

1988-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES
BILL 1989

EXPLANATORY MEMORANDUM

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

INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES
BILL 1989

OUTLINE AND FINANCIAL IMPACT STATEMENT

The purpose of this Bill is to establish the Institute of Aboriginal and Torres Strait Islander Studies ('the Institute'), which would replace the existing Australian Institute of Aboriginal Studies ('the AIAS'). Generally speaking, the Institute would operate much as the AIAS operates. However, the membership of the Institute would be differently structured to that of the AIAS, and the Council of the Institute would include representation from the Aboriginal and Torres Strait Islander Commission. This would provide for an enhanced role for Aboriginal persons and Torres Strait Islanders in Institute activities.

The Bill would establish the Institute as a body corporate and set out its functions (Parts 2 and 3).

Part 4 of the Bill would provide that membership of the Institute will comprise the existing members, corresponding members and associate members of the AIAS, though the time for which they will remain members because of their transfer by the Bill will vary.

Part 5 of the Bill would establish a Council to head the Institute, which would be managed by a Principal (see Part 6 of the Bill) who would be required to act in accordance with the Council's policies and directions. The Council would have 9 members including at least 5 Aboriginal persons or Torres Strait Islanders. At least 3 of the 9 members would also have to be Aboriginal and Torres Strait Islander Commissioners.

Parts 7 and 8 of the Bill would deal with the staff of the Institute and the establishment of Research Advisory Committees respectively.

Part 9 of the Bill would deal with the financial administration of the Institute.

Parts 10 and 11 of the Bill would deal with miscellaneous matters, and with consequential and transitional matters, for example, the transfer of staff, assets and liabilities etc., from the AIAS to the Institute.

The Bill would have no financial impact.

INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

BILL 1989

PART 1 - PRELIMINARY

CLAUSE 1 : SHORT TITLE

This clause would provide that the Act may be cited as the Institute of Aboriginal and Torres Strait Islander Studies Act 1989.

CLAUSE 2 : COMMENCEMENT

This clause would provide that the Bill will commence at the same time as the Aboriginal and Torres Strait Islander Commission Bill 1989.

CLAUSE 3 : INTERPRETATION

This clause would define a number of terms and expressions for the purposes of the Bill.

PART 2 - INSTITUTE OF ABORIGINAL AND TORRES STRAIT
ISLANDER STUDIES

CLAUSE 4 : INSTITUTE OF ABORIGINAL AND TORRES STRAIT
ISLANDER STUDIES

Clause 4 would establish an Institute of Aboriginal and Torres Strait Islander Studies. The Institute would be a body corporate; have a seal; be able to acquire, hold and dispose of real and personal property, and be able to sue and be sued. The seal would have to be kept as the Institute directs and used as authorised by the Institute. By virtue of clause 4(4) all courts, judges and persons acting judicially would be required to take judicial notice of the imprint of the seal of the Institute appearing on a document, and to presume that it was duly affixed.

PART 3 - FUNCTIONS AND POWERS OF INSTITUTE

CLAUSE 5 : FUNCTIONS OF INSTITUTE

Clause 5 would provide that the Institute has the following functions:

- (a) to undertake and promote Aboriginal and Torres Strait Islander studies;
- (b) to publish the results of Aboriginal and Torres Strait Islander studies and to assist in the publication of the results of such studies;
- (c) to conduct research in fields relevant to Aboriginal and Torres Strait Islander studies and to encourage other persons or bodies to conduct such research;
- (d) to assist in training persons, particularly Aboriginal persons and Torres Strait Islanders, as research workers in fields relevant to Aboriginal and Torres Strait Islander studies;
- (e) to establish and maintain a cultural resource collection consisting of materials relating to Aboriginal and Torres Strait Islander studies;
- (f) to encourage understanding in the general community of Aboriginal and Torres Strait Islander societies;
- (g) such other functions as are conferred on the Institute by the Bill;
- (h) to do anything else that is incidental or conducive to the performance of any of the above-mentioned functions.

