



Aboriginal and Torres Strait Islander Commission Act 1989

No. 150 of 1989

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Aboriginal and Torres Strait Islander Commission Act 1989

No. 150 of 1989

An Act to establish an Aboriginal and Torres Strait Islander Commission and an Aboriginal and Torres Strait Islander Commercial Development Corporation, and for related purposes

[Assented to 27 November 1989]

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Aboriginal and Torres Strait Islander Commission Act 1989*.

Commencement

2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that first period.

Objects

3. The objects of this Act are, in recognition of the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples and their present disadvantaged position in Australian society:

- (a) to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them;
- (b) to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;
- (c) to further the economic, social and cultural development of Aboriginal persons and Torres Strait Islanders; and
- (d) to ensure co-ordination in the formulation and implementation of policies affecting Aboriginal persons and Torres Strait Islanders by the Commonwealth, State, Territory and local governments, without detracting from the responsibilities of State, Territory and local governments to provide services to their Aboriginal and Torres Strait Islander residents.

Interpretation

4. (1) In this Act, unless the contrary intention appears:

“Aboriginal or Torres Strait Islander corporation” means:

- (a) a body corporate:
 - (i) in respect of which a declaration has been made under subsection 89 (2) or section 205; or
 - (ii) that was, immediately before the commencement of Part 6, an Aboriginal corporation within the meaning of the *Aboriginal Development Commission Act 1980*; other than a body corporate in relation to which, since the making of the declaration or the commencement of that Part, a declaration has been made under subsection 89 (3);
- (b) an Aboriginal Council established by Part III of the *Aboriginal Councils and Associations Act 1976*; or
- (c) an Aboriginal association incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*;

but does not include a Regional Council;

“Aboriginal person” means a person of the Aboriginal race of Australia;

“Advisory Board” means the Torres Strait Islander Advisory Board established by section 82;

“approved bank” means:

- (a) a trading bank as defined in subsection 5 (1) of the *Banking Act 1959*; or
- (b) a bank in respect of which an approval is in force under section 193;

- “approved Regional Council estimates” means Regional Council estimates approved by the Minister for the purpose of section 61;
- “Chief Executive Officer” means the Chief Executive Officer of the Commission referred to in section 46;
- “Commission” means the Aboriginal and Torres Strait Islander Commission established by section 6;
- “Commission Chairperson” means the Chairperson of the Commission appointed under section 27;
- “Commissioner” means a member of the Commission;
- “Commonwealth body” includes a Department of State, or authority, of the Commonwealth;
- “Commonwealth Electoral Roll” means the Rolls kept under the *Commonwealth Electoral Act 1918*;
- “Corporation” means the Aboriginal and Torres Strait Islander Commercial Development Corporation established by section 145;
- “Corporation Board” means the Board of Directors of the Corporation referred to in section 155;
- “Corporation Chairperson” means the Chairperson of the Corporation Board referred to in section 155;
- “Director” means a member of the Corporation Board;
- “elected Commissioner” means a member of the Commission referred to in subsection 27 (3);
- “election period”, in relation to a round of Regional Council elections, means the period:
- (a) starting on the day when the Minister fixes a day or days for the polling in accordance with subsection 104 (2); and
 - (b) ending on the last day on which a poll is declared in relation to an election in that round of Regional Council elections;
- “electorate notice” means:
- (a) a notice under subsection 91 (1); or
 - (b) a notice under subsection 106 (3);
- “electorate number”, in relation to a region, means the number of potential voters set out, in relation to the region, in the most recent electorate notice that includes such a number in relation to the region;
- “estimated population”, in relation to a region, means the number of persons living in the region set out, in relation to the region, in the most recent electorate notice that includes such a number in relation to the region;
- “Executive Committee”, in relation to a Regional Council, means the Executive Committee of the Regional Council referred to in subsection 127 (2);
- “General Manager” means the General Manager of the Corporation referred to in section 168;

- “Housing Fund” means the Housing Fund established by section 67;
“Land Fund” means the Regional Land Fund established by section 68;
“Ministerial Finance Direction” means a direction given to the Commission by the Minister under section 74;
“non-elected Commissioner” means the Commission Chairperson or a Commissioner chosen by the Minister under subsection 27 (2);
“Office” means the Office of Torres Strait Islander Affairs established by section 80;
“prescribed number” means:

- (a) in relation to the Torres Strait Regional Council—20; and
(b) in relation to any other Regional Council—the number determined by reference to the estimated population of the region concerned in accordance with the following table:

<i>Estimated population of region</i>	<i>Prescribed number</i>
less than 1,000	10
1,000-1,999	11
2,000-2,999	12
3,000-3,999	13
4,000-4,999	14
5,000-5,999	15
6,000-6,999	16
7,000-7,999	17
8,000-8,999	18
9,000-9,999	19
10,000 or more	20

- “region” means a region referred to in subsection 91 (1);
“Regional Council” means a Regional Council established by section 92;
“Regional Council election” means an election for members of a Regional Council conducted under Division 4 of Part 3;
“Regional Council election rules” means rules made by the Minister under section 113;
“Regional Council election year” means a calendar year in which section 104 requires Regional Council elections to be held;
“Regional Council estimates”, in relation to a Regional Council, means the detailed estimates of expenditure for the region concerned that are required by subsection 62 (2) to be shown in estimates prepared under section 61;
“regional statement” means a statement prepared by the Commission under subsection 63 (1);
“spouse”, in relation to a person, includes a person who, although not legally married to the first-mentioned person, is living with that person as that person’s spouse on a permanent and *bona fide* domestic basis;
“State body” includes a Department of State, or authority, of a State;

“Territory body” includes a Department of State, or authority, of a Territory;

“Torres Strait Islander” means a descendant of an indigenous inhabitant of the Torres Strait Islands;

“Torres Strait region” means the region that includes Thursday Island;

“zone” means a zone referred to in subsection 130 (1);

“zone election” means an election of a person to be appointed as a Commissioner to represent a zone;

“zone election rules” means rules made by the Minister under section 138.

(2) The question whether a company is a subsidiary of the Commission or of the Corporation shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the *Companies Act 1981*.

Act binds the Crown

5. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Australian Capital Territory, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

PART 2—ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

Division 1—Aboriginal and Torres Strait Islander Commission

Aboriginal and Torres Strait Islander Commission

6. (1) An Aboriginal and Torres Strait Islander Commission is established.

(2) The Commission:

(a) is a body corporate, with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name.

(3) The common seal of the Commission shall be kept in such custody as the Commission directs and shall not be used except as authorised by the Commission.

(4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that it was duly affixed.

Division 2—Functions of Commission

Functions of Commission

7. (1) The Commission has the following functions:
- (a) to formulate and implement programs for Aboriginal persons and Torres Strait Islanders;
 - (b) to monitor the effectiveness of programs for Aboriginal persons and Torres Strait Islanders, including programs conducted by bodies other than the Commission;
 - (c) to develop policy proposals to meet national, State, Territory and regional needs and priorities of Aboriginal persons and Torres Strait Islanders;
 - (d) to assist, advise and co-operate with Aboriginal and Torres Strait Islander communities, organisations and individuals at national, State, Territory and regional levels;
 - (e) to advise the Minister on:
 - (i) matters relating to Aboriginal and Torres Strait Islander affairs, including the administration of legislation; and
 - (ii) the co-ordination of the activities of other Commonwealth bodies that affect Aboriginal persons or Torres Strait Islanders;
 - (f) when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister;
 - (g) to take such reasonable action as it thinks necessary to protect Aboriginal and Torres Strait Islander cultural material and information, being material or information that is considered sacred or otherwise significant by Aboriginal persons or Torres Strait Islanders;
 - (h) at the request or with the concurrence of the Australian Bureau of Statistics but not otherwise, and without infringing the privacy of any individual, to collect and publish statistical information relating to Aboriginal persons and Torres Strait Islanders;
 - (j) such other functions as are conferred on the Commission by this Act or any other Act;
 - (k) such other functions as are conferred on the Commission by the Prime Minister by notices in force under section 8;
 - (m) such other functions as are expressly conferred on the Commission by a law of a State or of an internal Territory and in respect of which there is in force written approval by the Minister under section 9;
 - (n) to undertake such research as is necessary to enable it to perform any of its other functions;
 - (o) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

(2) The information that may be required by the Minister under paragraph (1) (f) includes, but is not limited to, information about the Commission's expenditure.

(3) The Minister is not empowered, when requesting information under paragraph (1) (f), to specify the content of the information that is to be provided.

(4) In performing its function under paragraph (1) (g), the Commission shall ensure that material or information covered by that paragraph is not disclosed by the Commission if that disclosure would be inconsistent with the views or sensitivities of relevant Aboriginal persons or Torres Strait Islanders.

(5) Nothing in this section or in any other provision of this Act shall be read as conferring on the Commission a function of acquiring land except:

- (a) for its administrative purposes; or
- (b) for the purpose of the performance of functions expressly conferred on the Commission by this Act.

Prime Minister may confer functions on Commission

8. (1) The Prime Minister may, for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders, confer a departmental function on the Commission.

(2) The power under subsection (1) shall be exercised by notice published in the *Gazette*.

(3) In this section:

“departmental function” means a function that has previously been performed by a Department of State of the Commonwealth.

Minister may approve performance of functions under State or Territory laws

9. The Minister may, in writing, approve the performance by the Commission of a function expressly conferred on the Commission by a law of a State or an internal Territory.

Powers of Commission

10. (1) The Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

(2) The powers of the Commission under subsection (1) include, but are not limited to, the following powers:

- (a) to negotiate and co-operate with other Commonwealth bodies and with State, Territory and local government bodies;
- (b) to enter into an agreement for the payment of a grant to a State, to the Australian Capital Territory or to the Northern Territory under section 18;

- (c) to enter into an agreement (other than an agreement referred to in paragraph (b)) with a State or Territory;
- (d) to accept gifts, grants, bequests and devises made to it;
- (e) to act as trustee of money and other property vested in it on trust.

(3) The power of the Commission to enter into agreements of the kind referred to in paragraph (2) (c) shall not be exercised without the written approval of the Minister.

(4) In spite of anything contained in this Act, any money or other property held by the Commission on trust shall be dealt with in accordance with the powers and duties of the Commission as trustee.

(5) The powers of the Commission may be exercised within or outside Australia.

Corporate plan

11. (1) The Commission shall from time to time, in consultation with the Minister, prepare a corporate plan:

- (a) setting out a statement of the Commission's objectives;
- (b) outlining the strategies and policies that the Commission intends to adopt in order to achieve those objectives;
- (c) setting out criteria for the engagement of consultants by the Commission; and
- (d) setting out standard terms and conditions for the engagement of consultants by the Commission.

(2) Each corporate plan shall relate to a period of at least 3 years and not more than 5 years.

(3) The Commission shall, in consultation with the Minister, review the corporate plan regularly.

(4) Without limiting the operation of the *Freedom of Information Act 1982*, the Chief Executive Officer shall ensure that copies of the corporate plan as in force from time to time are:

- (a) given to each Regional Council; and
- (b) available for inspection and purchase at each office of the Commission.

(5) The Chief Executive Officer shall cause notice of the publication of the corporate plan to be published in the *Gazette*.

Directions by Minister

12. (1) The Commission shall perform its functions and exercise its powers in accordance with such general directions as are given to it by the Minister in writing.

(2) Subsection (1) does not empower the Minister to give directions relating to the content of any advice, information or recommendation that

may be given by the Commission to a Minister, Department of State or authority of the Commonwealth.

(3) Subsection (1) does not empower the Minister to give directions relating to the content of any advice, information or recommendation that may be given by the Commission to a Minister, Department of State or authority of a State or Territory, except for the purpose of protecting the confidentiality of information given to the Commission by the Commonwealth or an authority of the Commonwealth.

(4) Subject to subsection (5), the Minister shall cause a copy of any direction given under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after that direction was given.

(5) A copy of a direction laid before the Parliament in accordance with subsection (4) shall not disclose any matter the disclosure of which in that manner would be inconsistent with the views or sensitivities of Aboriginal persons or Torres Strait Islanders because that matter is sacred or otherwise significant to those persons.

Advisory committees

13. (1) The Commission may establish an advisory committee or advisory committees to advise the Commission in relation to the performance of the Commission's functions.

(2) A member of an advisory committee is entitled to remuneration and allowances in accordance with section 194.

Grants of interests in property

14. (1) Subject to subsection (4), the Commission may, on such terms and conditions as it determines, grant property interests to Aboriginal or Torres Strait Islander corporations.

(2) No payment shall be due to the Commission in respect of a grant made under subsection (1).

(3) The Commission may acquire by agreement any interests in land or personal property for the purpose of making grants under this section.

(4) Where the Commission acquires an interest in land or personal property for the purpose of making a grant under this section in connection with a business enterprise to be engaged in by Aboriginal persons or Torres Strait Islanders, the following provisions apply:

- (a) the Commission shall not grant the interest to an Aboriginal or Torres Strait Islander corporation except in connection with a business enterprise to be engaged in by Aboriginal persons or Torres Strait Islanders;
- (b) the Commission shall not grant the interest in connection with a business enterprise unless it is satisfied that the enterprise is likely to become, or continue to be, commercially successful;

- (c) in considering whether to grant the interest, and to whom the interest should be granted, the Commission shall have regard to the effect of a proposed grant on the employment and training of Aboriginal persons and Torres Strait Islanders.

(5) In this section:

“property interest” means:

- (a) an interest acquired by the Commission under subsection (3);
- (b) an interest in land or personal property that was held by the Aboriginal Development Commission, and is now held by the Commission by virtue of the operation of Part 6; or
- (c) any interest derived from an interest referred to in paragraph (a) or (b).

Grants for acquisition of property

15. The Commission may, on such terms and conditions as it determines, make grants of money to Aboriginal or Torres Strait Islander corporations for the acquisition of interests in:

- (a) land; or
- (b) land and such personal property as the Commission considers appropriate.

Housing loans and grants

16. (1) The Commission may, on such terms and conditions as it determines, make loans to Aboriginal persons and Torres Strait Islanders for the following purposes:

- (a) the erection or purchase of dwellings or the purchase of land on which dwellings are to be erected or situated;
- (b) the extension or modification of, or the making of additions to, dwellings;
- (c) any purpose incidental to any of the foregoing purposes;
- (d) the purchase of household effects;
- (e) the repayment of existing debts incurred for any of the purposes referred to in paragraphs (a), (b), (c) and (d).

(2) The Commission may, on such terms and conditions as it determines, make loans or grants to Aboriginal or Torres Strait Islander corporations for the purpose of enabling them to provide housing for Aboriginal persons or Torres Strait Islanders.

(3) The Commission may, on such terms and conditions as it determines, make payments for the purpose of enabling Aboriginal persons and Torres Strait Islanders to obtain loans, for any or all of the purposes referred to in subsection (1), from lenders operating on a commercial basis.

(4) The making of a loan to, the provision of housing for, or the obtaining of a loan by, an Aboriginal person or a Torres Strait Islander

jointly with his or her spouse shall, for the purposes of this section, be taken to be the making of a loan to, the provision of housing for, or the obtaining of a loan by, an Aboriginal person or a Torres Strait Islander even if the spouse is not an Aboriginal person or a Torres Strait Islander.

Enterprise loans and grants

17. (1) The Commission may, for the purpose of enabling or assisting Aboriginal persons and Torres Strait Islanders to engage in business enterprises:

- (a) make loans, on such terms and conditions as are determined by the Commission, to:
 - (i) Aboriginal persons and Torres Strait Islanders; or
 - (ii) Aboriginal or Torres Strait Islander corporations;
- (b) subscribe for, or otherwise acquire, shares or stock in the capital of a company;
- (c) make grants of money, on such terms and conditions as are determined by the Commission, to Aboriginal or Torres Strait Islander corporations; and
- (d) make payments in respect of the investigation or supervision of, or the provision of accounting services, management advice or technical assistance for or in relation to, a business enterprise in connection with which:
 - (i) moneys have been or may be applied in accordance with paragraph (a), (b) or (c);
 - (ii) property has been, or may be, acquired or otherwise dealt with pursuant to section 14 or acquired pursuant to a grant under section 15; or
 - (iii) a guarantee has been or may be given under section 19.

(2) The loans that the Commission may make under subsection (1) include, but are not limited to, loans for the purpose of the acquisition from the Commission of shares or stock in the capital of a company.

(3) The Commission shall not exercise its powers under subsection (1) in relation to a business enterprise unless it is satisfied that the enterprise is likely to become, or continue to be, commercially successful.

(4) In considering whether to exercise its powers under subsection (1), the Commission shall have regard to the effect of the proposed exercise of power on the employment and training of Aboriginal persons and Torres Strait Islanders.

Loans or grants for specific purposes

18. (1) Subject to subsections (2) and (3), the Commission may, on such terms and conditions as it determines, make loans or grants of money to:

- (a) the States, the Australian Capital Territory and the Northern Territory;

- (b) State, Territory and local government bodies;
- (c) Aboriginal or Torres Strait Islander corporations; or
- (d) any other incorporated bodies;

for the purpose of futherling the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.

(2) The Commission may not make a loan or grant to a body under subsection (1) if the loan or grant is of a kind that could be made to that body under section 15, 16 or 17.

(3) The Commission may not make a loan or grant pursuant to paragraph (1) (d) without the Minister's written consent.

Guarantees

19. (1) Subject to subsection (2), where the Commission is satisfied that the purpose of a loan made or to be made to:

- (a) an Aboriginal person or a Torres Strait Islander;
- (b) an Aboriginal or Torres Strait Islander corporation; or
- (c) another incorporated body;

is a purpose for which the Commission could, in the performance of its functions, make a loan to that borrower, the Commission may guarantee the due payment of all moneys (including interest) payable by the borrower in accordance with the terms and conditions of the loan concerned.

