

1989

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL AND TORRES STRAIT ISLANDER  
COMMISSION BILL 1989

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on  
Behalf of the Government

(Circulated by authority of the Minister for  
Aboriginal Affairs, the Honourable Gerry Hand, MP)

**ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1989**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

**OUTLINE AND FINANCIAL IMPACT STATEMENT**

The amendments and new clauses to be moved on behalf of the Government would :

- . make amendments consequential upon the proposed alteration of the name of the Institute to be established by the Institute of Aboriginal and Torres Strait Islander Studies Bill 1989 to the 'Australian Institute of Aboriginal and Torres Strait Islander Studies'.
- . require the Chief Executive Officer to report to the Minister
- . make it clear that the Minister can appoint an Administrator for a Regional Council where there are no Regional Councillors
- . provide for the review by the Administrative Appeals Tribunal of decisions by the Commission under clause 20(1) and (3)
- . bring the provisions of the Bill relating to Regional Council elections closer in line with the provisions of the Commonwealth Electoral Act 1918.

The amendments and new clauses would have no financial impact.

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1989

CLAUSE 4 : INTERPRETATION

The amendments to clause 4 are consequential upon the alteration of the name of the Institute to be established by the Institute of Aboriginal and Torres Strait Islander Studies Bill 1989 to the 'Australian Institute of Aboriginal and Torres Strait Islander Studies'.

CLAUSE 44 : CHIEF EXECUTIVE OFFICER

The amendment to this clause would insert a new clause 44(5) which would require the Chief Executive Officer to report to the Minister as well as to the Commission.

CLAUSE 99 : PERSONS ENTITLED TO VOTE AT  
REGIONAL COUNCIL ELECTIONS

This amendment would open the way for Regional Council election rules to be made enabling a person to vote at a Regional Council election in circumstances where the person would be able to vote at an election for the Commonwealth Parliament even though :

- (a) the person's name is not on the Commonwealth Electoral Roll; or
- (b) the person's place of living or address is not shown on the Commonwealth Electoral Roll.

Rules bringing voting in Regional Council elections in this regard into line with voting at elections for the Commonwealth Parliament would be made under clause 109(2A).

**CLAUSe 100A : ERRORS IN COMMONWEALTH ELECTORAL  
ROLL NOT TO AFFECT ENTITLEMENTS**

This clause would bring the Bill into line with the Commonwealth Electoral Act 1918 in respect of errors in the Commonwealth Electoral Roll. The clause would provide that for the purpose of the Bill, a person's name shall be taken to be on the Roll if the name appearing on the Roll is, in the opinion of an authorised Electoral Officer, sufficient to identify the person, even if :

- (a) a given name of the person has been omitted from the Roll, or a wrong given name has been entered on the Roll;
- (b) the person's surname has been misspelt; or
- (c) the Roll does not show the person's correct address.

Furthermore, for the purposes of the Bill, a person's name would be taken to be on the Commonwealth Electoral Roll even if his or her name as shown on that Roll has been changed through marriage.

**CLAUSe 109 : RULES FOR CONDUCT OF ELECTIONS**

The amendment to clause 109(1)(a) would make it clear that the rules could deal with elections to be conducted because previous elections have been declared to be void. Rules could accordingly be made to deal with, for example, the fixing of days for voting, the appointment of polling places and the notification of those actions, in respect of such elections.

By virtue of the amendment inserting a new clause 109(2)(aa) it would be clear that rules made under clause 109 could deal with the functions of Aboriginal liaison officers in connection with the determination of a person's entitlement to vote.

Clause 99(b) of the Bill requires that a person's name be on the Commonwealth Electoral Roll ('the Roll') for a person to be entitled to vote at an election for members of a Regional Council. Accordingly, a person whose name has been omitted from the Roll by reason of an error or mistake by an officer of the Australian Electoral Commission ('the AEC') would be unable to vote at Regional Council elections and, by virtue of clause 100(a) would not be qualified to stand for election, or to be elected, as a member of a Regional Council. By contrast, s.200(3) of the Commonwealth Electoral Act 1918 ('the Act') provides a means by which the votes of postal voters whose names do not appear on the Roll may be accepted for further scrutiny. Similarly, s.235(6) of the Act provides a means by which a voter may cast a provisional vote in person at an election, even though his or her name is not on the Roll.

Clause 99(c) also provides that a person is entitled to vote at an election for the members of a Regional Council if and only if the person's place of living as shown on the Commonwealth Electoral Roll is within the region for which the Regional Council is established. However, the Act provides for persons' addresses to be omitted from the Roll in certain circumstances, see s.104, and also provides for certain persons (itinerant voters) to be able to vote even though the Roll must not show their place of living, see ss.83(2) and 96.

Proposed clause 109(2A) would make it clear that Regional Council rules may be made under clause 109(1) which would enable such persons to vote at Regional Council elections in the same circumstances where they would be able to vote at an election for the Commonwealth Parliament.

#### CLAUSE 111 : CONSTITUTION OF REGIONAL COUNCILS

This amendment would make it clear that the Minister's power to appoint an Administrator to administer the affairs of a Regional Council is available when there are no members of the Regional Council.

**CLAUSE 193 : REVIEW BY ADMINISTRATIVE APPEALS TRIBUNAL**

This amendment would provide for review by the Administrative Appeals Tribunal of a decision of the Commission to issue a notice to a person under clause 20(1) or (3), the effect of which would be to require the person to repay a grant or loan.

**CLAUSE 228 : PUBLIC SERVICE ACT**

The amendment would omit clause 228(4) of the Bill. The amendment is proposed because more favourable coverage would be provided for officers of the Australian Public Service who take up a position as General Manager of the Corporation if that office were to be prescribed under paragraph (c) of the definition of 'public office' contained in s.87(1) of the Public Service Act 1922.

**SCHEDULE 4**

The amendments to the Schedule would bring the provisions of the Schedule closer into line with the Commonwealth Electoral Act 1918. In particular, the Schedule would provide, after amendment, for the Court of Disputed Elections to deal with guidelines concerning qualifications of Regional Councillors, and of vacancies in Regional Councils. The provisions in this regard reflect Part XX of the Commonwealth Electoral Act 1918, and would be inserted as a new Part 3 to the Schedule. The insertion of the new Part would necessitate the re-ordering of the other provisions of the Schedule.