CLAUSE 6 : POWERS OF INSTITUTE

This clause would provide the the Institute has power to do everything necessary or convenient to be done for or in connection with the performance of its functions. The clause would further provide that in spite of anything contained in the Bill, any money or other property held by the Institute on trust must be dealt with in accordance with the powers and duties of the Institute as trustee.

PART 4 - MEMBERS OF INSTITUTECLAUSE 7 : MEMBERS OF INSTITUTE

Clause 7(1) would provide that, subject to clauses 8 and 9, the following persons are members of the Institute :

- (a) all persons who, immediately before the commencement of the clause, were members of the Australian Institute of Aboriginal Studies;
- (b) all persons who, immediately before the commencement of the clause, were listed in a register maintained by the Australian Institute of Aboriginal Studies as associate members or corresponding members of that Institute;
- (c) such other persons as are appointed by the Council to be members of the Institute.

Clause 7(2) would prohibit the Council from appointing a person to be a member of the Institute unless:

- (a) the person has applied for membership of the Institute in accordance with the Institute rules made under clause 46;
- (b) the person has demonstrated interest in Aboriginal and Torres Strait Islander studies;

- (c) the Research Advisory Committee has advised the Council whether or not the Committee considers the person should be appointed; and
- (d) the Council has considered the advice of the Committee.

CLAUSE 8 : PERIOD OF MEMBERSHIP

Clause 8 would provide that persons who become members of the Institute because they were former members, or corresponding members of the Australian Institute of Aboriginal Studies, or because they have been appointed by the Council, would continue to be members of the Institute as a result of that membership, or appointment, for a period of 5 years. A person who becomes a member of the Institute because he or she was an associate member of the Australian Institute of Aboriginal Studies would continue to be a member of the Institute for a period equal to the unexpired portion of the person's term as an associate member.

Clause 8(3) would make it clear that the Council may re-appoint a former member as a member of the Institute.

CLAUSE 9 : RESIGNATION

This clause would provide that a member of the Institute may resign by writing signed by him or her and sent to the Principal.

CLAUSE 10 : REGISTER OF MEMBERS

This clause would oblige the Principal to establish and maintain a register of the members of the Institute.

CLAUSE 11 : RIGHTS OF MEMBERS

Clause 11 would provide that membership of the Institute does not confer any rights or powers other than those expressly conferred by the Bill or by the Institute rules.

PART 5 - COUNCIL OF INSTITUTE

DIVISION 1 - CONSTITUTION OF COUNCIL

CLAUSE 12 : CONSTITUTION OF COUNCIL

Clause 12(1) would establish a Council of the Institute consisting of:

- (a) 4 persons elected by the members of the Institute in accordance with the Institute rules, being persons who are themselves members of the Institute;
- (b) one person appointed by the Minister, being a person who is a Torres Strait Islander and whose appointment has been recommended by the Advisory Board; and
- (c) 4 persons appointed by the Minister, being persons who are Aboriginal persons or Torres Strait Islanders.

By virtue of clause 12(2), at least 3 of the Councillors appointed under clause 12(1)(c) must be Commissioners, and clause 12(3) would require that all the Councillors hold office on a part-time basis. (See clause 50 for the procedures governing the first election under clause 12(1)(a).)

CLAUSE 13 : RESPONSIBILITIES OF COUNCIL

This clause would impose on the Council the responsibility of ensuring the proper and efficient performance of the functions of the Institute and determining the policy of the Institute with respect to any matter.

CLAUSE 14 : CHAIRPERSON AND DEPUTY CHAIRPERSON OF COUNCIL

This clause would require the Minister to appoint a Chairperson and a Deputy Chairperson of the Council from among the Councillors.

Clause 14(2) would provide that the Councillor who is the Chairperson or the Deputy Chairperson of the Council would cease to be the Chairperson or the Deputy Chairperson of the Council, as the case may be, if he or she ceases to be a Councillor. Clause 14(2) does not however, mean that the Chairperson or Deputy Chairperson must be a Commissioner.