(2) Where the purpose of a loan is to enable or assist Aboriginal persons or Torres Strait Islanders to engage in a business enterprise:

- (a) the Commission shall not give a guarantee under this section in respect of the loan unless it is satisfied that the enterprise is likely to become, or continue to be, commercially successful; and
- (b) in considering whether to give a guarantee under this section in respect of the loan, the Commission shall have regard to the effect of the loan on the employment and training of Aboriginal persons and Torres Strait Islanders.

(3) The operation of this section is subject to such limits as the Treasurer determines as to the total amount of money (other than interest) the payment of which may at any time be the subject of guarantees under this section.

(4) A loan made or to be made to an Aboriginal person or a Torres Strait Islander jointly with his or her spouse for a purpose referred to in subsection 16 (1) shall, for the purposes of this section, be taken to be a loan made or to be made to an Aboriginal person or a Torres Strait Islander even if the spouse is not an Aboriginal person or a Torres Strait Islander.

(5) The Commission may not give a guarantee pursuant to paragraph (1) (c) without the Minister's written consent.

Grants and loans to be repayable where conditions breached etc.

20. (1) The Commission may give written notice to a person or body to whom a grant has been made under this Act stating that the Commission is satisfied that the person or body has failed to fulfil a term or condition of the grant.

(2) A person or body who is given notice under subsection (1) is liable to pay to the Commission an amount equal to:

- (a) the amount of the grant; or
- (b) so much of the grant as the Commission specifies in the notice.

(3) The Commission may give written notice to a person or body to whom a loan has been made under this Act, stating that the Commission is satisfied that the person or body has failed to fulfil a term or condition of the loan.

(4) A person or body who is given notice under subsection (3) is liable to pay to the Commission, immediately, an amount equal to the sum of:

- (a) so much of the amount of the loan as has not yet been repaid; and
- (b) any accrued interest that has not been paid;

or so much of that amount as the Commission specifies in the notice.

Restriction on right to dispose of property

21. (1) This section applies where a body:

- (a) has acquired an interest in land under subsection 14 (1) or as a result of a grant under section 15; or
- (b) has acquired an interest in land, or in shares or stock in the capital of a company, under section 27 of the *Aboriginal Development Commission Act 1980* or as a result of a grant under section 23 of that Act.

(2) The body shall not dispose of the interest without the written consent of the Commission.

(3) If the body purports to dispose of the interest without the written consent of the Commission, the purported disposition is of no effect.

Loans, grants or guarantees not to be made without written application

22. The Commission shall not approve a loan, grant or guarantee under this Division unless the Commission has received a written application in the prescribed form for the loan, grant or guarantee.

Loans, grants, acquisitions and guarantees not to be approved without written assessment

23. The Commission shall not approve a loan, grant, acquisition or guarantee under this Division without first considering a written assessment of the proposal to make the loan, grant or acquisition or to give the guarantee that has been:

- (a) prepared by a member of the staff of the Commission; and

- (b) endorsed by or on behalf of the Chief Executive Officer.

Loan, grant, acquisition and guarantee documents to show legislative authority etc.

24. Where the Commission approves a loan, grant, acquisition or guarantee under this Division, the Commission shall ensure that its own records, and any documents that it issues in relation to that approval of that loan, grant, acquisition or guarantee, set out:

- (a) the provision of this Division that authorises the making of the loan, grant or acquisition or the giving of the guarantee; and
- (b) which of the Commission's objectives, as set out in the corporate plan, will be furthered by the making of the loan, grant or acquisition or the giving of the guarantee.

Guidelines

25. (1) The Commission shall formulate written guidelines, not inconsistent with the objects of this Act, relating to:

- (a) the making of loans under sections 16 and 17 to natural persons; and
- (b) the giving of guarantees under section 19 in respect of loans made to natural persons.

(2) The Commission may, from time to time, revise the guidelines.

(3) Subject to section 74, the Commission shall perform its functions and exercise its powers under sections 16, 17 and 19 in accordance with any applicable provisions of guidelines from time to time in force under this section.

(4) Without limiting the operation of the *Freedom of Information Act 1982*, the Chief Executive Officer shall ensure that copies of the guidelines as in force from time to time are:

- (a) given to each Regional Council; and
- (b) available for inspection and purchase at each office of the Commission.

(5) The Chief Executive Officer shall cause notice of the making of guidelines under this section to be published in the *Gazette*.

Review of operation of Act

26. (1) The Commission shall review the operation of this Act and report to the Minister accordingly.

(2) The review of the operation of the Act shall deal with:

- (a) any problems that have been caused by conflicts (if any) between the responsibility of the elected Commissioners to represent the zones and their responsibility as members of a body with executive responsibilities; and

(b) the operation of the electoral system established by this Act and, in particular, whether the objects of this Act would be better served if the manner in which Regional Councils are chosen differed from region to region having regard to the different circumstances of the Aboriginal persons and Torres Strait Islanders in different regions; and may deal with any other matter related to the operation of this Act.

(3) The report to the Minister may include suggestions for amendments of this Act to solve problems identified in the report.

(4) The Commission shall report to the Minister within 2 years after the appointment of the first elected Commissioner.

(5) The Minister shall cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Division 3—Constitution of Commission

Constitution of Commission

27. (1) The Commission consists of a Chairperson and 19 other members appointed by the Minister.

(2) The Chairperson and 2 other members shall be chosen by the Minister.

(3) The other 17 members shall be the persons elected under Division 7 of Part 3 to represent the several zones.

(4) This section has effect subject to section 28.

Constitution of first Commission

28. (1) During the period starting at the commencement of this Act and ending on a day (not being more than 12 months after that commencement) specified by the Minister by notice published in the *Gazette*, the Commission consists of a Chairperson, a Deputy Chairperson and 3 other members appointed by the Governor-General.

(2) The Chairperson appointed under this section holds office for such period, not exceeding 3 years, as is specified in, or ascertained in accordance with, the instrument of appointment.

(3) The other 4 members hold office for the period referred to in subsection (1).

(4) This Act, except section 33, applies in relation to a member appointed under this section as if the member were a non-elected Commissioner within the meaning of this Act.

Validation of appointments

29. The appointment of a member is not invalid merely because of a defect or irregularity in connection with his or her appointment.

Basis of holding office

30. (1) The non-elected Commissioners may be appointed on a full-time or part-time basis.

(2) The persons elected at the first round of zone elections shall be appointed as Commissioners on a part-time basis.

(3) Subject to subsection (4), the persons elected at subsequent rounds of zone elections shall be appointed as Commissioners on a part-time basis.

(4) Where a later appointed Commissioner elected as the Deputy Chairperson of the Commission under section 32 holds office as a Commissioner on a part-time basis, the Commission may request the Minister to direct that the Deputy Chairperson holds office as a Commissioner on a full-time basis.

(5) Where the Minister receives a request under subsection (4), the Minister may, in writing, direct that the Deputy Chairperson's appointment as a Commissioner shall be taken to be an appointment on a full-time basis.

(6) A direction under subsection (5):

(a) has effect for all purposes according to its terms while the Commissioner concerned remains the Deputy Chairperson; and

(b) ceases to have effect when the Commissioner concerned ceases to be the Deputy Chairperson.

(7) A reference in this section to a person elected at a round of zone elections includes a reference to a person elected to replace a person who was elected at the most recent round of zone elections and has ceased to hold office as an elected Commissioner.

(8) In this section:

“later appointed Commissioner” means a Commissioner appointed at any time after the second round of zone elections.

Qualifications for appointment as Commissioner

31. (1) A person is not qualified to be appointed as a Commissioner unless the person is an Aboriginal person or a Torres Strait Islander.

(2) Subject to subsection (3), a person is not qualified to be appointed as a Commissioner if he or she:

(a) has been convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or

(b) has been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer.

(3) Subsection (2) does not disqualify a person from being appointed as a Commissioner if:

- (a) where the person was never actually imprisoned for the offence—at least 2 years have elapsed since the person was convicted;
- (b) where the person served a term of imprisonment for the offence—at least 2 years have elapsed since the person was released from prison; or
- (c) in any case—the Federal Court of Australia, on application by the person, declares that in spite of the person's conviction, he or she ought not to be disqualified from being appointed as a Commissioner.

(4) The Federal Court of Australia has jurisdiction with respect to matters arising under subsection (3).

Deputy Chairperson of Commission

32. (1) At the first meeting of the Commission, the Commissioners shall elect one of their number to be the Deputy Chairperson of the Commission.

- (2) At any subsequent meeting of the Commission, the Commissioners:
 - (a) may elect one of their number to be the new Deputy Chairperson of the Commission; and
 - (b) shall elect one of their number to be the Deputy Chairperson of the Commission if there is a vacancy in the office of Deputy Chairperson of the Commission.

Division 4—Administrative provisions

Period of appointment

33. (1) A non-elected Commissioner holds office for such period, being at least 2 years but not more than 3 years, as is specified in, or ascertained in accordance with, the instrument of appointment.

(2) A Commissioner elected as provided in Division 7 of Part 3 to represent a zone holds office until another person is appointed as a Commissioner after having been elected as provided in that Division to represent that zone.

Remuneration and allowances

34. A Commissioner is entitled to remuneration and allowances in accordance with section 194.

Leave of absence

35. (1) The Minister may, subject to subsection (2), grant to a Commissioner leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

(2) The Minister shall not grant a Commissioner leave of absence from duty for a continuous period of more than 6 months unless the grant of

such leave of absence is required or expressly permitted by any other law of the Commonwealth.

(3) The Minister may delegate to the Commission Chairperson the power under subsection (1) to grant leave of absence to the other Commissioners.

Acting appointments

36. (1) The Deputy Chairperson of the Commission shall act as the Commission Chairperson:

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

(2) The Minister may appoint a Commissioner to act as the Deputy Chairperson of the Commission:

- (a) during a vacancy in the office of Deputy Chairperson, whether or not a person has previously been elected as Deputy Chairperson; or
- (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(3) The appointment of a person to act during a vacancy in the office of Deputy Chairperson of the Commission has effect until the next meeting of the Commission.

(4) The Minister may appoint a person to act in the office of a non-elected Commissioner (other than the Commission Chairperson):

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

(5) A person appointed to act during a vacancy in the office of a non-elected Commissioner under subsection (4):

- (a) shall not continue so to act for more than 6 months; and
- (b) shall not be re-appointed to act during that vacancy for a period that would be continuous with the period of 6 months from the day when the person first started acting during that vacancy.

(6) The Minister may appoint a person to act in the office of an elected Commissioner during any period, or during all periods, when the elected Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(7) The Minister shall not appoint a person to act in the office of a Commissioner unless, having regard to section 31, the person is qualified to be appointed as a Commissioner.

(8) The appointment of a person to act in the office of a Commissioner who is also the Deputy Chairperson of the Commission does not constitute an appointment of the person to act as the Deputy Chairperson.

(9) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not 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.

Disclosure of interests at meetings

37. (1) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to the Commissioner's knowledge, disclose the nature of the interest at a meeting of the Commission.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Commission and the Commissioner shall not:

- (a) be present during any deliberation of the Commission with respect to that matter; or
- (b) take part in any decision of the Commission with respect to that matter.

Disclosure of interests

38. (1) Each Commissioner shall make to the Minister a written disclosure of the financial interests of the Commissioner and the members of the Commissioner's immediate family equivalent to the disclosure of financial interests required to be made by officers of the Australian Public Service who are members of the Senior Executive Service.

(2) A Commissioner shall make a disclosure under subsection (1) within one month after being appointed as a Commissioner.

(3) A Commissioner shall from time to time make such further disclosures as are necessary to ensure that the information available to the Minister about the financial interests of that Commissioner and the members of his or her immediate family is up-to-date.

(4) In this section:

“Commissioner” includes an acting Commissioner.

Resignation

39. (1) A Commissioner may resign by writing signed by him or her and sent to the Minister.

- (2) An elected Commissioner shall be taken to have resigned if:
- (a) the Commissioner resigns from the Regional Council of which he or she was a member when elected to represent the zone concerned; or
 - (b) under section 121, the Commissioner is to be taken to have resigned from that Regional Council.

Termination of appointment

40. (1) Subject to subsection (2), the Minister may suspend a Commissioner from office because of misbehaviour or physical or mental incapacity.

(2) The Minister shall not suspend a Commissioner from office unless the Minister has:

- (a) by written notice served on the Commissioner, giving the Commissioner 7 days within which to show cause why the Commissioner should not be suspended; and
- (b) consulted the Commission.

(3) The Minister shall cause a statement identifying the Commissioner and setting out the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

(4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Commissioner ought to be restored to office and, if each House so passes such a resolution, the Minister shall terminate the suspension.

(5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Minister may terminate the appointment of the Commissioner.

(6) If an elected Commissioner ceases to be member of a Regional Council otherwise than by resigning from the Regional Council, the Minister may terminate the appointment of the Commissioner.

(7) If a Commissioner:

- (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer;
- (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer;
- (c) being a full-time Commissioner, is absent from duty, except on leave

granted under section 35, for 14 consecutive days or for 28 days in any period of 12 months;

(d) being a part-time Commissioner, is absent, except on leave granted under section 35, from 3 consecutive meetings of the Commission; or

(e) fails, without reasonable excuse, to comply with section 37;

the Minister shall terminate the appointment of that Commissioner.

(8) If the Minister terminates the appointment of a Commissioner, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the termination, a statement:

(a) identifying the Commissioner;

(b) stating that his or her appointment has been terminated; and

(c) setting out the ground of the termination.

(9) Without limiting the generality of this section, a Commissioner shall be taken to have been guilty of misbehaviour if he or she has knowingly voted in favour of, or knowingly participated in, a contravention of a lawful direction given by the Minister to the Commission, whether under section 12 or 74 or any other provision of this Act.

Recall of Commissioner

41. (1) Where the Minister receives a valid petition calling for the termination of the appointment of the Commissioner who represents a zone, the Minister shall forthwith terminate the appointment of that Commissioner.

(2) In this section:

“eligible person” means a person who would be entitled to vote at an election for the members of the Regional Council for a region included in the zone concerned;

“sufficient number” means a number that exceeds 66% of the sum of the electorate numbers for all the regions included in the zone;

“valid petition” means a petition:

(a) that contains the signatures of a sufficient number of persons who were eligible persons when they signed the petition;

(b) that sets out legibly:

(i) the name of each person who has signed the petition;

(ii) the date on which the person signed; and

(iii) an address for the person that is sufficient to identify the place where the person lives; and

(c) all the signatures to which have been affixed within the period of 6 months immediately preceding the delivery of the petition to the Minister.

Commissioners not personally liable

42. A Commissioner is not personally liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:

- (a) by the Commission; or
- (b) by the Commissioner in the capacity of Commissioner.

Other terms and conditions

43. A Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*.

Division 5—Operations of Commission

Meetings of Commission

44. (1) The Commission Chairperson shall convene at least 4 meetings of the Commission in each calendar year, and may convene such other meetings of the Commission as, in the Chairperson's opinion, are necessary for the efficient performance of its functions.

(2) The Minister may, at any time, convene a meeting of the Commission.

(3) The Commission Chairperson shall convene a meeting of the Commission upon receipt of a written request for a meeting signed by at least 8 Commissioners.

(4) At a meeting of the Commission a quorum is constituted by 12 Commissioners.

(5) Where:

(a) a Commissioner who is present at a meeting is required by section 37 not to be present during the deliberations, or to take part in any decision, of the Commission with respect to a particular matter;

(b) when the Commissioner leaves the meeting there is no longer a quorum present; and

(c) there are at least 8 Commissioners remaining at the meeting; those remaining Commissioners constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter,

(6) The Commission Chairperson shall preside at all meetings of the Commission at which he or she is present.

(7) If the Commission Chairperson is not present at a meeting of the Commission:

(a) if the Deputy Chairperson of the Commission is present, the Deputy Chairperson of the Commission shall preside at the meeting; and

(b) in any other case, the Commissioners present shall elect one of their number to preside at the meeting.

(8) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

(9) The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) The Commission may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

(11) If the Commission so determines, a Commissioner may participate in, and form part of a quorum at, a meeting of the Commission by means of any of the following methods of communication:

- (a) telephone;
- (b) closed circuit television;
- (c) another method of communication determined by the Commission.

(12) A determination of the Commission under subsection (11) may be made in respect of a particular meeting, or in respect of all meetings, of the Commission.

(13) A Commissioner who participates in a meeting as provided by subsection (11) shall be taken for the purposes of this section and section 37 to be present at the meeting.

Delegation to Chief Executive Officer or staff member

45. The Commission may, by writing under its seal, delegate any or all of its functions and powers, other than:

- (a) its power to give consent to the disposal of interests in property for the purposes of section 21;
- (b) its power to make declarations under section 89;
- (c) its power to make declarations under section 121;
- (d) its power to reconsider matters under section 195; and
- (e) its power to make declarations under section 205;

to the Chief Executive Officer or to a member of the staff of the Commission.

Division 6—Chief Executive Officer

Chief Executive Officer

46. (1) There shall be a Chief Executive Officer of the Commission who shall be appointed by the Minister.

(2) The Minister shall not appoint a person as the Chief Executive Officer, except as the first Chief Executive Officer, unless the Commission agrees to the appointment.

(3) The Chief Executive Officer shall, subject to subsection (4), manage the day-to-day administration of the Commission.

(4) The Chief Executive Officer shall, in managing the administration of the Commission and in exercising any powers conferred on the Chief Executive Officer by this Act, act in accordance with any policies determined, and any directions given, by the Commission in writing.

Period of appointment

47. (1) The Chief Executive Officer holds office for such period as is specified in the instrument of appointment.

(2) The period that may be specified in the instrument of appointment:

(a) shall not be less than 2 years, unless subsection (3) would otherwise prevent the appointment of that person; and

(b) shall not exceed:

(i) for the first Chief Executive Officer—2 years; or

(ii) for any other Chief Executive Officer—5 years.

(3) A person who has turned 65 shall not be appointed as the Chief Executive Officer and a person shall not be appointed as the Chief Executive Officer for a period that extends beyond the day on which the person will turn 65.

Remuneration and allowances

48. The Chief Executive Officer is entitled to remuneration and allowances in accordance with section 194.

Leave of absence

49. The Minister may, with the agreement of the Commission, grant leave of absence to the Chief Executive Officer on such terms and conditions as to remuneration or otherwise as the Minister, with the agreement of the Commission, determines in writing.

