for their benefit;
the Minister finds the performance of the Torres Strait Administrator unsatisfactory.

The termination must be in writing and signed by the Minister.

140 Sub-section 144ZW(4) would provide that the Minister may not make a determination under section 4A as to what may be taken to be misbehaviour warranting termination of the Torres Strait Administrator. Subsections 78F(5) and (6) confirm that the Torres Strait Administrator holds office under the terms and conditions determined by the Minister and is paid remuneration and allowances from the TSRA's funds.

Section 144ZX Exemption from suit

141 Section 144ZX would provide that the Torres Strait Administrator is exempt from suit in relation to actions or omissions made in good faith in the performance of his or her duties as Torres Strait Administrator.

Schedule 1 Item 47 - Commercial Development Corporation General Manager - Disclosure of Interest

142 Item 47 would insert a new section 172A after section 172.

The new section would provide that the Commercial Development Corporation General Manager must give written notice to the Minister and Chairperson of the Commercial Development Corporation Board of all direct or indirect pecuniary interests that the General Manager has or acquires in any business in or in any body corporate that carries on a business. It further provides that if the Commercial Development Corporation General Manager has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commercial Development Corporation Board, the General Manager must, as soon as possible after becoming aware of the relevant facts, disclose the nature of the interest to the Chairperson of the Board in writing.

Schedule 1 Item 48 - Commercial Development Corporation

143 Item 48 would repeal the penalty imposed by subsection 191 (\$2000.00 or imprisonment for one year or both) and impose a penalty of imprisonment of 1 year in its stead.

Schedule 1 Item 49 - Indigenous Land Corporation's and subsidiaries' interest in land

144 Item 49 would insert new sections 191SA and 191SB after section 191S.

145 The new subsection 191SA(1) would provide that any liability to the Indigenous Land Corporation arising out of a grant or a loan made by the Corporation is taken to be an interest of the Corporation in land.

146 The new subsection 191SA(2) would provide that the land is charged with the payment of all costs and expenses incurred by the Corporation in respect of its enforcement of the liability.

147 The new subsection 191SB(1) would provide that any liability to the Indigenous Land Corporation subsidiary arising out of a grant or a loan made by the subsidiary is taken to be an interest of the subsidiary in land.

148 The new subsection 191SB(2) would provide that the land is charged with the payment of all costs and expenses incurred by the subsidiary in respect of its enforcement of the liability.

Schedule 1 Items 50 and 51.

149 These items amend the penalty provisions of section 197.

Schedule 1 Item 52 - Offences guarantees grants and loans

150 Item 52 would amend section 197 by inserting a new subsection 197(3) providing that a person who contravenes subsection 197(2) (false or misleading statement) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months.

Schedule 1 Item 53 - Offences - elections

151 Item 53 would amend subsections 198 (1) and (2) by omitting the penalty of \$5000.00 and substituting 50 penalty units.

Schedule 1 Item 54 - Offences - elections

152 Item 54 amend subsection 198 (3) by omitting the penalty of \$1000.00 and substituting 10 penalty units.

Schedule 1 Item 55 - Offences - elections

153 Item 55 would insert new subsections 198(3A) and (3B) after subsection 198 (3).

154 The new subsection 198(3A) would provide that a person must not make a false or misleading statement to another person as to the other person's right to vote in an election.

155 The new subsection 198 (3B) would provide that a person must not encourage another person to vote in an election if the first mentioned person knows that the other person is not entitled to vote in the election.

Schedule 2

156 Schedule 2 makes certain amendments to the Aboriginal and Torres Strait Islander Commission Act (No.3) 1993. (Referred to below as the "1993 Act")

Schedule 2 Item 1 - Repeal of Part 31 of the 1993 Act

157 Item 1 repeals Part 31 of the 1993 Act. (Part 31 provided for amendments to the *Aboriginal and Torres Strait Islander Commission Act 1989* to reduce the number of Commissioners from 19 to 17 and to provide that all Commissioners would be elected)

Schedule 2 Item 2 - Reduction in the number of Commissioners

158 Item 2 would repeal Schedule 4 of the 1993 Act which provided for amendments relating to the reduction in the number of Commissioners.

Schedule 2 Item 3

159 Item 3 would provide that the Part and Schedule repealed by Items 1 and 2 are taken never to have been enacted.

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