DIVISION 2 - ADMINISTRATIVE PROVISIONS

CLAUSE 15 : TERM OF OFFICE

Clause 15 would provide that a Councillor appointed by the Minister holds office for such period, not exceeding 4 years, as is specified in the instrument of appointment, and that an elected Councillor holds office for such period not exceeding 4 years as is provided by the rules made under clause 46.

CLAUSE 16 : REMUNERATION AND ALLOWANCES

This clause would provide that a Councillor is entitled to remuneration and allowances in accordance with clause 43.

CLAUSE 17 : LEAVE OF ABSENCE

This clause would empower the Minister to grant a Councillor leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Minister determines in writing. The clause would also empower the Minister to delegate to the Council Chairperson, the power to grant leave of absence to other Councillors.

CLAUSE 18 : ACTING APPOINTMENTS ETC

Clause 18(1) would require the Deputy Chairperson of the Council to act as the Council Chairperson:

- (a) during a vacancy in the office of Council Chairperson, whether or not an appointment has previously been made to the office; or

- (b) during any period, or during all periods, when the Council Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Clause 18(2) would empower the Minister to appoint a person to act as an appointed Councillor (including an appointed Councillor who is also the Chairperson or Deputy Chairperson of the Council):

- (a) during a vacancy in the office of the appointed Councillor, whether or not an appointment has previously been made to the office; or
- (b) during any period or during all periods, when the appointed Councillor is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

A person appointed to act during a vacancy would not be able to continue so to act for more than 6 months, and could not immediately be re-appointed.

Clause 18(4) would prohibit the Minister from appointing or re-appointing a person to act in the office of an appointed Councillor unless the person would be eligible for appointment to a vacancy in that office: see clause 12.

Clause 18(5) would empower the Minister to appoint a person to act as an elected Councillor during any period, or during all periods, when the elected Councillor is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Clause 18(6) would provide that the appointment of a person to act in the office of Councillor who is also the Chairperson or the Deputy Chairperson of the Council does not constitute an appointment of the person to act as the Chairperson or the Deputy Chairperson, as the case may be. Thus, if, for example, the Chairperson is absent from Australia the Deputy Chairperson would

act as Chairperson: clause 18(1). The Minister would also be able to appoint a suitably qualified person (clause 18(4)) to act in the office of the appointed Councillor who is the Chairperson, but the person so appointed would not then act as Chairperson (clause 18(6)).

Clause 18(7) would provide that anything done by or in relation to a person purporting to act under an appointment made under clause 18 would not be invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

CLAUSE 19 : DISCLOSURE OF INTERESTS

This clause would require a Councillor who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council, as soon as possible after the relevant facts have come to the Councillor's knowledge, to disclose the nature of the interest at a meeting of the Council.

Clause 19(2) would require that such a disclosure be recorded in the minutes of the meeting of the Council and the Councillor would be prohibited from:

- (a) being present during any deliberation of the Council with respect to that matter; or
- (b) taking part in any decision of the Council with respect to that matter.

CLAUSE 20 : RESIGNATION

This clause would provide that a Councillor may resign by writing signed by him or her and sent to the Minister.

CLAUSE 21 : TERMINATION OF MEMBERSHIP OF COUNCIL

Clause 21(1) would empower the Minister to terminate a person's membership of the Council for misbehaviour or for physical or mental incapacity.

The Minister would, by virtue of clause 21(2), have to terminate a person's membership of the Council if that person:

- (a) is absent, except on leave of absence granted under clause 17, from 3 consecutive meetings of the Council; or
- (b) fails, without reasonable excuse, to comply with clause 19.

Clause 21(3) would provide that a Councillor who:

- (a) was one of the four persons appointed by the Minister under clause 12(1)(c); and
- (b) was, at the time of his or her appointment, a Commissioner.

would cease to be a Councillor if he or she ceases to be a Commissioner.

An elected Councillor would cease to be a Councillor if he or she ceases to be a member of the Institute, by virtue of clause 21(4).

CLAUSE 22 : OTHER TERMS AND CONDITIONS

This clause would provide that a Councillor holds office on such terms and conditions (if any) in respect of matters not provided for by the Bill as are determined by the Minister by notice published in the Gazette.