Acting Chief Executive Officer

50. (1) The Minister may, after consulting the Commission, appoint a person to act as the Chief Executive Officer:

(a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 6 months.

(2) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not 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.

Disclosure of interests

51. (1) The Chief Executive Officer shall give written notice to the Minister and the Commission of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate that carries on a business.

(2) Where the Chief Executive Officer has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, the Chief Executive Officer shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Commission Chairperson in writing.

Resignation

52. The Chief Executive Officer may resign by writing signed by him or her and sent to the Minister and the Commission.

Termination of appointment

53. (1) The Minister may, with the agreement of the Commission, terminate the appointment of the Chief Executive Officer because of incompetence, misbehaviour or physical or mental incapacity.

(2) If the Chief Executive Officer:

- (a) is absent from duty, except on leave granted under section 49, for 14 consecutive days or for 28 days in any period of 12 months;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (c) fails, without reasonable excuse, to comply with section 51; or
- (d) engages in paid employment outside the duties of the office of Chief Executive Officer without the written consent of the Minister given after consulting the Commission;

the Minister and the Commission shall terminate the appointment of the Chief Executive Officer.

Other terms and conditions

54. The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister, with the agreement of the Commission, by notice published in the *Gazette*.

Division 7—Staff

Staff

55. (1) Subject to section 56, the staff required to assist the Commission in the performance of its functions shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Chief Executive Officer has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.

Consultants

56. (1) The Commission may engage as consultants to the Commission persons having suitable qualifications and experience.

(2) The terms and conditions on which consultants are engaged shall be as determined by the Commission in writing.

Division 8—Finances

Money payable to Commission

57. (1) There is payable to the Commission such money as is appropriated from time to time by the Parliament for the Commission.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money so appropriated is to be paid to the Commission.

Money appropriated to Commission for purposes of other bodies

58. Money appropriated to the Commission for the purposes of the Corporation or Aboriginal Hostels Limited shall be paid by the Commission to the Corporation or Aboriginal Hostels Limited, as the case requires.

Estimates before Regional Councils elected

59. (1) This section applies in relation to each financial year before the financial year that starts on 1 July of the calendar year next after the calendar year in which the first members of Regional Councils take office under this Act.

(2) The Commission shall prepare estimates of the receipts and expenditure of the Commission for each financial year, and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

(3) Subject to subsections (4) and 67 (2), the money of the Commission shall not be spent, or paid into the Housing Fund, otherwise than in accordance with estimates of expenditure approved by the Minister.

(4) The amount spent by the Commission in relation to matters covered by an item in estimates approved by the Minister may differ from the amount allocated to that item in those estimates by not more than:

(a) 1% of the amount so allocated; or

(b) \$250,000 or such larger amount as is prescribed;

whichever is larger.

(5) Nothing in subsection (4) empowers the Commission to spend amounts in relation to matters covered by the estimates approved by the Minister that exceed in total the total amount of expenditure provided for by those estimates.

(6) In this section:

“money of the Commission” does not include:

- (a) money held in trust by the Commission;
- (b) money in the Housing Fund; or
- (c) money appropriated for the purposes of the Corporation or Aboriginal Hostels Limited.

Estimating procedures after Regional Councils elected

60. Sections 61, 62, 63, 64 and 65 apply in relation to the financial year that starts on 1 July in the calendar year next after the calendar year in which the first members of Regional Councils take office under this Act, and to each subsequent financial year.

Estimates

61. (1) The Commission shall prepare estimates of the receipts and expenditure of the Commission for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

(2) Subject to subsections (3) and (4) and 67 (2), the money of the Commission shall not be spent, or paid into the Housing Fund or the Land Fund, otherwise than in accordance with estimates of expenditure approved by the Minister.

(3) The amount spent by the Commission in relation to matters covered by an item in estimates approved by the Minister (not being matters covered in Regional Council estimates) may differ from the amount allocated to that item in those estimates by not more than:

- (a) 1% of the amount so allocated; or
- (b) \$250,000 or such larger amount as is prescribed;

whichever is larger.

(4) Nothing in subsection (3) empowers the Commission to spend amounts in relation to matters covered by the estimates approved by the Minister that exceed in total the total amount of expenditure provided for by those estimates.

(5) The amount spent, or paid into the Land Fund, by the Commission in relation to matters covered by an item in approved Regional Council estimates may, if the Regional Council concerned so directs in writing, differ from the amount allocated to that item in those estimates by not more than 10% of the amount so allocated.

(6) Nothing in subsection (5) empowers the Commission to spend or pay amounts in relation to matters covered by approved Regional Council estimates for a region that exceed in total the total amount allocated by those approved Regional Council estimates for that region.

(7) In this section:

“money of the Commission” does not include:

- (a) money held in trust by the Commission;
- (b) money in the Housing Fund or the Land Fund; or
- (c) money appropriated for the purposes of the Corporation or Aboriginal Hostels Limited.

Form of estimates

62. (1) Estimates prepared under section 61 shall use the same headings as those set out in the paragraphs of subsections 63 (4) and (5).

(2) Estimates prepared under section 61 shall set out, under the heading “amount for allocation by Regional Councils”, detailed estimates of expenditure for each region covering the matters required or permitted to be covered in Regional Council draft budgets prepared under section 97.

(3) Except as provided by subsections (1) and (2), estimates prepared under section 61 shall be in such form as the Minister directs.

(4) Nothing in this section prevents the Minister directing the Commission to prepare a second set of estimates, dealing with the same proposed expenditure, and the same period, as estimates prepared under section 61 and consistent with those estimates, but showing that expenditure under headings different from those required by subsection (1).

Commission to prepare draft budget

63. (1) For the purpose of preparing estimates under section 61 for the next financial year, the Commission shall prepare:

- (a) a draft budget for that financial year; and
- (b) a statement for each Regional Council setting out, in respect of that financial year:
 - (i) the share of the amount for allocation by Regional Councils that is proposed to be allocated for the region concerned;
 - (ii) the amount proposed to be allocated for the administrative expenses of the Regional Council;
 - (iii) the amount proposed to be allocated in grants under section 18 to the State or Territory, and to authorities of the State or Territory, in which the region, or most of the region, is located; and
 - (iv) the amount proposed to be spent out of the Housing Fund.

- (2) The Commission:**
- (a)** is not required to prepare more than one draft budget under subsection (1) for each financial year; and
 - (b)** shall not prepare the draft budget for a financial year until the Commission considers that:
 - (i)** it is able to make an informed estimate of the amount referred to in paragraph (3) (a); and
 - (ii)** the Regional Councils will be able to make reasonably detailed and realistic proposals for regional expenditure in that financial year.
- (3) A draft budget for a financial year shall set out the following matters:**
- (a)** the amount that the Commission estimates might be appropriated by the Parliament for the Commission for that financial year, having regard to:
 - (i)** the amount appropriated by the Parliament for the Commission for the current financial year;
 - (ii)** an appropriate inflation factor; and
 - (iii)** any other matter that the Commission thinks relevant;
 - (b)** the proposed allocation of that amount in accordance with subsections (4) and (5).
- (4) A draft budget shall, for the purposes of paragraph (3) (b), allocate amounts under the following headings:**
- (a)** amount for allocation by Regional Councils;
 - (b)** expenditure under section 14, other than amounts that may be allocated by Regional Councils;
 - (c)** grants under section 15, other than amounts that may be allocated by Regional Councils;
 - (d)** amount to be paid into the Housing Fund;
 - (e)** grants under section 16, other than amounts that may be allocated by Regional Councils;
 - (f)** loans, grants and other expenditure under section 17;
 - (g)** grants to the States, the Australian Capital Territory and the Northern Territory, and to authorities of the States, the Australian Capital Territory and the Northern Territory, under section 18;
 - (h)** administrative expenses of the Commission and Regional Councils;
 - (j)** Community Development Employment Program;
 - (k)** Aboriginal Hostels Limited.
- (5) A draft budget may, for the purposes of paragraph (3) (b), allocate amounts under the following headings:**
- (a)** programs appropriately conducted on a national basis;
 - (b)** expenditure in respect of guarantees given under section 19;

- (c) additional capital for the Corporation;
- (d) any other heading approved by the Minister.

(6) The Commission shall give to the Minister a copy of the draft budget, and of each regional statement, for a financial year.

(7) The Minister shall consider the draft budget and the regional statements.

(8) If the Minister is satisfied, after consulting the Commissioner representing the Torres Strait zone and the Executive Committee of the Regional Council for the Torres Strait region, that the amount proposed to be allocated for the Torres Strait region is not appropriate, the Minister:

- (a) may alter the regional statement for the Torres Strait region by altering the amount for allocation by the Regional Council for the Torres Strait region to an amount that the Minister is satisfied is appropriate; and
- (b) if the Minister does so—shall alter the draft budget so as to ensure that the total of the amounts of proposed expenditure shown in the draft budget is still the same as the amount shown in the draft budget given to the Minister under subsection (6).

(9) The Minister shall:

- (a) if he or she has not made any alterations under subsection (8)—notify the Commission that the draft budget and regional statements may be given to the Regional Councils; or
- (b) if he or she has made alterations under subsection (8)—give to the Commission a copy of the draft budget and the regional statements as so altered.

(10) Where the Minister notifies the Commission under paragraph (9) (a), the Commission shall give to each Regional Council a copy of the draft budget and of the regional statement for the region concerned.

(11) Where the Minister gives the Commission copies of the draft budget, and of the regional statements, under paragraph (9) (b), the Commission shall give to each Regional Council a copy of the draft budget and of the regional statement for that region as received from the Minister.

(12) When the Commission gives a Regional Council a copy of a draft budget for a financial year, it may also give the Regional Council a copy of any guidelines that the Commission wants the Regional Council to consider in preparing the Regional Council's draft budget.

Commission to give draft budgets to Minister

64. The Commission shall give to the Minister a copy of each draft budget, or revised draft budget, for a financial year that the Commission has received from a Regional Council.

Minister to explain inconsistencies between approved estimates and Regional Council draft budgets

65. (1) Where Regional Council estimates included in estimates approved for the purpose of section 61 are inconsistent with the draft budget of the Regional Council given to the Minister under section 64, the Minister shall cause to be laid before each House of the Parliament, within 15 sitting days of that House after the estimates are approved, a statement:

- (a) identifying the inconsistency between the Regional Council estimates and the draft budget; and
- (b) giving the Minister's reasons for approving Regional Council estimates that are inconsistent with the draft budget.

(2) Subsection (1) does not apply where an inconsistency between Regional Council estimates and the draft budget of a Regional Council has been approved by the Regional Council in writing.

Application of money held by Commission

66. (1) Money of the Commission shall be applied only:

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

(2) In this section:

“money of the Commission” does not include:

- (a) money held in trust by the Commission;
- (b) money in the Housing Fund or the Land Fund; or
- (c) money appropriated for the purposes of the Corporation or Aboriginal Hostels Limited.

Housing Fund

67. (1) There is established by this subsection a fund to be known as the Housing Fund.

(2) There shall be paid into the Housing Fund:

- (a) such amounts as are appropriated to the Commission for the purposes of the Housing Fund; and
- (b) such amounts as are paid to the Commission as repayment of, or otherwise in respect of:
 - (i) loans made by the Commission under section 16;
 - (ii) loans made by the Aboriginal Development Commission under section 25 of the *Aboriginal Development Commission Act 1980*; or

(iii) loans made by the Aboriginal Loans Commission under section 25 of the *Aboriginal Loans Commission Act 1974*.

(3) Money in the Housing Fund may only be applied in making loans under subsection 16 (1) or (2) or payments under subsection 16 (3).

(4) The Commission shall prepare estimates of the receipts of, and expenditure from, the Housing Fund for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

(5) Money in the Housing Fund shall not be spent otherwise than in accordance with estimates of expenditure approved by the Minister.

(6) Money in the Housing Fund that is not immediately required for the purposes of the Housing Fund may be invested:

- (a) on deposit with an approved bank;
- (b) in Commonwealth securities; or
- (c) in any other manner approved by the Treasurer.

Regional Land Fund

68. (1) There is established by this subsection a fund to be known as the Regional Land Fund.

(2) Subject to subsection 61 (5), there shall be paid into the Land Fund, from the money of the Commission, amounts equal to amounts allocated to the Land Fund in approved Regional Council estimates.

(3) Money in the Land Fund shall not be spent except in acquiring land under section 14, or making a grant under section 15, in accordance with a proposal relating to an acquisition of specified land that is:

- (a) made by a Regional Council; and
- (b) approved by the Minister.

(4) 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.

(5) The total amount of money spent from the Land Fund from time to time on:

- (a) land in a region; and
- (b) grants under section 15 in connection with the acquisition of interests in land in the region;

shall not exceed the sum of:

- (c) the total amount of money paid, or taken to have been paid, from time to time into the Land Fund under subsection (2) by virtue of Regional Council estimates for the region concerned; and

- (d) such amount as the Commission determines is a fair share of the income earned by the Land Fund through investments under subsection (6).

(6) Money in the Land Fund that is not immediately required for the purposes of the Land Fund may be invested:

- (a) on deposit with an approved bank;
- (b) in Commonwealth securities; or
- (c) in any other manner approved by the Treasurer.

Borrowing on overdraft to meet temporary deficit

69. (1) The Commission may, for the purpose only of meeting a temporary deficit in the money of the Commission, borrow money on overdraft from an approved bank.

(2) The operation of this section is subject to such limits as the Treasurer determines as to:

- (a) the total amount of money (other than interest) that may be owed by the Commission at any time as a result of borrowings under this section; and
- (b) the periods for which money may be borrowed under this section.

Limits on Commission's powers

70. (1) The Commission shall not borrow money except in accordance with section 69.

(2) The Commission shall not raise money except by borrowing.

Exemption from taxation

71. The Commission is not subject to taxation (including taxation under the *Debts Tax Act 1982*) under any law of the Commonwealth or of a State or Territory.

Annual report and financial statements

72. (1) Subject to this section, the Commission shall, as soon as practicable after 30 June in each year, prepare and submit to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister for Finance approves.

(2) The Commission shall include in each report prepared under subsection (1) particulars of:

- (a) any directions given by the Minister under section 12;
- (b) any consultants engaged under section 56; and
- (c) any statements laid before the Houses of the Parliament under section 65 or 68;

during the period to which the report relates.

(3) The Commission shall include in each report prepared under subsection (1) a report by the Director of Evaluation and Audit of the operations of the Office of Evaluation and Audit during the period to which the report relates.

(4) The Commission shall include in each report prepared under subsection (1) the model rules for Regional Council meetings formulated under subsection 128 (12).

(5) Subject to any direction by the Minister for Finance, the financial statements shall deal with the Housing Fund and the Land Fund separately from each other and from the other finances of the Commission.

(6) The Commission shall not, in any report prepared under subsection (1), disclose any matters known to the Commission 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.

(7) Where a report prepared under subsection (1) gives particulars of a consultant engaged under section 56, the report shall set out any significant differences between the terms and conditions on which that consultant was engaged and the standard terms and conditions for the engagement of consultants by the Commission as set out in the corporate plan.

(8) Before submitting financial statements to the Minister under subsection (1), the Commission shall submit them to the Auditor-General, who shall report to the Minister:

- (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and the state of the affairs of the Commission;
- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(9) The Minister shall cause copies of the report and financial statements together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

Application of Audit Act

73. (1) It is hereby declared that the Commission is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) The *Audit Act 1901* applies in relation to the Commission as if:

- (a) the Commission were not a Department for the purposes of Part VII of that Act; and

(b) section 63H of that Act were omitted.

Ministerial Finance Directions

74. (1) The Minister shall give to the Commission written directions, not inconsistent with this Act or the regulations, about the administration of the Commission's finances.

(2) The Commission shall comply with a Ministerial Finance Direction that is in force even if it is inconsistent with:

- (a) the provisions of the corporate plan; or
- (b) a guideline in force under section 25.

(3) The Ministerial Finance Directions may apply, adopt or incorporate, with or without modification, directions given under the *Audit Act 1901* by the Minister for Finance, or the Secretary to the Department of Finance, being such directions as in force at a particular time or as in force from time to time.

(4) Without limiting the operation of the *Freedom of Information Act 1982*, the Minister shall ensure that copies of the Ministerial Finance Directions as in force from time to time are:

- (a) given to each Regional Council; and
- (b) available for inspection and purchase at each office of the Commission.

(5) The Chief Executive Officer shall cause notice of the giving of Ministerial Finance Directions under this section to be published in the *Gazette*.

Division 9—Office of Evaluation and Audit

Office of Evaluation and Audit

75. An Office of Evaluation and Audit is established within the Commission.

Functions of Office

76. The Office has the following functions:

- (a) to evaluate and audit the operations of the Commission regularly;
- (b) when requested to do so by the Minister or the Commission, to evaluate or audit particular aspects of the operations of the Commission;
- (c) to report on those evaluations and audits, in writing, to the Commission and the Minister at least every 3 months;
- (d) to tell the Minister and the Commission about particular problems that have arisen or may arise in relation to the operations of the Commission, or of any other body that exercises powers, performs functions or receives money under this Act.

Director of Evaluation and Audit

77. (1) There shall be a Director of Evaluation and Audit appointed by the Minister after consulting the Commission.

(2) The Director of Evaluation and Audit is the head of the Office of Evaluation and Audit.

(3) The Director of Evaluation and Audit shall, as soon as practicable after 30 June in each year, give the Commission a report of the operations of the Office of Evaluation and Audit during that year for inclusion in the annual report of the Commission.

Desirability of regular evaluations etc.

78. In directing the operations of the Office of Evaluation and Audit, the Director of Evaluation and Audit shall have regard to the desirability of evaluating and auditing:

- (a) every program that is conducted, or funded, under this Act; and
- (b) the operations of every office of the Commission;

at least once in every 3 years.

