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1996

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE SENATE

**ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION
AMENDMENT BILL (NO.2) 1996**

EXPLANATORY MEMORANDUM

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

OUTLINE

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

Provisions relating to the Indigenous Land Corporation: 1. widen the powers of the ILC to allow it to grant land to trusts, partnerships and individuals as well as corporations; 2. require the ILC to take into account the needs of Aboriginal persons and Torres Strait Islanders, suffering most disadvantage in access to land, in performing its functions; 3. empowering the Minister, in consultation with the ILC Board, to appoint such additional members she/he may consider appropriate from time to time; 4. technical amendments to ILF and ILC provisions;

Provisions relating to the Commissioners and Regional Council Chairpersons

1. provide that a person is disqualified from standing for election as a Commissioner or Regional Councillor if he or she has been removed from office within the previous three years for misbehaviour; 2 clarify that the Minister's consent is required for Commissioners and Regional Council Chairpersons to engage in outside employment;

Provisions relating to Commission decisions: 1. make it possible for corporations as well as natural persons to obtain internal review of the merits of a decision to refuse a loan or guarantee 2. allow the Commission to delegate its power to review delegates' decisions 3. allow review by the Administrative Appeals Tribunal of the merits of a decision to refuse a loan or guarantee once internal review by the Commission has been exhausted
formal amendments.

FINANCIAL IMPACT STATEMENT

Financial impact of the amendments is expected to be nil.

NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides that the Act may be cited as the *Aboriginal and Torres Strait Islander Commission Amendment (No.2) Act 1996*.

Clause 2 - Commencement

2. This clause provides that the Act will commence on the day on which it receives the Royal Assent.

Clause 3 - Schedule

3. This clause provides that the Act specified in the Schedule to the Act is amended as set out in the Schedule

Schedule 1 AMENDMENTS OF THE *ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION ACT 1989*

Item 1 - Amendment of Subsection 4(1)

This item amends subsection 4(1) by defining the expressions 'Aboriginal or Torres Strait Islander partnership' and 'Aboriginal and Torres Strait Islander trust'

Item 2, 22, 23 and 24 - Amendment of Section 4, Subsection 191V(2) and Subsection 191X(1)

Items 22 and 23 amend subsection 191V(2) to enable the Minister, in consultation with the ILC Board, to appoint additional members to the ILC Board from time to time. Items 2 and 24 make consequential amendments to the definition 'appointed Indigenous Land Corporation Director' and to the requirement for ILC Directors, other than the Commission Chairperson, to be appointed by the Minister.

Item 3 - Amendment of Section 30

This item amends section 30 to clarify that a person holding office full time as a Commissioner may engage in outside paid employment, but only with the written approval of the Minister.

Item 4 - Amendment of Section 40

This item amends section 40 to provide that engagement in paid employment outside of office without the Minister's written consent is grounds for the Minister to terminate the appointment of a Commissioner.

Item 5 - Repeal of Paragraph 45(1)(d)

The repeal of paragraph 45(1)(d) enables the Commission to delegate its power to review the decision of a delegate to another delegate.

Item 6 - Amendment of Section 102

This item adds subsection 102(1B) which prevents a Regional Councillor who is removed from office after suspension for misbehaviour by the Commission from standing for election or being elected as a Regional Councillor until after the next round of Regional Council elections. It is not intended to prevent a Regional Councillor from standing for election or being elected as a Regional Councillor if removed from office after suspension for misbehaviour by the Minister, i.e. as a Commissioner or Regional Council Chairperson.

Item 7 - Amendment of Section 127A

This item amends Section 127A to clarify that a person holding office as a Regional Council Chairperson may engage in outside paid employment, but only with the written approval of the Minister.

Items 8 - amendment of Section 127C

This item amends subsection 127C(1) to enable the Minister to remove a Regional Council Chairperson from office for engaging in outside paid employment without the approval of the Minister.

Item 9 - Amendment of Subsection 131(2)

The amendment to section 131(2) clarifies that a Commissioner who is removed from office for misbehaviour may not stand for election at the next election for a person to represent a zone until after the next round of zone elections.

Item 10 - Amendment of Section 191C

This item adds subsection 191C(2) which requires the Indigenous Land Corporation (ILC) to take into account the needs of Aboriginal persons and Torres Strait Islanders, suffering most disadvantage in access to land, in performing its functions.

Items 11 to 15 - Amendment of Section 191D

These items amend section 191D to enable the ILC to make grants to and to give guarantees for Aboriginal and Torres Strait Islander trusts and in exceptional circumstances, to be determined by the ILC Board, to Aboriginal and Torres Strait Islander individuals and partnerships.

Item 16 - Amendment of Paragraph 191J(1)(b)

This item amends paragraph 191J(1)(b) to include in land, which the ILC may dispose of as excess, land which it considers it no longer needs for the purpose of making a grant to an Aboriginal and Torres Strait Islander trust, individual or partnership.

Item 17 - Amendment of Paragraph 191N(2)(a)

This item amends paragraph 191N(2)(a) to include the acquisition of interests in land for Aboriginal and Torres Strait Islander trusts and to Aboriginal and Torres Strait Islander individuals and partnerships in the matters to be covered in the national indigenous land strategy.

Item 18 - Amendment of Paragraph 191P(4)(a)

This item amends paragraph 191N(2)(a) to include the acquisition of interests in land for Aboriginal and Torres Strait Islander trusts and to Aboriginal and Torres Strait Islander individuals and partnerships in the matters to be covered in a regional indigenous land strategy.

Item 19 to 21 - Amendment of Division 4 of Part 4A

This item amends Division 4 of Part 4A so that all land acquired from the ILC or a subsidiary of the ILC, or with money granted by the ILC or a subsidiary of the ILC is subject to the restrictions of that Division.

Item 25 - Amendment of Subsection 191X(4)

This item amends Subsection 191X(4) so that the Minister is required to be satisfied as to the experience, in the fields specified in paragraphs (a), (b) and (c), of all persons to be appointed to be ILC Directors.

Item 26 - Amendment of Subsection 192D(3)

This item amends subsection 192D(3) to enable the ILC Board to determine the terms and conditions on which the ILC Board can grant the ILC Chairperson leave of absence.

Item 27 - Amendment of Subsection 193C(1)

This item amends subsection 193C(1) so that payments to the ILC from the Indigenous Land Fund, under that section, are to be made on the last business day in August of each financial year.

Item 28 and 29 - Amendment of Subsection 193R(1)

These items amend subsection 193R to include matters in relation to Aboriginal and Torres Strait Islander trusts and Aboriginal and Torres Strait Islander individuals and

partnerships in the matters in relation to which the stamp duty and tax exemptions granted by section 193R extends.

Items 30 to 38 - Amendment of Section 193S

These items amend section 193S to include participants in a consultative forum under section 193G and information acquired and documents obtained in connection with such a consultative forum in the classes of people covered and information protected, by the secrecy provisions of section 193S.

Item 39 - Amendment of Subsection 195(1)

This item amends section 195 to broaden the category of persons who may request review by the Commission of a decision to refuse a loan or guarantee.

Item 40 - Amendment of Section 195

This item adds subsection 195(3) to section 195 so that internal review of a delegate's decision cannot be subject to further internal review.

Items 41 to 43 - Amendment of Section 196

These items amend section 196 to extend the jurisdiction of the Administrative Appeals Tribunal to review decisions to those decisions for which a right of review is extended by the amendment of section 195.

Item 44 - Validation of Review Decisions

This item validates any review by the Commission of decisions of delegates resulting from requests which may have been made by bodies corporate and unincorporated bodies before the amendments to section 195 take effect.



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