DIVISION 3 - OPERATIONS OF COUNCIL

CLAUSE 23 : MEETINGS OF COUNCIL

Clause 23(1) would require the Council Chairperson to convene such meetings of the Council as, in the Chairperson's opinion, are necessary for the efficient performance of the Council's responsibilities. The Minister would also be able to convene a meeting of the Council at any time: clause 23(2)

The Council Chairperson would also have to convene a meeting of the Council upon receipt of a written request for a meeting signed by at least 4 other Councillors: clause 23(3).

At such a meeting a quorum would be constituted by 5 Councillors, at least one of whom must also be a Commissioner. However, where:

- (a) a Councillor who is present at a meeting would be required by clause 19 to leave the meeting during the deliberations, or to not take part in any decision, of the Council with respect to a particular matter; and
- (b) when the Councillor leaves the meeting there would be less than 5 Councillors present;

the Councillors remaining at the meeting would constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter. (See clauses 23(4) and (5).)

Clause 23(6) would require the Council Chairperson to preside at all meetings of the Council at which he or she is present. Under clause 23(7) if the Council Chairperson is not present:

- (a) if the Deputy Chairperson of the Council is present, the Deputy Chairperson of the Council would have to preside at the meeting; and

- (b) if the Deputy Chairperson is also absent, the Councillors present would be required to elect one of their number to preside at the meeting.

Clause 23(8) would provide that questions arising at a meeting of the Council must be determined by a majority of the votes of the Councillors present and voting, and by virtue of clause 23(9), the person presiding at a meeting of the Council would have a deliberative vote and, if the votes are equal, would also have a casting vote.

Clause 23(10) would require the Council Chairperson, when he or she convenes a meeting, to notify the Chief Executive Officer of the Aboriginal and Torres Strait Islander Commission of the time and place fixed for the meeting. This would reflect clause 23(11) under which the Chief Executive Officer, or his or her representative, would be entitled to be present at meetings of the Council, although they would not be entitled to vote at any such meeting.

Clause 23(12) would provide that the Council may regulate the conduct of proceedings at its meetings as it thinks fit, and would require the Council to cause minutes of those proceedings to be kept.

PART 6 - PRINCIPAL

CLAUSE 24 : PRINCIPAL

Clause 24 would establish the office of Principal of the Institute. By virtue of clause 51, the first Principal would be the person who immediately before the commencement of the clause, holds the office of Principal of the Australian Institute of Aboriginal Studies. (Further provision is made in respect of the first Principal in clause 51.) Any subsequent Principal would be appointed by the Council, and would be required to manage the day-to-day administration of the Institute : clause 24(1) and (2).

The Principal would be required by clause 24(3), in managing the administration of the Institute, and in exercising any powers conferred on the Principal by the Bill, to act in accordance with any policies determined, and any directions given, by the Council in writing.

CLAUSE 25 : PERIOD OF APPOINTMENT

This clause would provide that the Principal (other than the first Principal) would hold office for the period not exceeding 5 years that is specified in the instrument of appointment. It would not be possible to appoint as such a Principal a person who has attained the age of 65 years, nor could a person be appointed as Principal for a period that would extend beyond the day on which the person attains that age. The first Principal would hold office for an period equal to his or her unexpired term as Principal of the Australian Institute of Aboriginal Studies. (See clause 51.)

CLAUSE 26 : REMUNERATION AND ALLOWANCES

This clause would provide that the Principal is entitled to remuneration and allowances in accordance with clause 43.

CLAUSE 27 : RESIGNATION

This clause would enable the Principal to resign by writing signed by him or her and sent to the Council.

CLAUSE 28 : OTHER TERMS AND CONDITIONS

Clause 28 would provide that the Principal holds office on such terms and conditions (if any) in respect of matters not provided for by the Bill as are determined in writing by the Council by notice published in the Gazette.

PART 7 - STAFF

CLAUSE 29 : STAFF

This clause would provide that except for persons engaged under clause 30 as consultants, the staff required for the purposes of the Institute must be appointed or employed under the Public Service Act 1922.