Division 10—Special provisions relating to Torres Strait Islander affairs

Minister to consult with Torres Strait representatives before approving estimates

79. The Minister shall consult the Commissioner representing the Torres Strait zone and the Executive Committee of the Regional Council for the Torres Strait region before approving estimates for the purpose of section 61.

Office of Torres Strait Islander Affairs

80. An Office of Torres Strait Islander Affairs is established within the Commission.

Functions of Office

81. (1) The Office has the following functions:

- (a) to monitor the conduct of programs affecting Torres Strait Islanders by the Commission, by other Commonwealth bodies and by State, Territory and local government bodies, and to evaluate the extent to which those programs meet the needs of Torres Strait Islanders;
- (b) to monitor the development of programs and policies affecting Torres Strait Islanders by the Commission, by Regional Councils and by other Commonwealth bodies, and to evaluate the extent to which those programs and policies are likely to meet the needs of Torres Strait Islanders;
- (c) to report to the Advisory Board, the Commission, and the Minister, as appropriate, on the results of the performance of the functions set out in paragraphs (a) and (b).

(2) In performing its functions, the Office shall pay particular attention to the needs of Torres Strait Islanders who live on the Australian mainland.

(3) The Office shall consult the Advisory Board from time to time in relation to the performance of the functions of the Office.

Torres Strait Islander Advisory Board

82. A Torres Strait Islander Advisory Board is established.

Function of Advisory Board

83. (1) The function of the Advisory Board is to provide advice to the Minister, the Commission and the Regional Council for the Torres Strait region for the purpose of furthering the social, economic and cultural advancement of Torres Strait Islanders.

(2) The function of the Advisory Board may be performed by the Advisory Board on its own initiative or at the request of the Minister, the Commission or the Regional Council, as the case requires.

Constitution of Advisory Board

84. (1) The Advisory Board consists of:

- (a) a Chairperson appointed by the Minister, being:
 - (i) where an appointment is made before the election of the first Commissioner representing the Torres Strait zone—a Torres Strait Islander who lives in the Torres Strait region; and
 - (ii) in any other case—the Commissioner who represents the Torres Strait zone; and
- (b) 6 other members, being Torres Strait Islanders appointed by the Minister to represent Torres Strait Islanders living in the following areas:
 - (i) New South Wales and the Australian Capital Territory;
 - (ii) Victoria and Tasmania;
 - (iii) Queensland;
 - (iv) Western Australia;
 - (v) South Australia;
 - (vi) the Northern Territory.

(2) The members of the Advisory Board hold office on a part-time basis.

(3) The members of the Advisory Board referred to in paragraph (1) (b) hold office for such periods, not exceeding 3 years, as are specified in their instruments of appointment.

Remuneration and allowances

85. A member of the Advisory Board is entitled to remuneration and allowances in accordance with section 194.

Other terms and conditions

86. A member of the Advisory Board holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*.

Meetings of Advisory Board

87. (1) The Chairperson of the Advisory Board shall convene at least 4 meetings of the Advisory Board in each calendar year, and may convene such other meetings of the Advisory Board as, in the Chairperson's opinion, are necessary for the efficient performance of its functions.

(2) The Minister or the Chief Executive Officer may, at any time, convene a meeting of the Advisory Board.

(3) The Advisory Board may regulate the conduct of proceedings at its meetings as it thinks fit.

(4) If the Advisory Board so determines, a member of the Advisory Board may participate in a meeting of the Advisory Board by means of any of the following methods of communication:

- (a)** telephone;
- (b)** closed circuit television;
- (c)** another method of communication determined by the Advisory Board.

(5) A determination of the Advisory Board under subsection (4) may be made in respect of a particular meeting, or in respect of all meetings, of the Advisory Board.

Review of operation of Act

88. The Minister shall, within 6 months after receiving the report of the Commission under section 26, meet the Regional Council for the Torres Strait region and the Advisory Board to review the operation of this Act as it affects Torres Strait Islanders.

Division 11—Miscellaneous

Aboriginal or Torres Strait Islander corporations

89. (1) For the purposes of this section, the following conditions are qualifying conditions in relation to a body corporate:

- (a)** all the members of the body corporate are Aboriginal persons or Torres Strait Islanders;
- (b)** a substantial majority of the members of the body corporate are Aboriginal persons or Torres Strait Islanders and the body corporate is controlled by Aboriginal persons or Torres Strait Islanders.

(2) The Commission shall, by notice published in the *Gazette*, declare a body corporate to be an Aboriginal or Torres Strait Islander corporation for the purposes of this Act if, upon written application made to the Commission

by the body corporate, the Commission is satisfied that the body corporate satisfies either of the qualifying conditions.

(3) If the Commission is satisfied that a body corporate that is an Aboriginal or Torres Strait Islander corporation satisfies neither of the qualifying conditions, the Commission shall, by notice published in the *Gazette*, declare that the body corporate has ceased to be an Aboriginal or Torres Strait Islander corporation for the purposes of this Act.

Secrecy

90. (1) This section applies to a person:

- (a) who is or has been a Commissioner or acting Commissioner;
- (b) who is or has been the Chief Executive Officer or acting Chief Executive Officer;
- (c) who is or has been a member of the staff of the Commission;
- (d) who is or has been engaged under section 56.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act, or of a prosecution for an offence against this Act:

- (a) make a record of, or divulge or communicate 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 or guarantee under this Act; or
- (b) produce to any person a document relating to the affairs of another person furnished in connection with an application for, or the giving of, a loan or guarantee under this Act.

Penalty: \$2,000 or imprisonment for one year, or both.

(3) A person to whom this section applies shall not be required:

- (a) to divulge or communicate to a court any information referred to in subsection (2); or
- (b) to produce in a court any document referred to in that subsection; except when it is necessary to do so for the purposes of this Act, or of a prosecution for an offence against this Act.

(4) A reference in this section to an offence against this Act includes a reference to an offence created by section 5, 6, 7, 7A, 29C or 29D, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that relates to this Act or the regulations.

(5) In this section:

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to;

“this Act” includes the regulations.

PART 3—REGIONS AND ZONES

Division 1—Regions

Regions

- 91. (1)** For the purposes of this Act, Australia is divided into 60 regions:
- (a) each of which includes the place or places set out in a single line of column B of Schedule 1, and does not include any place set out in any other line of that column; and
 - (b) the boundaries of which are as determined from time to time by the Minister by notice published in the *Gazette*.
- (2) The Minister shall not change boundaries under subsection (1) without inviting the Commission to provide him or her with written advice about the proposed new boundaries.
- (3) The Minister shall not change boundaries under subsection (1) between 31 March and 31 December in a Regional Council election year.
- (4) The Minister shall include, in a notice changing boundaries under subsection (1):
- (a) a statement setting out, in respect of each region whose boundaries are changed, the amount (if any) in the Land Fund that is to be taken, for the purpose of subsection 68 (5), to have been paid into the Land Fund by virtue of Regional Council estimates for that region;
 - (b) an estimate by the Minister, made after consulting the Australian Electoral Commission, in relation to each region whose boundaries are changed, of:
 - (i) the number of persons who will be entitled to vote at the next Regional Council election for that region; and
 - (ii) the number of persons living in that region who are Aboriginal persons or Torres Strait Islanders; and
 - (c) any provisions that the Minister thinks necessary transferring assets or liabilities between Regional Councils for regions whose boundaries are changed.
- (5) The Minister shall consult the Commission and any Regional Council that would be affected before including provisions referred to in paragraph (4) (c) in a notice under subsection (1).
- (6) Provisions made under paragraph (4) (c) have effect according to their terms.
- (7) A notice changing boundaries under subsection (1):
- (a) has effect for the purposes of Regional Council elections held after the date of the notice; and
 - (b) takes effect, for all other purposes, at the end of the election period in relation to the first round of Regional Council elections held after the date of the notice.

Division 2—Regional Councils

Regional Councils

92. (1) A Regional Council is established for each region.

(2) Each Regional Council:

- (a)** is a body corporate, with perpetual succession;
- (b)** shall have a common seal;
- (c)** has the capacity to acquire, hold and dispose of real and personal property; and
- (d)** may sue and be sued in its corporate name.

(3) The common seal of a Regional Council shall be kept in such custody as the Regional Council directs and shall not be used except as authorised by the Regional Council.

(4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of a Regional Council appearing on a document and shall presume that it was duly affixed.

Names of Regional Councils

93. (1) The Regional Council for a region may from time to time, by resolution, determine a name, or a new name, for the Regional Council.

(2) Where a Regional Council determines a name, or a new name, for the Regional Council, the Regional Council shall give the Commission written notice of the name or the new name.

(3) The corporate name of a Regional Council for a region that includes a place or places set out in column B of Schedule 1 is:

- (a)** if a name for the Regional Council has not been determined under subsection (1)—the Regional Council for the region that includes that place or those places; or
- (b)** the name shown in the most recent notice given to the Commission under subsection (2).

Division 3—Functions of Regional Councils

Functions of Regional Councils

94. (1) Each Regional Council has the following functions:

- (a)** to formulate, and revise from time to time, a regional plan for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents of the region;
- (b)** to assist, advise and co-operate with the Commission, other Commonwealth bodies and State, Territory and local government bodies in the implementation of the regional plan;
- (c)** to make proposals, in accordance with section 97, for Commission expenditure in relation to the region;

- (d) to receive, and to pass on to the Commission, the views of Aboriginal persons and Torres Strait Islanders about the activities, in the region, of the Commission, other Commonwealth bodies and State, Territory and local government bodies;
- (e) to represent Aboriginal and Torres Strait Islander residents of the region and to act as an advocate of their interests;
- (f) such other functions as are conferred on the Regional Council by this Act;
- (g) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

(2) Nothing in this section or in any other provision of this Act shall be read as conferring on a Regional Council a function of acquiring land except:

- (a) for its administrative purposes; or
- (b) for the purpose of the performance of functions expressly conferred on the Regional Council by this Act.

Powers of Regional Councils

95. (1) A Regional Council has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

(2) A Regional Council shall not exercise its power to engage staff without the written approval of the Commission.

Advisory committees

96. (1) A Regional Council may establish an advisory committee or advisory committees to advise the Regional Council in relation to the performance of the Regional Council's functions.

(2) An advisory committee established under subsection (1) may include members of the Regional Council.

Regional Councils to prepare draft budgets

97. (1) Where, under section 63, a Regional Council is given a copy of the Commission's draft budget for a financial year, the Regional Council shall, within such period as the Commission directs:

- (a) prepare a draft budget for the Regional Council for that financial year; and
- (b) give a copy of the draft budget to the Commission.

(2) In preparing a draft budget under subsection (1), the Regional Council shall consider any guidelines given to it by the Commission under subsection 63 (12).

(3) A draft budget for a Regional Council for a financial year shall set out the proposed allocation in accordance with subsection (4) of the amount

specified under subparagraph 63 (1) (b) (i) in the regional statement for the region for that financial year.

- (4) For the purposes of subsection (3), a draft budget:
- (a) shall allocate the amount, or so much of it as is not allocated to the Land Fund, among programs conducted or to be conducted in the region concerned;
 - (b) shall show, in relation to each program, the organisation or organisations conducting or proposing to conduct the program; and
 - (c) may allocate some of the amount to the Land Fund.

(5) In subsection (4):
“program” does not include:

- (a) a program of a kind to which amounts could be allocated under paragraph 63 (4) (f), (h) or (j) or 63 (5) (b) or (c);
- (b) a program on which money could be spent out of the Housing Fund;
- (c) a program to which an amount is to be allocated under paragraph 63 (5) (a) or (d); or
- (d) except where the Commission, at the request of the Regional Council concerned, has approved the program for the purposes of this section—a program to be conducted by a State, the Australian Capital Territory or the Northern Territory, by an authority of a State, the Australian Capital Territory or the Northern Territory, by Aboriginal Hostels Limited or by the Australian Institute of Aboriginal and Torres Strait Islander Studies.

(6) When the Commission receives a copy of a Regional Council’s draft budget under subsection (1), the Commission may, in writing, ask the Regional Council to reconsider the draft budget and change it in specified respects.

(7) A Regional Council that is asked to reconsider its draft budget under subsection (6):

- (a) shall reconsider its draft budget;
- (b) is not required to change its draft budget; and
- (c) shall, within such period as the Commission directs:
 - (i) notify the Commission in writing that it has not changed its draft budget; or
 - (ii) give the Commission a copy of its revised draft budget.

Regional Councils to advise Commission

98. (1) The Commission may from time to time ask a Regional Council for advice, in such form (if any) as the Commission specifies, about any matter.

(2) The Regional Council shall give the Commission that advice.

Annual report

99. (1) Each Regional Council shall, as soon as practicable after 30 June each year and, in any event, before 31 October in each year, prepare and give to the Commission a report about its operations, and the implementation of the regional plan, during the year ended on that 30 June.

(2) A report given to the Commission under subsection (1) during a year shall be tabled at a meeting of the Commission before 31 December of that year.

(3) Within 7 days after a report of a Regional Council is given to the Commission, the Chairperson of the Regional Council shall make copies of the report available for inspection by residents of the region.

(4) The copies of the report shall be made available for inspection at each office of the Commission that serves the region concerned.

Division 4—Regional Council elections

Regional Council elections

100. Regional Council elections shall be conducted by the Australian Electoral Commission in accordance with:

- (a) the provisions of this Act; and
- (b) the Regional Council election rules in force at the beginning of the election period.

Persons entitled to vote at Regional Council elections

101. A person is entitled to vote at an election for the members of a Regional Council if and only if:

- (a) the person is an Aboriginal person or a Torres Strait Islander; and
- (b) either:
 - (i) the person's name is on the Commonwealth Electoral Roll and the person's place of living as shown on that Roll is within the region for which the Regional Council is established; or
 - (ii) the person is entitled to vote at the election pursuant to rules made under subsection 113 (3).

Persons qualified to be elected to Regional Councils

102. (1) A person is not qualified to stand for election, or to be elected, as a member of a Regional Council if:

- (a) the person is not entitled to vote at the Regional Council election;
- (b) the person does not live in the region for which the Regional Council is established;
- (c) the person is a member of the staff of, or a consultant to, the Commission;

- (d) subject to subsection (2), the person has been convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
- (e) subject to subsection (2), the person has been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer.

(2) In spite of subsection (1), a person covered by paragraph (1) (d) or (e) is not disqualified by that paragraph from standing for election, or being elected, as a member of a Regional Council if:

- (a) where the person was never actually imprisoned for the offence—at least 2 years have elapsed since the person was convicted;
- (b) where the person served a term of imprisonment for the offence—at least 2 years have elapsed since the person was released from prison; or
- (c) in any case—the Federal Court of Australia, on application by the person, declares that in spite of the person's conviction, he or she ought not to be disqualified from standing for election, or being elected, as a member of a Regional Council.

(3) The Federal Court of Australia has jurisdiction with respect to matters arising under subsection (2).

Errors in Commonwealth Electoral Roll not to affect entitlements

103. (1) For the purposes of this Act, a person's name shall be taken to be on the Commonwealth Electoral 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.

(2) For the purposes of this Act, a person's name shall be taken to be on the Commonwealth Electoral Roll even if his or her name as shown on that Roll has been changed because of his or her marriage.

Timing of Regional Council elections

104. (1) Regional Council elections shall, subject to this section, be held every 3 years during periods determined under the rules having regard to the day or days fixed for the polling in accordance with this section.

(2) The Minister shall, by notice in writing, fix a day or days for the polling in each round of Regional Council elections.

(3) The polling day, or the last of the polling days, for the first round of Regional Council elections shall be no later than 8 months after the commencement of this Act.

(4) The polling day or days for each subsequent round of Regional Council elections shall be between 1 July and 31 December, inclusive, in the third calendar year after the immediately preceding round of Regional Council elections.

Polling places

105. (1) The Australian Electoral Commission shall, by notice in writing, appoint by name such polling places for each region as it considers necessary.

(2) The Australian Electoral Commission shall appoint polling places under subsection (1):

- (a) as soon as practicable after the commencement of this Act; and
- (b) between 1 April and 31 May in each Regional Council election year.

(3) The Australian Electoral Commission shall give a copy of each notice under subsection (1) to the Minister and to the Aboriginal and Torres Strait Islander Commission.

(4) The Aboriginal and Torres Strait Islander Commission shall take reasonable steps to ensure that a copy of the most recent notice appointing polling places for a region under subsection (1) is available for inspection at each office of the Aboriginal and Torres Strait Islander Commission that serves that region.

Fixing of election days, and location of polling places, to be notified in *Gazette*

106. (1) The Minister shall cause a copy of the notice under subsection 104 (2) fixing a polling day or polling days for the first round of Regional Council elections to be published in the *Gazette* before the day, or the first of the days, so fixed.

(2) The Minister shall cause a copy of the notice under subsection 104 (2) fixing a polling day or polling days for a subsequent round of Regional Council elections to be published in the *Gazette* at least 90 days before the day, or the first of the days, so fixed.

(3) The Minister shall cause to be published, together with the copy referred to in subsection (1) or (2):

- (a) a copy of the most recent notice appointing polling places under section 105; and
- (b) a notice setting out an estimate by the Minister, in relation to each region, of:
 - (i) the number of persons who will be entitled to vote at the forthcoming Regional Council election for that region; and
 - (ii) the number of persons living in that region who are Aboriginal persons or Torres Strait Islanders.

(4) A failure by the Minister to comply with this section does not invalidate the fixing of the day or days, or the appointing of the polling places, as the case requires.

Effect of nominations

107. (1) If the number of candidates nominated for election to a Regional Council is not greater than the prescribed number, the authorised electoral officer shall declare the candidates nominated to be duly elected.

(2) If the number of candidates nominated for election to a Regional Council is greater than the prescribed number, a poll shall be held.

Voting not compulsory

108. Voting at Regional Council elections is not compulsory.

Voting to be by secret ballot

109. Voting at Regional Council elections shall be by secret ballot.

Voting

110. (1) A voter shall cast a vote at a Regional Council election by marking the ballot paper so as to show the order of the voter's preference for the candidates.