Clause 29(2) would confer on the Principal all the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service under the Public Service Act 1922, so far as those powers relate to the branch of the Australian Public Service comprising the staff of the Institute (other than consultants), as if that branch were a separate Department of the Australian Public Service.

CLAUSE 30 : CONSULTANTS

This clause would empower the Principal, on behalf of the Institute, to engage as consultants to the Institute, persons having suitable qualifications and experience. The terms and conditions of the engagement of such consultants would be as determined by the Council by notice published in the Gazette.

PART 8 - RESEARCH ADVISORY COMMITTEE

CLAUSE 31 : RESEARCH ADVISORY COMMITTEE

This clause would establish a Research Advisory Committee of the Institute consisting of :

- (a) 3 members of the Council appointed by the Council;
- (b) 8 members of the Institute elected by the members of the Institute in accordance with the Institute rules; and
- (c) the Principal.

Clause 31(2) would require that at least one of the members appointed by the Council be a Commissioner.

By virtue of clause 31(3) a member of the Research Advisory Committee who is appointed by the Council and who, at the time of his or her appointment, is a Commissioner, would cease to be a member if he or she ceases to be a Commissioner. Under clause 31(4), a member of the Research Advisory Committee who is appointed by the Council would also cease to be a member if he or she ceases to be a member of the Council. Similarly, a person elected as a member of the Research Advisory Committee by the members of the Institute would cease to be a member of the Research Advisory Committee if he or she ceases to be a member of the Institute. (See clause 31(5).)

CLAUSE 32 : FUNCTIONS OF RESEARCH ADVISORY COMMITTEE

This clause would provide that the functions of the Research Advisory Committee are:

- (a) to assess applications for research grants made to the Institute and to make recommendations to the Council in relation to such applications;
- (b) to advise the Council in relation to research matters; and
- (c) to advise the Council in relation to applications for membership of the Institute.

CLAUSE 33 : REMUNERATION AND ALLOWANCES

This clause would provide that a member of the Research Advisory Committee is entitled to remuneration and allowances in accordance with clause 43.

CLAUSE 34 : RESIGNATION

This clause would provide that a member of the Research Advisory Committee may resign by writing signed by him or her and sent to the Council.

CLAUSE 35 : OTHER TERMS AND CONDITIONS

Clause 35 would provide that a member of the Research Advisory Committee holds office for such period, and on such terms and conditions in respect of matters not provided for by the Bill, as are determined by the Council by notice published in the Gazette.

PART 9 - FINANCE

CLAUSE 36 : APPLICATION OF MONEY HELD BY INSTITUTE

This clause would provide that money held by the Institute may only be applied:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the Institute in the performance of its functions and the exercise of its powers;
- (b) in payment of any remuneration and allowances payable to any person under the Bill or any Act; and
- (c) in making any other payments which the Institute is authorised or required to make under the Bill.

CLAUSE 37 : EXEMPTION FROM TAXATION

This clause would exempt the Institute from taxation (including taxation under the Debts Tax Act 1982) under any law of the Commonwealth or of a State or Territory.

CLAUSE 38 : APPLICATION OF
AUDIT ACT

This clause would declare that the Institute is a public authority to which Division 3 of Part XI of the Audit Act 1901 applies. That part of the Audit Act 1901 deals with financial provisions relating to public authorities that are not required to keep accounts in accordance with commercial practice. Provision is made for bank accounts, and the keeping of proper accounts, as well as the preparation of reports and the preparation and audit of financial statements. The effect of clause 38(2) would be to ensure that the Institute would not have to prepare two sets of financial statements by virtue of different provisions of the Audit Act 1901.

PART 10 - MISCELLANEOUS

CLAUSE 39 : MINISTER AND COMMISSION TO BE INFORMED
CONCERNING GENERAL CONDUCT OF INSTITUTE

This clause would require the Council to :

- (a) from time to time inform the Minister and the Commission about the general conduct of the activities of the Institute; and
- (b) give to the Minister or the Commission such information about the activities of the Institute as the Minister or the Commission, as the case may be, from time to time requires.