(2) A ballot paper is formal if and only if:

- (a) the authorised electoral officer is satisfied that it is an authentic ballot paper;
- (b) it indicates the voter's first preference for one, and only one, candidate; and
- (c) it does not have upon it any identifying mark.

(3) A ballot paper that is formal shall be given effect according to the voter's intention so far as that intention is clear.

(4) In this section:

“identifying mark” means writing or another mark by which, in the opinion of the authorised electoral officer, the voter can be identified, but does not include writing or another mark placed on the ballot paper (whether or not in contravention of any law) by a person involved in conducting the election.

Counting of votes and election of candidates

111. Votes cast at a Regional Council election shall be counted, and candidates shall be elected, as provided in Schedule 2 and in the Regional Council election rules.

General obligation to inform voters about elections

112. In addition to its specific obligations in relation to Regional Council elections, the Australian Electoral Commission shall take such steps as it considers reasonable to inform persons who are or may be entitled to vote at Regional Council elections about:

- (a) eligibility to vote;
- (b) the dates and times fixed for polling;
- (c) the locations of polling places; and
- (d) any other matters related to the conduct of Regional Council elections that the Australian Electoral Commission considers significant.

Rules for conduct of elections

113. (1) The Minister may, after consulting the Aboriginal and Torres Strait Islander Commission and the Electoral Commissioner, make rules, not inconsistent with this Act, prescribing:

- (a) the manner in which Regional Council elections are to be conducted (including elections conducted because previous elections have been declared to be void); and
- (b) the manner in which casual vacancies in Regional Councils are to be filled.

(2) The matters that may be dealt with in rules under subsection (1) include, but are not limited to, the following matters:

- (a) the use of an electoral roll or voter cards to establish an entitlement to vote or to make a record of the persons who have cast votes;
- (b) the functions of Aboriginal and Torres Strait Islander liaison officers in connection with the determination of a person's entitlement to vote;
- (c) the nomination of candidates for election;
- (d) ballot papers and forms;
- (e) postal voting;
- (f) mobile polling, including the appointment and duties of mobile polling teams and matters relating to polling by such teams;
- (g) confidentiality of voting;
- (h) the employment by the Australian Electoral Commission of staff, including polling staff, in connection with elections;
- (j) the scrutiny and counting of votes;
- (k) the declaration of the poll.

(3) The rules may make provisions entitling Aboriginal persons and Torres Strait Islanders to vote at Regional Council elections even if those persons would not be entitled so to vote pursuant to subparagraph 101 (b) (i)

and, without limiting the generality of the foregoing, may make provision in relation to the following matters:

- (a) the determination of the Regional Council election at which a person is entitled to vote if:
 - (i) the person's name is on the Commonwealth Electoral Roll; but
 - (ii) pursuant to a provision of the *Commonwealth Electoral Act 1918*, the person's place of living or address is not shown on the Commonwealth Electoral Roll;
 - (b) how a vote cast by a person is to be dealt with where:
 - (i) the person was entitled to have his or her name on the Commonwealth Electoral Roll; but
 - (ii) the person's name was not on that Roll because of a mistake by a person exercising powers or performing functions under the *Commonwealth Electoral Act 1918*;
 - (c) the casting of a provisional vote by a person whose name does not, on the polling day, appear to be on the Commonwealth Electoral Roll;
 - (d) the circumstances in which a provisional vote cast pursuant to rules made under paragraph (c) is to be accepted.
- (4) The rules may provide penalties for breaches of the rules not exceeding:
- (a) in the case of a natural person—\$1,000; or
 - (b) in the case of a body corporate—\$5,000.
- (5) Where:
- (a) the rules create an offence in relation to Regional Council elections that corresponds to an offence under the *Commonwealth Electoral Act 1918*; and
 - (b) the maximum pecuniary penalty for the offence under the *Commonwealth Electoral Act 1918* exceeds the penalty that, by subsection (4), could be imposed for a breach of the rules;
- the rules may provide a maximum penalty for the first-mentioned offence not exceeding the maximum pecuniary penalty for the corresponding offence under the *Commonwealth Electoral Act 1918*, but nothing in this subsection enables the rules to provide penalties of imprisonment.
- (6) In making rules under subsection (1), the Minister shall have regard to the desirability of providing for Regional Council elections to be conducted in a manner similar to the manner in which elections for the Parliament are conducted with a view to increasing Aboriginal and Torres Strait Islander understanding of, and participation in, elections for the Parliament.
- (7) Nothing in subsection (6) prevents the Minister making rules:
- (a) that take account of the special circumstances of Aboriginal persons or Torres Strait Islanders; or

- (b) that will enable significant reductions in the costs of conducting Regional Council elections.

(8) Rules made by the Minister under subsection (1) are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(9) Section 48 of the *Acts Interpretation Act 1901* applies in relation to rules made by the Minister under subsection (1), other than rules made for the purposes of the first round of Regional Council elections, as if paragraph (1) (b) of that section were omitted and the following paragraph were substituted:

“(b) subject to this section, shall take effect on the first day on which the rules are no longer liable to be disallowed, or to be deemed to have been disallowed, under this section; and”.

Authorised electoral officer

114. A reference in a provision of this Division or Schedule 2 to an authorised electoral officer is, in relation to a Regional Council election, a reference to a member of the staff of the Australian Electoral Commission designated by the Electoral Commissioner for the purposes of that provision and in relation to that Regional Council election.

Division 5—Administrative provisions

Constitution of Regional Councils

115. (1) Subject to any notice in force under section 116, each Regional Council consists of the prescribed number of members elected in accordance with Division 4 of this Part.

(2) The performance of the functions or the exercise of the powers of a Regional Council is not affected by reason only that there are fewer than the prescribed number of members of the Regional Council because:

- (a) there were fewer than the prescribed number of candidates for election to the Regional Council at the last election for the Regional Council; or
- (b) a casual vacancy in the membership of the Regional Council has occurred and has not yet been filled, or is not able to be filled, in accordance with the Regional Council election rules.

(3) Where there are fewer than 7 members of a Regional Council, the Minister may, subject to subsection (4), by notice in writing published in the *Gazette*:

- (a) remove the remaining members (if any) of the Regional Council from office; and
- (b) appoint an Administrator to administer the affairs of the Regional Council.

(4) Subsection (3) does not apply where:

- (a) there are casual vacancies in the membership of the Regional Council;
- (b) some or all of those vacancies will be able to be filled in accordance with the Regional Council election rules; and
- (c) when those casual vacancies are filled, the Regional Council will have at least 7 members.

Torres Strait Regional Council

116. (1) Where the Minister is satisfied that the Torres Strait Regional Council would best be able to represent the Torres Strait Islanders and Aboriginals living in the Torres Strait region if it consisted of, or included, persons elected to represent particular communities in the Torres Strait region under the Queensland Act, the Minister may, by notice published in the *Gazette*, declare that he or she is so satisfied.

(2) The notice shall also set out particulars of how the Torres Strait Regional Council is to be constituted and, without limiting the generality of the foregoing, may make any of the following provisions:

- (a) provision for some or all of the members of the Torres Strait Regional Council to be persons elected under the Queensland Act to represent particular communities in the Torres Strait region;
- (b) provision for some of the members of the Torres Strait Regional Council to be elected under this Act to represent particular communities in the Torres Strait region;
- (c) provision for the method of election of members of the Torres Strait Regional Council to whom provisions under paragraph (b) apply;
- (d) provision for the term of office of members of the Torres Strait Regional Council holding office under this section.

(3) The notice may make such other provisions in relation to the constitution and operation of the Torres Strait Regional Council as the Minister thinks necessary.

(4) A notice under this section has effect according to its terms.

(5) A notice under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(6) Section 48 of the *Acts Interpretation Act 1901* applies in relation to a notice under subsection (1), other than any notice published before the beginning of the first Regional Council election period, as if paragraph (1) (b) of that section were omitted and the following paragraph were substituted:

- “(b) subject to this section, shall take effect on the first day on which the notice is no longer liable to be disallowed, or to be deemed to have been disallowed, under this section; and”

(7) In this section:

“Queensland Act” means the *Community Services (Torres Strait) Act 1984* of Queensland as amended and in force from time to time, and includes any law of Queensland that replaces that Act.

Term of office of members of Regional Council

117. Persons elected, or declared to have been elected, as members of a Regional Council:

- (a) take office as members at the end of the election period concerned; and
- (b) hold office, subject to this Part, until the end of the next election period.

Remuneration and allowances

118. A member of a Regional Council is entitled to remuneration and allowances in accordance with section 194.

Disclosure of interests

119. (1) A member of a Regional Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Regional Council shall, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Regional Council.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting.

Resignation

120. A member of a Regional Council may resign by writing signed by the member and sent to the Minister.

Persons taken to have resigned from Regional Councils in certain circumstances

121. (1) Where the Commission is satisfied that a member of a Regional Council:

- (a) does not live in the region; and
- (b) has not lived in the region at all during the immediately preceding period of 6 months;

the Commission may, in writing, declare that it is so satisfied.

(2) Subject to the *Administrative Appeals Tribunal Act 1975*, where the Commission makes a declaration under subsection (1) about a member of a Regional Council, the member shall for all purposes be taken to have resigned on the date of the declaration.

(3) The Commission may, in writing, declare that a member of a Regional Council has become an employee of, or a consultant to, the Commission.

(4) Where the Commission makes a declaration under subsection (3) about a member of a Regional Council, the member shall for all purposes be taken to have resigned on the date of the declaration.

Persons cease to be members of Regional Councils in certain circumstances

122. (1) Where the Commission is satisfied that a member of a Regional Council, since becoming, or last becoming, a member of the Regional Council:

- (a) has been convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer;
 - (b) has been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
 - (c) has failed, without reasonable excuse, to comply with section 119;
- the Commission shall, in writing, declare that it is so satisfied.

(2) Where the Commission makes a declaration under subsection (1) about a member of a Regional Council, the member ceases to be a member of the Regional Council on the date of the declaration.

Removal of Regional Council

123. (1) Where the Minister receives a valid petition calling for the suspension of a Regional Council, the Minister may, at any time within the period of 6 months after receiving the petition but no later, by notice in writing published in the *Gazette*:

- (a) remove the members of the Regional Council from office; and
- (b) appoint an Administrator to administer the affairs of the Regional Council.

(2) In this section:

“eligible person” means a person who would be entitled to vote at an election for members of the Regional Council concerned;

“sufficient number” means a number that exceeds 25% of the electorate number;

“valid petition” means a petition:

- (a) that contains the signatures of a sufficient number of eligible persons who were eligible persons when they signed the petition;
- (b) that sets out legibly:
 - (i) the name of each person who has signed the petition;
 - (ii) the day on which the person signed; and
 - (iii) an address for the person that is sufficient to identify the place where the person lives; and
- (c) all the signatures to which have been affixed within the period of 6 months immediately preceding the delivery of the petition to the Minister.

Powers of Administrator

124. An Administrator appointed under section 115 or 123 or Schedule 4 to administer the affairs of a Regional Council:

- (a) shall do so until the new members of the Regional Council take office;
- (b) has all the functions and powers of the Regional Council;
- (c) has all powers necessary to rectify any problems in the affairs of the Regional Council; and
- (d) does not have power to vote in a zone election.

Members of Regional Councils, and Administrators, not personally liable

125. (1) A member of a Regional Council is not personally liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:

- (a) by the Regional Council; or
- (b) by the member in the capacity of member.

(2) An Administrator appointed under section 115 or 123 or Schedule 4 is not personally liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done:

- (a) by the Regional Council concerned before the Administrator was appointed; or
- (b) in good faith by the Administrator in the capacity of Administrator.

Other terms and conditions

126. A member of a Regional Council holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*.

Division 6—Operations of Regional Councils

Chairperson and Executive Committee

127. (1) A Regional Council shall, at its first meeting after it is elected and thereafter at the next meeting held after each anniversary of that first meeting, elect from among its members by secret ballot:

- (a) a Chairperson; and
- (b) 4 other persons.

(2) The Chairperson of the Regional Council and the 4 other persons together comprise the Executive Committee of the Regional Council.

(3) At any other meeting of a Regional Council, the Regional Council:

- (a) may elect a new Chairperson, and shall elect a new Chairperson if there is a vacancy in the office of Chairperson of the Regional Council; and
- (b) may elect another member of the Regional Council to replace a particular member previously elected under paragraph (1) (b), and

shall elect another member of the Regional Council if there is a vacancy in an office of member of the Executive Committee.

(4) Elections under this section shall be conducted in accordance with the regulations.

Meetings of Regional Councils

128. (1) The Chairperson of a Regional Council shall convene at least 4 meetings of the Regional Council in each calendar year, and may convene such other meetings of the Regional Council as, in the Chairperson's opinion, are necessary for the efficient performance of its functions.

(2) The Commission Chairperson:

(a) may at any time; and

(b) shall whenever the Regional Council does not have a Chairperson; convene a meeting of a Regional Council.

(3) The Commission Chairperson shall give members of the Regional Council concerned at least 14 days notice of a meeting convened in circumstances mentioned in paragraph (2) (b).

(4) The Chairperson of a Regional Council shall convene a meeting of the Regional Council upon receipt of a written request for a meeting signed by at least 4 members of the Regional Council.

(5) At a meeting of a Regional Council a quorum is constituted by a majority of the number of members of the Regional Council holding office on the day of the meeting.

(6) The Chairperson of a Regional Council shall preside at all meetings of the Regional Council at which he or she is present.

(7) If the Chairperson of a Regional Council is not present at a meeting of the Regional Council, the members present shall elect one of their number to preside at the meeting.

(8) Questions arising at a meeting of the Regional Council shall be determined by a majority of the votes of the members present and voting.

(9) The person presiding at a meeting of Regional Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) A Regional Council shall cause minutes of the proceedings at its meetings to be kept.

(11) Subject to subsections (12), (13) and (14), a Regional Council may regulate the conduct of proceedings at its meetings as it thinks fit and, in particular, may conduct its meetings in accordance with Aboriginal or Torres Strait Islander tradition and custom.

(12) The Commission shall formulate model rules, not inconsistent with this Act, for the conduct of proceedings at meetings of Regional Councils.

(13) A Regional Council may:

- (a) adopt the model rules for the conduct of proceedings at its meetings;
- (b) adopt the model rules for the conduct of proceedings at its meetings with such modifications, not inconsistent with this Act, as the Regional Council from time to time determines; or
- (c) formulate its own rules, not inconsistent with this Act, for the conduct of proceedings at its meetings.

(14) Where a Regional Council has not adopted or formulated rules for the conduct of proceedings at its meetings under subsection (13), proceedings at meetings of the Regional Council shall be conducted in accordance with the model rules formulated by the Commission.

Commission officers may be required to attend Regional Council meetings

129. (1) The Chairperson of a Regional Council may ask the Chief Executive Officer, in writing, to nominate a member of the staff of the Commission to attend meetings of the Regional Council.

(2) The Chief Executive Officer shall nominate a member of the staff of the Commission to attend meetings accordingly.

Division 7—Zones

Zones

130. (1) For the purposes of this Act, the regions are grouped, as shown in Schedule 1, into the zones set out in column A of that Schedule.

(2) The regulations may amend Schedule 1 so as to remove a region from one zone and include it in another zone.

(3) A regulation made pursuant to subsection (2) takes effect at the end of the election period in relation to the first round of Regional Council elections held after the date on which the regulation is notified in the *Gazette*.

Election of zone representatives

131. (1) The members of the Regional Councils of the regions included in a zone shall elect one of their number to represent the zone.

(2) A person whose appointment as the Commissioner representing a zone has been terminated by the Minister:

- (a) under subsection 40 (4) because of misbehaviour; or
- (b) under section 41;

is not eligible to stand for election at the next election under subsection (1) for a person to represent the zone.

Zone elections

132. (1) Zone elections shall be conducted in accordance with:

- (a) the provisions of this Act; and
- (b) the zone election rules in force at the end of the election period in relation to the last round of Regional Council elections.

(2) Subject to zone election rules made under paragraph 138 (1) (b), zone elections shall be conducted by the Australian Electoral Commission.

Timing of zone elections

133. Each round of zone elections shall be held as soon as practicable, and in any case within 3 months, after the end of the election period in relation to a round of Regional Council elections.

Effect of nominations

134. (1) If only one candidate is nominated for election at a zone election, the authorised electoral officer shall declare the candidate to be duly elected.

(2) If 2 or more candidates are nominated for election at a zone election, a poll shall be held.

Voting to be by secret ballot

135. Voting at zone elections shall be by secret ballot.

Voting

136. (1) A voter shall cast a vote at a zone election by marking the ballot paper so as to show the order of the voter's preference for the candidates.

(2) A ballot paper is formal if and only if:

- (a) the authorised electoral officer is satisfied that it is an authentic ballot paper;
- (b) it indicates the voter's first preference for one, and only one, candidate; and
- (c) it does not have upon it any identifying mark.

(3) A ballot paper that is formal shall be given effect according to the voter's intention so far as that intention is clear.

(4) In this section:

“identifying mark” means writing or another mark by which, in the opinion of the authorised electoral officer, the voter can be identified, but does not include writing or another mark placed on the ballot paper (whether or not in contravention of any law) by a person involved in conducting the election.

Counting of votes and election of candidates

137. Votes cast at a zone election shall be counted, and candidates shall be elected, as provided in Schedule 3 and in the zone election rules.

Rules for conduct of elections

138. (1) The Minister may, after consulting the Aboriginal and Torres Strait Islander Commission and the Electoral Commissioner, make rules, not inconsistent with this Act, prescribing:

- (a) the manner in which zone elections are to be conducted; and

(b) the manner in which casual vacancies among the elected Commissioners are to be filled.

(2) The matters that may be dealt with in rules under subsection (1) include, but are not limited to, the following matters:

- (a) the nomination of candidates for election;
- (b) ballot papers and forms;
- (c) postal voting;
- (d) confidentiality of voting;
- (e) the performance of administrative duties in relation to elections by members of staff of the Aboriginal and Torres Strait Islander Commission;
- (f) the scrutiny and counting of votes;
- (g) the declaration of the poll.