CLAUSE 40 : MINISTER OR COMMISSION MAY ASK FOR ADVICE

This clause would provide that the Minister or the Commission may, from time to time, ask the Council to provide advice on aspects of the culture, history and society of Aboriginal persons and Torres Strait Islanders.

The Council would then have the option under clause 40(2) of:

- (a) preparing its advice having regard only to any relevant information that is already in the possession of the Institute; or
- (b) if the Council considers it appropriate to do so - arranging for the conduct of research into the matter to which the request relates by or on behalf of the Institute, and preparing its advice having regard to that research and to any other relevant information that is otherwise in the possession of the Institute.

The Institute could not be required by such a direction to disclose matters known to the Institute to be held sacred by Aboriginal persons or Torres Strait Islanders or by a particular community or group of Aboriginal persons or Torres Strait Islanders. Nor could the Institute be compelled by such a direction to disclose information relating to a person in a form in which the person to whom the information relates can be identified. (See clause 40(3).)

CLAUSE 41 : COMMISSION TO BE GIVEN COPIES OF ANNUAL REPORTS ETC

The Council would be required by this clause to ensure that copies of all documents prepared in relation to the Institute in compliance with section 63M of the Audit Act 1901 are given to the Commission as soon as practicable after their preparation.

CLAUSE 42 : DELEGATION TO PRINCIPAL OR STAFF

This clause would empower the Institute, by instrument under its seal, to delegate any or all of its functions and powers to the Principal or to a member of the staff of the Institute.

CLAUSE 43 : REMUNERATION AND ALLOWANCES

This clause would provide that the holders of the offices of:

- . Councillor;

- . Principal; and
- . member of the Research Advisory Committee

would be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal;
- (b) if no such determination of that remuneration is in operation - such remuneration as the Minister determines in writing; and
- (c) such allowances as the Minister determines in writing.

By virtue of clause 43(2) a determination of remuneration or allowances made by the Minister under clause 43(1) would be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Clause 43(3) would provide that clause 43 would have effect subject to the Remuneration Tribunal Act 1973.

CLAUSE 44 : OFFENCES RELATING TO GRANTS

Clause 44 would make it an offence for a person to make in connection with, or in connection with an application for, a grant from the Institute, a statement that the person knows to be false or misleading in a material particular or present a document that, to the person's knowledge, contains information that is false or misleading in a material particular. The maximum penalty for an offence against would be \$1,000 or imprisonment for 6 months, or both.

CLAUSE 45 : CONDUCT OF DIRECTORS SERVANTS AND AGENTS

Clause 45(1) is an evidentiary provision which would impute to a body corporate the state of mind of its directors, servants or agents, in circumstances where it is necessary to establish the

body corporate's state of mind for the purposes of proceedings for an offence against the Bill.

Clause 45(2) would deem, for the purposes of a prosecution for an offence against the Bill, conduct engaged in on behalf of a body corporate by a director, servant or agent acting within the scope of his or her actual or apparent authority to also have been engaged in by the body corporate, unless the body corporate shows it took reasonable precautions to avoid the conduct.

Clause 45(3) and (4) are similar evidentiary provisions in relation to persons other than bodies corporate.

Clause 45(5) would provide that a natural person shall not be subject to a term of imprisonment when convicted of an offence in respect of conduct attributable to him or her by clause 45(3) and (4).

Clause 45(6), (7), (8) and (9) are definitional.

CLAUSE 46 : RULES

This clause would empower the Council to make Institute rules, that are not inconsistent with the Bill or any regulations made under clause 47, prescribing matters:

- (a) required or permitted by the Bill to be prescribed by the Institute rules; or
- (b) necessary or convenient to be prescribed by the Institute rules in connection with the conduct of the affairs of the Institute.

By virtue of clause 46(2) rules made under clause 46(1) would not be statutory rules within the meaning of the Statutory Rules Publication Act 1903. References to the Institute rules appear in clauses 7(2)(a), 11, 12(1)(a), 15(2) and 31(1)(b).

CLAUSE 47 : REGULATIONS

This clause would provide that the Governor-General may make regulations, not inconsistent with the Bill, prescribing matters:

- (a) required or permitted by the Bill to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to the Bill.