(3) The rules may provide penalties for breaches of the rules not exceeding:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

(4) Where:

- (a) the rules create an offence in relation to zone elections that corresponds to an offence under the *Commonwealth Electoral Act 1918*; and
- (b) the maximum pecuniary penalty for the offence under the *Commonwealth Electoral Act 1918* exceeds the penalty that, by subsection (3), could be imposed for a breach of the rules;

the rules may provide a maximum penalty for the first-mentioned offence not exceeding the maximum pecuniary penalty for the corresponding offence under the *Commonwealth Electoral Act 1918*, but nothing in this subsection enables the rules to provide penalties of imprisonment.

(5) Rules made by the Minister under subsection (1) are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(6) Section 48 of the *Acts Interpretation Act 1901* applies in relation to rules made by the Minister under subsection (1), other than rules made for the purposes of the first round of zone elections, as if paragraph (1) (b) of that section were omitted and the following paragraph were substituted:

- “(b) subject to this section, shall take effect on the first day on which the rules are no longer liable to be disallowed, or to be deemed to have been disallowed, under this section; and”.

Authorised electoral officer

139. A reference in a provision of this Division to an authorised electoral officer is a reference to:

- (a) in the case of a zone election being conducted by the Australian Electoral Commission—a member of the staff of the Australian

Electoral Commission designated by the Electoral Commissioner for the purposes of that provision and in relation to that zone election;
or

- (b) in the case of a zone election being conducted by another person or body pursuant to a determination by the Minister under zone election rules made under paragraph 138 (1) (b)—a person designated in the determination.

Division 8—Disputed elections

Disputed elections

140. The provisions of Schedule 4 apply where there is a dispute in relation to a Regional Council election or a zone election.

Division 9—Review of boundaries

Review Panels

141. (1) The Minister shall convene a Review Panel in accordance with section 142 to review matters relating to:

- (a) the boundaries of the regions; and
- (b) the grouping of regions into zones;

and to report to the Minister accordingly.

(2) A Review Panel shall consist of:

- (a) a Commissioner, who shall be the Chairperson of the Review Panel;
- (b) a person nominated by the Electoral Commissioner to represent the Australian Electoral Commission; and
- (c) a person (not being a Commissioner) who is an Aboriginal person or a Torres Strait Islander.

(3) A Review Panel may, if the Minister thinks fit, include a person nominated by the General Manager of the Australian Surveying and Land Information Group to represent that Group.

(4) A member of a Review Panel is entitled to remuneration and allowances in accordance with section 194.

When Review Panel to be convened

142. (1) The Minister may convene a Review Panel after any round of zone elections.

(2) The Minister shall convene a Review Panel:

- (a) after a round of zone elections, unless a Review Panel was convened after the immediately preceding round of zone elections; or
- (b) if the Minister receives a valid petition calling for a review of:
 - (i) the boundaries of a region; or
 - (ii) the regions that are included in a zone.

(3) In this section:

“eligible person” means:

- (a) in relation to a region—a person who would be entitled to vote at an election for the members of the Regional Council for the region; or
- (b) in relation to a zone—a person who would be entitled to vote at an election for the members of the Regional Council for a region included in the zone;

“sufficient number” means:

- (a) in relation to a region—a number that exceeds 25% of the electorate number for the region; or
- (b) in relation to a zone—a number that exceeds 25% of the sum of the electorate numbers for all the regions included in the zone;

“valid petition” means a petition:

- (a) that contains the signatures of a sufficient number of persons who were eligible persons when they signed the petition;
- (b) that sets out legibly:
 - (i) the name of each person who has signed the petition;
 - (ii) the date on which the person signed; and
 - (iii) an address for the person that is sufficient to identify the place where the person lives; and
- (c) all the signatures to which have been affixed within the period of 6 months immediately preceding the delivery of the petition to the Minister.

Conduct of review etc.

143. (1) For the purposes of its review, a Review Panel shall give each Regional Council an opportunity to express its views about the matters under review.

(2) A Review Panel convened pursuant to paragraph 142 (2) (b) shall, if the Minister so directs in writing, review only the matters raised in the petition concerned.

When Review Panel to report

144. (1) A Review Panel shall report to the Minister within 12 months after it is convened.

(2) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

**PART 4—ABORIGINAL AND TORRES STRAIT ISLANDER
COMMERCIAL DEVELOPMENT CORPORATION**

***Division 1—Aboriginal and Torres Strait Islander Commercial
Development Corporation***

**Aboriginal and Torres Strait Islander Commercial Development
Corporation**

145. (1) An Aboriginal and Torres Strait Islander Commercial Development Corporation is established.

(2) The Corporation:

- (a)** is a body corporate;
- (b)** shall have a seal;
- (c)** may acquire, hold and dispose of real and personal property; and
- (d)** may sue and be sued.

(3) The seal of the Corporation shall be kept in such custody as the Corporation Board directs and shall not be used except as authorised by the Corporation Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Corporation appearing on a document and shall presume that it was duly affixed.

Purposes of Corporation

146. The Corporation is established:

- (a)** to assist and enhance Aboriginal and Torres Strait Islander self-management and economic self-sufficiency; and
- (b)** to advance the commercial and economic interests of Aboriginal persons and Torres Strait Islanders by accumulating and using a substantial capital asset for the benefit of the Aboriginal and Torres Strait Islander peoples.

Division 2—Functions of Corporation

Functions of Corporation

147. The Corporation has the following functions:

- (a)** to engage in commercial activities;
- (b)** to promote and encourage Aboriginal and Torres Strait Islander self-management and economic self-sufficiency;
- (c)** such other functions as are conferred on the Corporation by this Act.

Performance of functions

148. (1) In performing its functions, the Corporation shall act in accordance with sound business principles.

(2) For the purpose of the performance of the Corporation's functions, the Corporation Board shall have regard to the desirability of:

- (a)** encouraging and facilitating Aboriginal and Torres Strait Islander participation in commercial projects and enterprises;
- (b)** securing, as far as practicable, Aboriginal and Torres Strait Islander participation in the ownership and control of companies engaged in activities that are likely to have a significant impact on Aboriginal or Torres Strait Islander interests;
- (c)** promoting the development of industries and other commercial and economic activities that are likely to have a beneficial impact on Aboriginal or Torres Strait Islander interests; and
- (d)** making specialist commercial expertise available to Aboriginal persons and Torres Strait Islanders engaged in commercial activities.

Corporate plan

149. (1) The Corporation Board shall from time to time prepare a corporate plan:

- (a)** setting out a statement of the Corporation's objectives; and
- (b)** outlining the strategies and policies that the Corporation Board intends to adopt in order to achieve those objectives, with particular reference to the Corporation Board's intentions in relation to investments, loans, guarantees and other financial aspects of its operations.

(2) Each corporate plan shall relate to a period of at least 3 years and not more than 5 years.

(3) The corporation shall review the corporate plan regularly.

Consideration of corporate plan by Minister

150. (1) The Corporation Board shall give a copy of the corporate plan to the Commission.

(2) The Corporation shall give a copy of the corporate plan to the Minister and may also give to the Minister a copy of any written comments by the Commission about the corporate plan.

(3) The Minister may, by notice in writing to the Corporation Board, request the Corporation Board to change the corporate plan in specified respects.

(4) The Minister shall cause a copy of the corporate plan to be laid before each House of the Parliament within 15 sitting days of that House after receipt by the Minister.

(5) The Minister shall cause a copy of any notice given under subsection (3) to be laid before each House of the Parliament within 15 sitting days of that House after it is given.

Powers of Minister

151. Except as expressly provided in this Act, the Minister is not empowered to direct the Corporation in relation to any of its activities.

Powers of Corporation

152. (1) Subject to section 153 and Division 8, the Corporation has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

(2) The powers of the Corporation under subsection (1) include, but are not limited to, the following powers:

- (a) to enter into contracts;
- (b) to invest money of the Corporation;
- (c) to appoint agents and attorneys, and act as an agent for other persons;
- (d) to form, and participate in the formation of, companies;
- (e) to subscribe for and purchase shares in, and debentures and other securities of, companies;
- (f) to enter into partnerships;
- (g) to participate in joint ventures and arrangements for the sharing of profits;
- (h) to accept gifts, grants, bequests and devises made to it;
- (j) to act as trustee of money and other property vested in it on trust;
- (k) to charge for the provision of services by it.

(3) In spite of anything contained in this Act, any money or other property held by the Corporation on trust shall be dealt with in accordance with the powers and duties of the Corporation as trustee.

(4) The powers of the Corporation may be exercised within or outside Australia.

Guarantees

153. (1) Where the Corporation Board is satisfied that money lent or to be lent to any person will be used in a way that furthers the commercial or economic development of Aboriginal persons or Torres Strait Islanders, the Corporation may guarantee the due payment of all moneys (including interest) payable by the borrower in accordance with the terms and conditions of the loan concerned.

(2) The operation of this section is subject to such limits as the Treasurer determines as to the total amount of money (other than interest) the payment of which may at any time be the subject of guarantees under this section.

(3) The Corporation shall not give guarantees except under this section.

Minister or Commission may ask for information

154. (1) The Minister or the Commission may from time to time ask the Corporation Board for information about the Corporation's activities.

(2) The Corporation Board shall give the Minister the information he or she asks for.

(3) The Corporation Board may give the Commission the information it asks for.

Division 3—Board of Directors of Corporation

Board of Directors of Corporation

155. (1) There shall be a Board of Directors of the Corporation.

(2) The Board consists of the following members:

- (a) a Chairperson;
- (b) a Deputy Chairperson;
- (c) 7 other members.

Responsibilities of Corporation Board

156. It is the responsibility of the Corporation Board to ensure the proper and efficient performance of the functions of the Corporation and to determine the policy of the Corporation with respect to any matter.

Appointment of Directors

157. (1) The Directors shall be appointed by the Minister on a part-time basis.

(2) The Chairperson of the Corporation Board and at least 4 other Directors shall be Aboriginal persons or Torres Strait Islanders.

(3) Up to 3 of the Directors may be Commissioners.

(4) Each Director shall be a person who the Minister is satisfied has experience in:

- (a) industry, commerce or finance; or
- (b) Aboriginal or Torres Strait Islander community life or enterprises.

Selection of Directors

158. Whenever there is, or is expected to be, a vacancy in an office of Director, the Minister may consult the Commission about a suitable appointee.

Division 4—Administrative provisions

Period of appointment

159. (1) Subject to subsection (2), a Director holds office for such period, being at least 1 year but not more than 5 years, as is specified in the instrument of appointment.

(2) A person who has turned 65 shall not be appointed as a Director and a person shall not be appointed as a Director for a period that extends beyond the day on which the person will turn 65.

Remuneration and allowances

160. A Director is entitled to remuneration and allowances in accordance with section 194.

Leave of absence

161. (1) The Minister may, by writing, grant to a Director leave of absence from a meeting of the Corporation Board.

(2) The Minister may delegate to the Corporation Chairperson the power under subsection (1) to grant leave of absence to the other Directors.

Acting appointments

162. (1) The Deputy Chairperson of the Corporation Board shall act as the Corporation Chairperson:

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

(2) The Minister may appoint a Director to act as the Deputy Chairperson of the Corporation Board:

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

but a person appointed to act during a vacancy shall not continue so to act for more than 6 months.

(3) The Minister may appoint a person to act as a Director (other than the Chairperson or Deputy Chairperson of the Corporation Board):

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

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

but a person appointed to act during a vacancy shall not continue so to act for more than 6 months.

(4) The Minister shall not appoint a person to act in an office unless, having regard to section 157, the person could be appointed to that office.

(5) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not 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.

Disclosure of interests

163. (1) A Director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Corporation Board shall, as soon as possible after the relevant facts have come to the Director's knowledge, disclose the nature of the interest at a meeting of the Corporation Board.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Corporation Board and the Director shall not:

- (a) be present during any deliberation of the Corporation Board with respect to that matter; or
- (b) take part in any decision of the Corporation Board with respect to that matter.

Resignation

164. A Director may resign by writing signed by him or her and sent to the Minister.

Termination of appointment

165. (1) The Minister may, after consulting with the Commission, terminate the appointment of a Director because of misbehaviour or physical or mental incapacity.

(2) If a Director:

- (a) is absent, except on leave granted under section 161, from 3 consecutive meetings of the Corporation Board;
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (c) fails, without reasonable excuse, to comply with section 163;
- the Minister shall terminate the appointment of the Director.

(3) Where:

(a) 3 of the Directors are Commissioners; and

(b) a fourth Director becomes a Commissioner;

that fourth Director ceases to be a Director.

Other terms and conditions

166. A Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*.

Division 5—Operations of Corporation and Corporation Board

Meetings of Corporation Board

167. (1) The Corporation Chairperson shall convene such meetings of the Corporation Board as, in the Chairperson's opinion, are necessary for the efficient performance of the Corporation Board's responsibilities.

(2) At a meeting of the Corporation Board a quorum is constituted by 5 Directors.

(3) Where:

(a) a Director who is present at a meeting is required by section 163 not to be present during the deliberations, or to take part in any decision, of the Corporation Board with respect to a particular matter; and

(b) when the Director leaves the meeting there is no longer a quorum present;

the Directors remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

(4) The Corporation Chairperson shall preside at all meetings of the Corporation Board at which he or she is present.

(5) If the Corporation Chairperson is not present at a meeting of the Corporation Board:

(a) if the Deputy Chairperson of the Corporation Board is present, the Deputy Chairperson of the Corporation Board shall preside at the meeting; and

(b) in any other case, the Directors present shall elect one of their number to preside at the meeting.

(6) Questions arising at a meeting of the Corporation Board shall be determined by a majority of the votes of the Directors present and voting.

(7) The person presiding at a meeting of the Corporation Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) The Corporation Board may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

(9) If the Corporation Board so determines, a Director may participate in, and form part of a quorum at, a meeting of the Corporation Board by means of any of the following methods of communication:

- (a) telephone;
- (b) closed circuit television;
- (c) another method of communication determined by the Corporation Board.

(10) A determination of the Corporation Board under subsection (9) may be made in respect of a particular meeting, or in respect of all meetings, of the Corporation Board.

(11) A Director who participates in a meeting as provided by subsection (9) shall be taken for the purposes of this section and section 163 to be present at the meeting.

Division 6—General Manager

General Manager

168. (1) There shall be a General Manager of the Corporation, who shall be appointed by the Corporation Board.

(2) The General Manager shall, subject to subsection (3), manage the day-to-day administration of the Corporation.

(3) The General Manager shall, in managing the administration of the Corporation and in exercising any powers conferred on the General Manager by this Act, act in accordance with any policies determined, and any directions given, by the Corporation Board in writing.

Term of appointment

169. (1) The General Manager shall be appointed for a term not longer than 5 years from a day specified in the instrument of appointment.

(2) A person who has turned 65 shall not be appointed as the General Manager and a person shall not be appointed as the General Manager for a period that extends beyond the day on which the person will turn 65.

Holding of office

170. The General Manager holds office during the Corporation Board's pleasure.

Remuneration and allowances

171. The General Manager shall be paid such remuneration and allowances as are determined by the Corporation Board in writing.

Acting General Manager

172. (1) The Corporation Board may appoint a person to act as the General Manager:

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

but a person appointed to act during a vacancy shall not continue so to act for more than 6 months.

(2) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not 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.

Resignation

173. The General Manager may resign by writing signed by him or her and sent to the Corporation Board.

Other terms and conditions

174. The General Manager holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Corporation Board in writing.

Division 7—Staff

Staff

175. (1) The General Manager may, on behalf of the Corporation, engage such employees as are necessary for the performance of the Corporation's functions under this Act.

(2) The terms and conditions of employment of persons engaged under this section are as determined by the Corporation Board in writing.

Arrangements for Commission staff to perform duties on behalf of Corporation

176. The General Manager may make arrangements with the Chief Executive Officer for the performance of duties by the staff of the Commission on behalf of the Corporation.

Arrangements relating to staff

177. The General Manager may, on behalf of the Corporation, make arrangements for the services of officers or employees of:

- (a) the Public Service of the Commonwealth or of a State or Territory;
- (b) an authority of the Commonwealth or of a State or Territory; or

(c) any other organisation or body;
to be made available to the Corporation.

Consultants

178. (1) The General Manager may, on behalf of the Corporation, engage as consultants to the Corporation persons having suitable qualifications and experience.

(2) The terms and condition on which consultants are engaged shall be as determined by the Corporation Board in writing.

Division 8—Finances

Capital of the Corporation

179. The capital of the Corporation consists of:

- (a) amounts payable to the Corporation under section 208; and
- (b) any amount appropriated from time to time by the Parliament as capital for the Corporation.

Bank accounts

180. (1) The Corporation shall open and maintain an account with a bank and may open and maintain as many other accounts with banks as the Corporation Board thinks necessary.

(2) The Corporation shall pay all money received by it into an account kept under subsection (1).

Application of money held by Corporation

181. Money held by the Corporation shall be applied only:

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

Restriction on Corporation spending

182. The Corporation Board shall not approve a proposal for the Corporation to spend money (other than for the purposes of the day-to-day administration of the Corporation) without first considering a written assessment of the proposal that has been:

- (a) prepared by a member of the staff of the Corporation; and
- (b) endorsed by or on behalf of the General Manager.

Borrowing for temporary purposes

183. (1) The Corporation may, for the purpose only of meeting a temporary deficit in the money of the Corporation, borrow money on overdraft from a bank.

(2) The operation of this section is subject to such limits as the Treasurer determines as to:

- (a) the total amount of money (other than interest) that may be owed by the Corporation at any time as a result of borrowings under this section; and
- (b) the periods for which money may be borrowed under this section.

Limit on Corporation's powers

184. (1) The Corporation shall not borrow money except in accordance with section 183.

(2) The Corporation shall not raise money except by borrowing.

Giving of security over assets

185. The Corporation may give security over the whole or any part of its assets:

- (a) for the repayment by the Corporation of money borrowed under section 183 and the payment by the Corporation of interest (including interest on interest) on money so borrowed; or
- (b) in connection with a guarantee given by the Corporation under section 153;

and not otherwise.

Net profit of Corporation

186. For the purposes of this Act, the net profit of the Corporation for a financial year is the amount (if any) remaining after deducting from the revenue received or receivable in respect of the financial year the expenditure and provision for expenditure properly chargeable against that revenue.

Powers of companies in which Corporation has an interest

187. Nothing in this Part (except section 185) shall be taken to limit the powers of any company:

- (a) formed by the Corporation, whether alone or jointly with another person; or
- (b) in which the Corporation holds shares, debentures or other securities.

Exemption from taxation

188. The Corporation is not subject to taxation under any law of the Commonwealth or of a State or Territory.

Application of Division 2 of Part XI of Audit Act

189. (1) It is hereby declared that the Corporation is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) Division 2 of Part XI of the *Audit Act 1901* applies to the Corporation as if sections 63D and 63E were omitted.

Division 9—Miscellaneous

Delegation to General Manager or member of staff

190. The Corporation may, by writing under its seal, delegate any or all of its functions and powers to the General Manager or to a member of the staff of the Corporation.

Secrecy

191. (1) This section applies to a person:

- (a) who is or has been a Director or acting Director;
- (b) who is or has been the General Manager or acting General Manager;
- (c) who is or has been employed or engaged under section 175 or 178;
- (d) who is performing, or who has performed, duties on behalf of the Corporation pursuant to an arrangement under section 176; or
- (e) whose services are being or have been made available to the Corporation pursuant to an arrangement under section 177.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act, or of a prosecution for an offence against this Act:

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the first-mentioned person in the performance of duties for the purposes of this Act; or
- (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$2,000 or imprisonment for 1 year, or both.

(3) A person to whom this section applies shall not be required to divulge or communicate to a court any information referred to in subsection (2) or to produce in a court any document referred to in that subsection, except when it is necessary to do so for the purposes of this Act, or of a prosecution for an offence against this Act.

(4) A reference in this section to an offence against this Act includes a reference to an offence created by section 5, 6, 7, 7A, 29C or 29D, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that relates to this Act or the regulations.

(5) In this section:

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to;

“this Act” includes the regulations.

Telephone access to ATSIC offices

192. The Commission shall make provision for the development of a service which will enable a person to make a telephone call to the nearest regional office of the Commission, at no greater cost than the cost of a local telephone call.

PART 5—MISCELLANEOUS

Approval of banks

193. The Treasurer may, in writing, approve a bank for the purposes of this Act.

Remuneration and allowances

194. (1) The following provisions apply in relation to the holder of an office who is, by a provision of this Act, entitled to remuneration and allowances in accordance with this section:

- (a) the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal;
- (b) if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined, in writing, by the Minister;
- (c) the holder of the office shall be paid such allowances as are determined, in writing, by the Minister.

(2) A determination by the Minister for the purposes of paragraph (1) (b) or (c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Review by Commission of delegates' decisions

195. (1) Where a delegate of the Commission has:

- (a) refused a loan under section 16 or 17 to a natural person; or
- (b) refused to give a guarantee under section 19 in respect of a loan made or to be made to a natural person;

the natural person may, within 30 days after being notified of the refusal, request the Commission to reconsider the matter.

(2) Where a request is made under subsection (1), the Commission shall reconsider the matter and shall decide whether to make the loan or to give the guarantee.

Review by Administrative Appeals Tribunal

196. (1) An application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision made by the Commission to refuse a loan under section 16 or 17 to a natural person;
- (b) a decision made by the Commission to refuse to give a guarantee under section 19 in respect of a loan made or to be made to a natural person;
- (c) a decision made by the Commission to give notice to a person or body under subsection 20 (1) or (3);
- (d) a decision of the Commission under subsection 89 (2) refusing to declare a body corporate to be an Aboriginal or Torres Strait Islander corporation;
- (e) a decision of the Commission under subsection 89 (3) declaring that a body corporate has ceased to be an Aboriginal or Torres Strait Islander corporation;
- (f) a decision of the Commission to make a declaration under subsection 121 (1);
- (g) any other decision of the Commission included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section; or
- (h) any decision made under the Regional Council election rules or the zone election rules included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section.

(2) Where the Commission notifies a person of a decision of a kind referred to in subsection (1), the notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision by or on behalf of a person whose interests are affected by the decision.

(3) A failure to comply with subsection (2) in relation to a decision does not affect the validity of the decision.

(4) In this section:

“decision made by the Commission” does not include a decision made by a delegate of the Commission.

Offences—guarantees, grants and loans

197. (1) A person shall not, in or in connection with a claim under a guarantee given under this Act, make 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.

Penalty: \$10,000 or imprisonment for 5 years, or both.

(2) A person shall not, in or in connection with, or with, an application for a guarantee or a grant or loan under this Act, make 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.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Offences—elections

198. (1) A person shall not, in relation to an election under this Act, ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for the person or any other person, on an understanding that:

- (a) any vote of the first-mentioned person;
- (b) any candidature of the first-mentioned person;
- (c) any support of, or opposition to, a candidate or a group of candidates by the first-mentioned person; or
- (d) the doing of any act or thing by the first-mentioned person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector;

will, in any manner, be influenced or affected.

Penalty: \$5,000.

(2) A person shall not, in relation to an election under this Act, in order to influence or affect:

- (a) any vote of another person;
- (b) any candidature of another person;
- (c) any support of, or opposition to, a candidate or a group of candidates by another person; or
- (d) the doing of any act or thing by another person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector.

give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.

Penalty: \$5,000.

(3) A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act.

Penalty: \$1,000.

(4) This section does not apply in relation to a declaration of public policy or a promise of public action.

Conduct of directors, servants and agents

199. (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercises due diligence to avoid the conduct.

(3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against this Act includes a reference to:

- (a) an offence created by the regulations, the Regional Council election rules or the zone election rules; and
- (b) an offence created by section 5, 6, 7, 7A, 29C or 29D, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that relates to this Act, the regulations, the Regional Council election rules or the zone election rules.

Staff of Aboriginal Hostels Limited to be public servants

200. (1) The staff required to assist Aboriginal Hostels Limited in the performance of its functions shall, in spite of anything in the constituent documents of Aboriginal Hostels Limited, be persons appointed or employed under the *Public Service Act 1922*.

(2) The General Manager of Aboriginal Hostels Limited has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.

(3) In spite of subsection (2), Aboriginal Hostels Limited shall be taken not to be a Department for the purposes of Part VII of the *Audit Act 1901*.

Regulations

201. (1) The Governor-General may make regulations, not inconsistent with this Act, the Regional Council election rules or the zone election rules, prescribing matters:

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

(2) Without limiting the generality of subsection (1), the regulations may:

- (a) provide for notices given to the Commission under subsection 93 (2) to be available for public inspection;
- (b) make provision in relation to the conduct of elections for the purposes of section 127 including, without limiting the generality of the foregoing, provision for a system of optional preferential voting to be used in such elections;
- (c) make provision in relation to requests under subsection 195 (1) and the reconsideration of matters under subsection 195 (2);
- (d) prescribe fees payable in respect of any matter under this Act; and
- (e) 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 6—CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

Division 1—Preliminary

Interpretation

202. In this Part, unless the contrary intention appears:

“ADC Act” means the *Aboriginal Development Commission Act 1980*;

“assets” means property of every kind, and, without limiting the generality of the foregoing, includes:

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

“authorised officer” means the Minister, the Chief Executive Officer or a member of the staff of the new Commission authorised by the Minister in writing for the purposes of this Part;

“commencement” means the commencement of this Act;

“liabilities” means liabilities of every kind, and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

“new Commission” means the Aboriginal and Torres Strait Islander Commission;

“old Commission” means the Aboriginal Development Commission;

“old Commission instrument” means an instrument:

- (a) to which the old Commission was a party;
- (b) that was given to or in favour of the old Commission;
- (c) in which a reference is made to the old Commission; or
- (d) under which money is, or may become, payable, or any other property is to be, or may become liable to be, transferred to or by the old Commission;

being an instrument subsisting immediately before the commencement;

“old Department” means the Department of Aboriginal Affairs.

Division 2—Repeals

Repeals

203. (1) The following Acts are repealed:

Aboriginal Development Commission Act 1980

States Grants (Aboriginal Advancement) Act 1972

States Grants (Aboriginal Advancement) Act 1973

States Grants (Aboriginal Advancement) Act (No. 2) 1973

States Grants (Aboriginal Assistance) Act 1974

States Grants (Aboriginal Assistance) Act 1976.

(2) In spite of the repeal of the *States Grants (Aboriginal Assistance) Act 1976*, section 5 of that Act continues to have effect in relation to grants of financial assistance made under that Act.

Division 3—Transitional provisions relating to Aboriginal Development Commission and Department of Aboriginal Affairs

Quorum until all Commissioners appointed

204. (1) Until appointments have been made to all the offices of Commissioner, the quorum at a meeting of the new Commission is constituted by a majority of the number of Commissioners holding office on the day of the meeting.

(2) Subsection 44 (4) has effect subject to this section.

New Commission shall declare certain bodies to be Aboriginal or Torres Strait Islander corporations

205. As soon as practicable after the commencement, the new Commission shall declare each body corporate:

- (a) that has, at some time since 1 July 1987, received a grant from the old Department or the old Commission; and
- (b) in relation to which the new Commission is satisfied that all the members of the body corporate are Aboriginal persons or Torres Strait Islanders;

to be an Aboriginal or Torres Strait Islander corporation for the purposes of this Act.

Transfer of assets and liabilities of old Department

206. (1) The Minister may, in writing, declare that a specified asset of the Commonwealth that was, before the commencement, used by the old Department is to be transferred to the new Commission or to the Corporation.

(2) Where the Minister makes a declaration under subsection (1), the asset specified in the declaration becomes an asset of the new Commission or of the Corporation, as provided by the declaration.

(3) The Minister may, in writing, declare that a specified liability of the Commonwealth incurred before the commencement in connection with the operation of the old Department is to become a liability of the new Commission or of the Corporation.

(4) Where the Minister makes a declaration under subsection (3), the liability specified in the declaration becomes a liability of the new Commission or of the Corporation, as provided by the declaration.

(5) Liabilities of the Commonwealth that have become liabilities of the new Commission or of the Corporation because of subsection (4) shall, after

the commencement, be taken to be liabilities incurred by the new Commission, or by the Corporation, as the case may be, in the performance of its functions and the exercise of its powers.

Transfer of assets and liabilities of old Commission

207. (1) Subject to section 208 and any declaration under subsection 209 (1), at the commencement, the assets and liabilities of the old Commission become assets and liabilities of the new Commission.

(2) The following provisions apply to assets and liabilities that have become assets and liabilities of the new Commission because of subsection (1):

- (a)** an asset that was, immediately before the commencement, held by the old Commission on trust shall, after the commencement, be held by the new Commission on trust and subject to the terms of the trust on which the asset was so held by the old Commission;
- (b)** investments of the old Commission shall, after the commencement, be deemed to have been duly made in accordance with section 63E of the *Audit Act 1901*;
- (c)** liabilities of the old Commission to make payments shall, after the commencement, be taken to be liabilities incurred by the new Commission in the performance of its functions and the exercise of its powers.

Capital Fund of old Commission transferred to Corporation

208. (1) At the commencement, money held, immediately before the commencement, in the Capital Fund referred to in paragraph 20 (3) (a) of the ADC Act becomes money of the Corporation.

(2) At the commencement, any assets of the old Commission that were acquired as a result of expenditure out of the Capital Fund referred to in paragraph 20 (3) (a) of the ADC Act, and any liabilities of the old Commission that are associated with those assets, become assets and liabilities of the Corporation.

Minister may declare specified liabilities transferred to Commonwealth instead of new Commission

209. (1) The Minister may, after consulting the Minister for Finance, declare in writing that a specified liability of the old Commission does not become a liability of the new Commission.

(2) Where the Minister makes a declaration under subsection (1), the liability concerned becomes a liability of the Commonwealth.

Minister may direct transfer of money etc. from new Commission to Corporation

210. (1) The Minister may from time to time direct, in writing, that:

- (a)** all or a specified part of the money transferred from the old Commission to the new Commission by section 207 should be paid by the new Commission to the Corporation; or

- (b) all the other assets, or specified assets, transferred from the old Commission to the new Commission by section 207 should be transferred by the new Commission to the Corporation.

(2) The new Commission shall comply with any direction given by the Minister under subsection (1).

(3) Where assets are transferred by the new Commission to the Corporation pursuant to a direction given under subsection (1), any liabilities of the new Commission that are associated with those assets, being liabilities specified in the direction, become liabilities of the Corporation.

Old Commission instruments

211. (1) An old Commission instrument continues to have effect after the commencement but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring after that commencement, has effect as if a reference in the instrument to the old Commission were a reference to the appropriate new body.

(2) For the purposes of the application of subsection (1) in relation to an old Commission instrument, the appropriate new body is:

- (a) in the case of an instrument relating to an asset or liability that has, because of section 208 or 210, become an asset or liability of the Corporation—the Corporation;
- (b) in the case of an instrument relating to a liability that has, because of a declaration under subsection 209 (1), become a liability of the Commonwealth—the Commonwealth; or
- (c) in any other case—the new Commission.

Pending proceedings

212. Where, immediately before the commencement, proceedings to which the old Commission was a party were pending in any court or tribunal, the new Commission is, after the commencement, substituted for the old Commission as a party to the proceedings and has the same rights in the proceedings as the old Commission had.

Final report and financial statement for old Department

213. (1) As soon as practicable after the commencement the Chief Executive Officer shall:

- (a) prepare and give to the Minister a report on the operations of the old Department during the period (in this section called the “pre-commencement period”) commencing on 1 July 1989 and ending at the commencement; and
- (b) prepare and give to the Auditor-General a financial statement that relates to the old Department during the pre-commencement period and that satisfies the requirements of section 50 of the *Audit Act 1901* as that section applies in relation to the financial year that commenced on 1 July 1989.

(2) The Chief Executive Officer may, in discharging his or her obligations under subsection (1), rely on accounts and records of the old Department that are in the possession of the new Commission or to which the Chief Executive Officer is allowed access and on any other information provided to the Chief Executive Officer by any person who held an office, or was employed, in the old Department.

(3) A report prepared and given to the Minister in accordance with paragraph (1) (a) shall, for the purposes of the *Public Service Act 1922*, be taken to have been prepared and given to the Minister under subsection 25 (6) of that Act.

(4) A financial statement prepared and given to the Auditor-General in accordance with paragraph (1) (b) shall, for the purposes of the *Audit Act 1901*, be taken to have been prepared and given to the Auditor-General under section 50 of that Act as that section applies in relation to the financial year that commenced on 1 July 1989.

(5) The Auditor-General may, in discharging his or her obligations under section 50 of the *Audit Act 1901* as it applies because of subsection (4), rely on accounts and records of the old Department that are in the possession of the new Commission or to which the Chief Executive Officer is allowed access and on any other information provided to the Chief Executive Officer by any person who held an office, or was employed, in the old Department.

Final report and financial statements for old Commission

214. (1) Subject to this section, the Chief Executive Officer shall, as soon as practicable after the commencement, prepare and give to the Minister:

- (a) a report on the operations of the old Commission during the period (in this section called the “pre-commencement period”) commencing on 1 July 1989 and ending at the commencement; and
- (b) financial statements that relate to the old Commission during that period in such form as the Minister for Finance approves.

(2) The report prepared by the Chief Executive Officer in accordance with paragraph (1) (a):

- (a) shall include particulars of any general directions given to the old Commission during the pre-commencement period under section 11 of the ADC Act; and
- (b) shall not disclose any matters known to the Chief Executive Officer 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.

(3) Before giving financial statements to the Minister under subsection (1), the Chief Executive Officer shall give them to the Auditor-General, who shall report to the Minister:

- (a) whether, in the Auditor-General’s opinion, the statements are based on proper accounts and records;

- (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and state of affairs of the old Commission;
- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the old Commission during the pre-commencement period were in accordance with the ADC Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4) The Chief Executive Officer and the Auditor-General may, in discharging their obligations under this section, rely on accounts and records of the old Commission that are in the possession of the new Commission or to which the Chief Executive Officer is allowed access and on any other information provided to the Chief Executive Officer by any person who was a member of the old Commission or of the staff of the old Commission.

(5) The Minister shall cause copies of the report and financial statements together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

Certificates relating to assets, liabilities and instruments

215. (1) An authorised officer may certify, in writing, that:

- (a) an asset or liability specified or described in the certificate became, because of section 207, an asset or liability of the new Commission;
- (b) an asset or liability specified or described in the certificate became, because of section 208, an asset or liability of the new Corporation;
or
- (c) an instrument specified or described in the certificate is an old Commission instrument.

(2) A certificate under subsection (1) is, in all courts and for all purposes, evidence of the matter stated in the certificate.

(3) Where a document purports to be a certificate under subsection (1) signed by a person purporting to be an authorised officer, judicial notice shall be taken of the signature of the person and of the fact that the person is or was an authorised officer.

Exemption from taxation

216. An instrument is not subject to 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 this Division.

Ombudsman investigations

217. Where:

- (a) before the commencement, a complaint was made to the Ombudsman, or the Ombudsman commenced an investigation, under the *Ombudsman Act 1976* in relation to action taken by the old Commission or the old Department; and
- (b) immediately before the commencement, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the commencement as if that action had been taken by the new Commission.

Division 4—General transitional provisions

Transfer of appropriated money

218. (1) For the purposes of the operation of an Appropriation Act after the commencement, this section applies to references in that Appropriation Act referred to in subsections (2) to (5), inclusive.

(2) References to the old Department shall be read as references to the new Commission.

(3) References to the old Commission shall be read as references to the new Commission.

(4) References to a repealed Act shall be read as references to this Act.

(5) References to the Aboriginal Entitlement Account—General Fund shall be read as references to the new Commission.