Amongst other things, such regulations would be able to :

- (a) prescribe fees payable in respect of any matter under the Bill; and
- (b) provide penalties for breaches of the regulations not exceeding :
 - (i) in the case of a natural person - \$1,000; or
 - (ii) in the case of a body corporate - \$5,000.

PART II - CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

DIVISION 1 - PRELIMINARY

CLAUSE 48 : INTERPRETATION

This clause would define a number of terms and expressions for the purposes of this Part of the Bill.

DIVISION 2 - REPEAL

CLAUSE 49 : REPEAL

Clause 49 would repeal the Australian Institute of Aboriginal Studies Act 1964.

DIVISION 3 - TRANSITIONAL PROVISIONS

CLAUSE 50 : ELECTION OF COUNCILLORS WHERE
INSTITUTE RULES HAVE NOT BEEN MADE

Clause 12(1) provides that the Council of the Institute of Aboriginal and Torres Strait Islander Studies shall consist of, amongst others, 4 persons elected by the members of the Institute in accordance with the Institute rules. However, under clause 46 it would be the Council of the Institute itself that makes the Institute rules.

Clause 50 would overcome this difficulty by providing that until the Council of the Institute makes Institute rules relating to the conduct of elections for the purposes of clause 12(1)(a), the reference in that paragraph to the Institute rules shall be read as a reference to procedures for the conduct of elections determined, in writing, by the Minister for the purposes of that paragraph. 4 members of the Institute would then be elected to the Council of the Institute in accordance with such procedures, and the Council would then be able to itself make rules for the purposes of subsequent elections.

CLAUSE 51 : FIRST PRINCIPAL OF THE INSTITUTE

Under this clause the first Principal of the Institute would be the person who, immediately before the Bill comes into operation, holds the office of Principal of the Australian Institute of Aboriginal Studies. He or she would hold office for a period equal to the unexpired term of his or her appointment as Principal of the Australian Institute of Aboriginal Studies, and would do so on the same terms and conditions as applied to that appointment. The first Principal would be entitled to remuneration and allowances in accordance with clause 43. Provision is also made in respect of the Principal in clauses 24 to 28.

CLAUSE 52 : TRANSFER OF ASSETS AND LIABILITIES OF THE
AUSTRALIAN INSTITUTE OF ABORIGINAL STUDIES

This clause would transfer all the assets and liabilities of the Australian Institute of Aboriginal Studies to the Institute of Aboriginal and Torres Strait Islander Studies. Any assets that were held by the former body on trust would be held on the same trusts by the Institute of Aboriginal and Torres Strait Islander Studies. (See clause 52(1) and (2)(a).)

Clause 52(2) would make the Institute of Aboriginal and Torres Strait Islander Studies responsible for any liabilities transferred to it under clause 52(1) as if it had incurred them itself.

CLAUSE 53 : OLD INSTITUTE INSTRUMENTS

Clause 53 would continue in effect all instruments subsisting immediately before the Bill comes into operation :

- (a) to which the Australian Institute of Aboriginal Studies was a party;
- (b) that were given to it in favour of that Institute;
- (c) in which a reference is made to the Institute; or
- (d) under which money is, or may become, payable, or any other property is to be, or may become liable to be transferred, conveyed or assigned to or by that Institute.

By virtue of clause 53, however, in their operation in relation to acts, transactions, matters or things done, entered into or occurring on or after the Bill comes into effect, such instruments would have effect as if references in them to the Australian Institute of Aboriginal Studies were references to the Institute of Aboriginal and Torres Strait Islander Studies.

CLAUSE 54 : PENDING PROCEEDINGS

This clause would substitute the Institute of Aboriginal and Torres Strait Islander Studies for the Australian Institute of Aboriginal Studies in any proceedings to which the latter is a party, and which are pending in any court immediately before the commencement of the Bill. Clause 54 would also confer on the Institute of Aboriginal and Torres Strait Islander Studies the same rights in those proceedings as the Australian Institute of Aboriginal Studies has.

CLAUSE 55 : ANNUAL REPORT AND FINANCIAL STATEMENTS

This clause would have the effect that the Institute of Aboriginal and Torres Strait Islander Studies would provide an annual report and financial statements for the year ending on the first 30 June after the Bill comes into operation covering both itself and the Australian Institute of Aboriginal Studies. Subsequent annual reports and financial statements would have to be prepared in accordance with the requirements of Division 3 of Part XI of the Audit Act 1901 : see clause 38.

CLAUSE 56 : CERTIFICATES WITH RESPECT TO ASSETS,
LIABILITIES AND INSTRUMENTS

This clause is an evidentiary provision, and would empower the Minister, the Principal of the Institute of Aboriginal and Torres Strait Islander Studies, or a member of the staff of that Institute authorised in writing by the Minister for the purposes of Part II of the Bill, to certify in writing that:

- . an asset or a liability specified or described in the certificate is one that was transferred to that Institute under clause 52; or
- . an instrument specified or described in the certificate is an old Institute instrument, which term is defined in clause 48.

By virtue of clause 56(2) such a certificate would be in all courts and for all purposes, evidence of the matter stated in the certificate.

Clause 56(3) would require that, if a document purports to be a certificate given under clause 56(1) signed by a person purporting to be an authorised officer as that term is defined in clause 48, judicial notice must be taken of the signature of the person and of the fact that the person is or was an authorised officer.

CLAUSE 57 : STATE OR TERRITORY OFFICER MAY ACT ON CERTIFICATE

This clause would facilitate the registration etc., of the transfer of interests in land that may take place under clause 52. This clause provides for, amongst other things, the transfer of assets from the Australian Institute of Aboriginal Studies to the Institute.

The clause would provide for the lodging of certificates relating to such transfers with the relevant Registrar of Titles, or equivalent officer, who would be able to deal with and give effect to the certificates as if they were a grant or conveyance etc., duly executed under the laws of the relevant State or Territory.

CLAUSE 58 : TRANSFER OF APPROPRIATED MONEY

This clause would provide for the transfer of money appropriated for the expenditure of the AIAS to the Institute of Aboriginal and Torres Strait Islander Studies.

CLAUSE 59 : CONTRACTS OF EMPLOYMENT NOT PRESERVED

Clause 59 would provide that nothing in Part 11 of the Bill preserves contracts of employment entered into by the AIAS.

CLAUSE 60 : TRANSFER OF STAFF TO
AUSTRALIAN PUBLIC SERVICE

This clause would enable officers of the Australian Public Service who immediately before the Bill comes into operation are employed by the old Institute and who are unattached officers for the purposes of the Public Service Act 1922, to be transferred to the new Institute by means of section 81B of the Public Service Act 1922. Without this provision such persons would have to resign from the Australian Public Service before being transferred.

CLAUSE 61 : EXEMPTION FROM TAXATION

This clause would exempt an instrument from stamp duty or any other tax under a law of the Commonwealth or of a State or Territory if an authorised officer certifies, in writing, that the instrument was made or given because of, or for a purpose connected with, or arising out of, the operation of Division 3 of Part 11 of the Bill.

DIVISION 4 : CONSEQUENTIAL AMENDMENTS

OF OTHER ACTS

CLAUSE 62 : PUBLIC SERVICE ACT

The effect of this clause would be that if an officer of the Australian Public Service takes up an appointment as Principal of the Institute, the officer would be able to return to employment in the Australian Public Service in accordance with the provisions of Part IV of the Public Service Act 1922.

CLAUSE 63 : REMUNERATION TRIBUNAL ACT

The effect of this amendment would be that where the Remuneration Tribunal has made a determination of remuneration and allowances in respect of persons who hold an office or have been appointed under the Bill the remuneration must be paid in accordance with

the determination out of lawfully available moneys of the Institute.

CLAUSE 64 : SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

Clause 64 would amend the first schedule to the Sales Tax (Exemptions and Classification) Act 1935. The effect of the amendment would be to exempt from sales tax certain goods for use, and not for sale, by the Institute.