(6) In this section:

“Appropriation Act” means an Act appropriating money for expenditure in respect of a financial year and includes an Act appropriating money, by way of interim provision, for such expenditure;

“repealed Act” means an Act repealed by section 203.

Transfer of staff to Australian Public Service

219. Section 81B of the *Public Service Act 1922* has effect in relation to any person who, immediately before the commencement:

- (a) was employed by the old Commission or Aboriginal Hostels Limited; and
- (b) was an unattached officer for the purposes of the *Public Service Act 1922*;

as if the person had ceased to be an officer of the Australian Public Service immediately before the commencement.

Operation of Superannuation Benefit (Interim Arrangement) Act

220. (1) The Superannuation Act and any related law apply in relation to any person who:

- (a) before the commencement, was employed by the old Commission; and
- (b) after the commencement, is employed under the *Public Service Act 1922* in the new Commission;

as if:

- (c) the person's employer was in each case the same body; and
- (d) the continuity of the person's employment was not affected by the abolition of the old Commission and the establishment of the new Commission.

(2) The Superannuation Act and any related law apply in relation to any person who:

- (a) before the commencement, was employed by Aboriginal Hostels Limited; and
- (b) after the commencement, is employed under the *Public Service Act 1922* in Aboriginal Hostels Limited;

as if:

- (c) the person's employer was in each case the same body; and
- (d) the continuity of the person's employment was not affected by the changes made by this Act to the staffing arrangements in respect of Aboriginal Hostels Limited.

(3) In this section:

“related law” means any law of the Commonwealth to the extent that it relates to the superannuation benefits covered by the Superannuation Act;

“Superannuation Act” means the *Superannuation Benefit (Interim Arrangement) Act 1988*.

Contracts of employment not preserved

221. Nothing in this Part preserves a contract of employment entered into by the old Commission.

State or Territory officer may act on certificate

222. Where:

- (a) under section 206, 207 or 208, an estate or interest in land becomes an asset of the new Commission or the Corporation; and
- (b) a certificate that:
 - (i) identifies the land and the estate or interest;
 - (ii) states that the estate or interest has, because of that section, become an asset of the new Commission or the Corporation, as the case may be; and

- (iii) is signed by an officer of the Attorney-General's Department authorised by the Secretary to that Department to give such certificates;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated; the officer with whom the certificate is lodged may deal with and give effect to the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the estate or interest to the new Commission or the Corporation, as the case may be, duly executed under the laws in force in that State or Territory.

Division 5—Amendments of other Acts

Aboriginal and Torres Strait Islander Heritage Protection Act

223. Section 21B of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*¹ is amended by omitting from subsection (1) “delegate to a State Minister or an officer of the Department all or any powers that are conferred on the Minister by or under this Part.” and substituting the following:

“delegate all or any powers that are conferred on the Minister by or under this Part to:

- (a) a State Minister;
- (b) an officer of the Department; or
- (c) the Chief Executive Officer of, or a member of the staff of, the Aboriginal and Torres Strait Islander Commission.”.

Aboriginal Councils and Associations Act

224. Section 3 of the *Aboriginal Councils and Associations Act 1976*² is amended by omitting paragraph (b) of the definition of “Aboriginal” and substituting the following paragraph:

“(b) a descendant of an indigenous inhabitant of the Torres Strait Islands;”.

Aboriginal Land Grant (Jervis Bay Territory) Act

225. (1) In this section, “Principal Act” means the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*³.

(2) Section 15 of the Principal Act is amended by inserting in subsection (3) “or the Aboriginal and Torres Strait Islander Commission” after “Department”.

(3) Section 16 of the Principal Act is amended by omitting from subsection (1) all the words from and including “delegate to” to and including “purpose,” and substituting the following:

“delegate to:

- (a) a person holding or performing the duties of an office in the Department, being a person approved by the Secretary to the Department for the purpose; or

- (b) a person holding or performing the duties of an office in the Aboriginal and Torres Strait Islander Commission, being a person approved by the Chief Executive Officer of that Commission for the purpose;”.

Aboriginal Land (Lake Condah and Framlingham Forest) Act

226. Section 5 of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*⁴ is amended by omitting from subsection (1) “delegate to a Minister of the Crown of the State of Victoria or an officer of the Department all or any powers that are conferred on the Minister by or under this Act.” and substituting the following:

“delegate all or any powers that are conferred on the Minister by or under this Act to:

- (a) a Minister of the Crown of Victoria;
- (b) an officer of the Department; or
- (c) the Chief Executive Officer of, or a member of the staff of, the Aboriginal and Torres Strait Islander Commission.”.

Aboriginal Land Rights (Northern Territory) Act

227. (1) In this section, “Principal Act” means the *Aboriginal Land Rights (Northern Territory) Act 1976*⁵.

(2) Section 23E of the Principal Act is amended:

- (a) by omitting from paragraph (3) (b) “or” (last occurring);
- (b) by inserting after paragraph (3) (b) the following paragraph:
“(ba) to:

- (i) a member of the Aboriginal and Torres Strait Islander Commission;
- (ii) the Chief Executive Officer of that Commission; or
- (iii) a member of the staff of that Commission approved by the Chief Executive Officer; or”;

(c) by omitting from subsection (4) all the words from and including “Neither” to and including “shall” and substituting the following:

“A person to whom information may, in accordance with paragraph (3) (b) or (ba), be communicated, shall not”.

(3) After section 64A of the Principal Act the following section is inserted:

Accounts, financial statements and annual report

“64B. (1) The Commission shall keep accounts, and prepare financial statements, in such form as the Minister for Finance determines, in respect of the Trust Account.

“(2) The Commission shall, as soon as practicable after each 30 June, prepare and submit to the Minister administering this section a report relating to the Trust Account for the year ending on that day, together with

financial statements for the Trust Account in respect of the year in such form as the Minister for Finance approves in writing.

“(3) Before submitting the financial statements to the Minister administering this section, the Commission shall submit them to the Auditor-General, who shall report to that Minister:

- (a) whether, in the opinion of the Auditor-General, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the opinion of the Auditor-General, show fairly the financial transactions and state of affairs of the Trust Account; and
- (c) as to such other matters arising out of the statements as the Auditor-General considers should be reported to that Minister.

“(4) The Minister administering this section shall cause a copy of the report and financial statements, together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by that Minister.

“(5) In this section:

‘Commission’ means the Aboriginal and Torres Strait Islander Commission established by section 6 of the *Aboriginal and Torres Strait Islander Commission Act 1989*.”.

Administrative Decisions (Judicial Review) Act

228. Paragraph (k) of Schedule 2 of the *Administrative Decisions (Judicial Review) Act 1977*⁶ is amended by inserting “Aboriginal and Torres Strait Islander Commercial Development Corporation” before “Australian Canned Fruits Corporation”.

Freedom of Information Act

229. Part II of Schedule 2 of the *Freedom of Information Act 1982*⁷ is amended by inserting before the item relating to the Albury-Wodonga Development Corporation the following item:

“Aboriginal and Torres Strait Islander Commercial Development Corporation, in relation to documents in respect of its competitive commercial activities”.

Public Service Act

230. (1) In this section, “Principal Act” means the *Public Service Act 1922*⁸.

(2) Section 47C of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) Where the Commissioner is satisfied that:

(a) a person who was an officer holding an office in the Aboriginal and Torres Strait Islander Commission:

(i) resigned in order to become a candidate for election as a member of a Regional Council established under

section 92 of the *Aboriginal and Torres Strait Islander Commission Act 1989*;

(ii) was a candidate at the election; and

(iii) failed to be elected; and

(b) the resignation took effect not earlier than 6 months before the date on which nominations for the election closed;

the Commissioner shall, upon application by the person within 2 months after the declaration of the result of the election, re-appoint the person to the Service to fill the office occupied by the person immediately before resigning or an equivalent office or, if such an office is not available, as an unattached officer, having the same classification as the person had immediately before resigning.”;

(b) by inserting after subsection (2) the following subsection:

“(2A) The reference in subsection (1A) to the declaration of the result of the election shall, where an election petition has been addressed to the Federal Court of Australia under Schedule 4 of the *Aboriginal and Torres Strait Islander Commission Act 1989*, be read as a reference to the giving of a final decision on the election petition by the Federal Court.”;

(c) by inserting in paragraph (3) (a) “or (1A) (a) (i)” after “subparagraph (1) (a) (i)”.

(3) Section 82B of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) Where the Commissioner is satisfied that:

(a) a person who was an employee and was employed in the Aboriginal and Torres Strait Islander Commission:

(i) resigned in order to become a candidate for election as a member of a Regional Council established under section 92 of the *Aboriginal and Torres Strait Islander Commission Act 1989*;

(ii) was a candidate at the election; and

(iii) failed to be elected; and

(b) the resignation took effect not earlier than 6 months before the date on which nominations for the election closed;

the Commissioner shall, upon application by the person within 2 months after the declaration of the result of the election, employ the person in the Aboriginal and Torres Strait Islander Commission in the same or a similar capacity with the same rate of pay as that payable to the person immediately before resigning.”;

(b) by adding at the end the following subsection:

“(3) The reference in subsection (1A) to the declaration of the result of the election shall, where an election petition has been addressed to the Federal Court of Australia under Schedule 4 of the *Aboriginal and Torres Strait Islander Commission Act 1989*,

be read as a reference to the giving of a final decision on the election petition by the Federal Court.”.

Remuneration Tribunal Act

231. Section 7 of the *Remuneration Tribunal Act 1973*⁹ is amended by omitting paragraph (9) (ac) and substituting the following paragraphs:

- “(ac) in the case of remuneration or allowances payable to a person who holds an office or appointment under Part 2 or 3 of the *Aboriginal and Torres Strait Islander Commission Act 1989*—be paid in accordance with the determination out of money of the Aboriginal and Torres Strait Islander Commission that is lawfully available to pay the remuneration or allowances;
- (aca) in the case of remuneration or allowances payable to a person who holds an office or appointment under Part 4 of the *Aboriginal and Torres Strait Islander Commission Act 1989*—be paid in accordance with the determination out of money of the Aboriginal and Torres Strait Islander Commercial Development Corporation that is lawfully available to pay the remuneration or allowances;”.

Sales Tax (Exemptions and Classifications) Act

232. The First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*¹⁰ is amended by inserting after item 75 the following item:

- “75A. Goods for use (whether as goods or in some other form), and not for sale, by the Aboriginal and Torres Strait Islander Commission Nos. 1 to 9”.

SCHEDULE 1

Subsections 91 (1) and 130 (1)

ZONES AND REGIONS

Column A	Column B
Zone	Places included in regions
Central Australia	Alice Springs Deakin Harts Range Indulkana Papunya Warburton Yulara
New South Wales (East)	Casino Goulburn Nowra Quirindi Taree Tingha
New South Wales (Metropolitan)	Sydney
New South Wales (West)	Bourke Deniliquin Dubbo Moree Temora Wilcannia
Northern Territory (North-East)	Jabiru Kalkaringi Mataranka Tennant Creek Yirrkala
Northern Territory (North-West)	Daly River Darwin Milikapiti
Queensland (Far North and Communities)	Aurukun Cherbourg/Woorabinda Doomadgee Yarrabah/Palm Island
Queensland (Metropolitan)	Brisbane
Queensland (North)	Cairns Townsville
Queensland (South)	Charleville Mount Isa Rockhampton
South Australia	Adelaide Leigh Creek Murray Bridge Tarcoola
Tasmania	Launceston
Torres Strait	Thursday Island
Victoria	Bairnsdale Halls Gap Melbourne
Western Australia (Metropolitan)	Perth

SCHEDULE 1—continued

Column A Zone	Column B Places included in regions
Western Australia (North)	Balgo Fitzroy Crossing Halls Creek Jigalong Kununurra Lagrange Marble Bar Mount Barnett
Western Australia (South)	Geraldton Kalgoorlie Narrogin Wyalcatchem

SCHEDULE 2

Section 111

**METHOD OF COUNTING VOTES AND DETERMINING
SUCCESSFUL CANDIDATES AT REGIONAL COUNCIL
ELECTIONS**

1. In a Regional Council election, the scrutiny shall be conducted, and the several vacancies shall be filled, in the manner set out in this Schedule.

2. Where, for the purposes of this Schedule:

- (a) the number of ballot papers or votes in any category is required to be ascertained;
- (b) a quota, a transfer value or the order of standing of continuing candidates in a poll is required to be determined; or
- (c) a candidate is required to be identified;

the authorised electoral officer shall ascertain the number, determine the quota, transfer value or order, or identify the candidate, as the case may be.

3. The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by one more than the prescribed number in relation to the Regional Council and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.

4. Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this clause called “surplus votes”) of each elected candidate shall be transferred to the continuing candidates as follows:

- (a) the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by him or her and the resulting fraction shall be the transfer value;

SCHEDULE 2—continued

- (b) the total number of ballot papers of the elected candidate that express the first preference vote for him or her and the next available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;

and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

5. Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under clause 4, or elected subsequently under this clause, shall be transferred to the continuing candidates in accordance with paragraphs 4 (a) and (b), and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

6. Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 4 or 5 of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate.

7. For the purposes of the application of paragraphs 4 (a) and (b) in relation to a transfer under clause 5 or 12 of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by him or her on a transfer under this section shall be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly.

8. Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or fewer than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who stands lowest in the poll shall be excluded or, if a bulk exclusion can be effected in accordance with clause 9, the candidates who may be excluded in accordance with that clause shall be excluded, and:

- (a) the total number of ballot papers expressing a first preference vote for an excluded candidate and the next available preference for a particular continuing candidate shall be transferred, each ballot paper at a transfer value of 1 vote, to the continuing candidate and added to the number of votes of the continuing candidate; and
- (b) the total number (if any) of other ballot papers obtained by an excluded candidate or candidates, as the case may be, shall be transferred beginning with the ballot papers received by that

SCHEDULE 2—continued

candidate or those candidates at the highest transfer value and ending with the ballot papers received at the lowest transfer value, as follows:

- (i) the total number of ballot papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value and expressing the next available preference for a particular continuing candidate shall be multiplied by that transfer value;
- (ii) the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;
- (iii) all those ballot papers shall be transferred to the continuing candidate.

9. (1) The procedure for a bulk exclusion, and the circumstances in which such an exclusion may be made, are as provided by this clause.

(2) A continuing candidate (in this clause called "Candidate A") shall be identified, if possible, who, of the continuing candidates who each have a number of notional votes equal to or greater than the vacancy shortfall, stands lower or lowest in the poll.

(3) A continuing candidate (in this clause called "Candidate B") shall be identified, if possible, who:

- (a) stands lower in the poll than Candidate A, or if Candidate A cannot be identified, has a number of notional votes that is fewer than the vacancy shortfall;
- (b) has a number of notional votes that is fewer than the number of votes of the candidate standing immediately higher than him or her in the poll; and
- (c) if 2 or more candidates satisfy paragraphs (a) and (b)—is the candidate who of those candidates stands higher or highest in the poll.

(4) In a case where Candidate B has been identified and has a number of notional votes fewer than the leading shortfall, Candidate B and any other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.

(5) In a case where Candidate B has been identified and has a number of notional votes equal to or greater than the leading shortfall:

- (a) a continuing candidate (in this clause called "Candidate C") shall be identified who:
 - (i) has a number of notional votes that is fewer than the leading shortfall; and
 - (ii) if 2 or more candidates satisfy subparagraph (i)—is the candidate who of those candidates stands higher or highest in the poll; and

SCHEDULE 2—continued

(b) Candidate C and all other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.

10. Where, apart from this clause, the number of continuing candidates after a bulk exclusion under clause 9 would be fewer than the number of remaining unfilled vacancies, clause 9 shall operate to exclude only the number of candidates, beginning with the candidate who stands lowest in the poll, that would leave sufficient continuing candidates to fill the remaining unfilled vacancies.

11. Notwithstanding any other provision of this Schedule (other than clause 16), where a candidate or candidates has or have been elected and there are surplus votes as a result of that election, subclauses 9 (2), (3), (4) and (5) may be applied as if references in those paragraphs to notional votes were references to adjusted notional votes.

12. Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 8 or 13 of ballot papers of an excluded candidate or candidates, as the case may be, shall be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with paragraphs 4 (a) and (b), except that, where the candidate so elected is elected before all the ballot papers of the excluded candidate or candidates, as the case may be, have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until the remaining ballot papers of the excluded candidate or candidates, as the case may be, have been transferred in accordance with paragraphs 8 (a) and (b) to continuing candidates.

13. Subject to clause 15, where, after the transfer of all of the ballot papers of an excluded candidate or candidates, as the case may be, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who stands lowest in the poll shall be excluded and his or her ballot papers transferred in accordance with paragraphs 8 (a) and (b).

14. Where a candidate is elected during a transfer of ballot papers under clause 8 or 13, no other ballot papers of an excluded candidate or candidates, as the case may be, shall be transferred to the candidate so elected.

15. In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes shall be elected notwithstanding that that number is below the quota, and if those candidates have an equal number of votes the authorised electoral officer shall decide by lot which candidate shall be elected.

16. Notwithstanding any other provision of this Schedule, where the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates shall be elected.

SCHEDULE 2—continued

17. Subject to clauses 18 and 19, where, after any count under this Schedule, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.

18. Subject to clause 19, where, after any count under this Schedule, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count being transferred first, but if there has been no such count the authorised electoral officer shall determine the order in which the surpluses shall be dealt with.

19. Where, after any count under this section, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count.

20. Where a candidate is elected by reason that the number of first preference votes received by him or her, or the aggregate of first preference votes received by him or her and all other votes obtained by him or her, on transfers under this Schedule, is equal to the quota, all the ballot papers expressing those votes shall be set aside as finally dealt with.

21. A ballot paper shall be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate.

22. Where a candidate dies before the scrutiny, a vote indicated on a ballot paper opposite the name of that candidate shall be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences shall be deemed to be altered accordingly.

23. For the purposes of this Schedule, each of the following is a separate transfer:

- (a) a transfer under clause 4, 5 or 12 of all the surplus votes of an elected candidate;
- (b) a transfer under paragraph 8 (a) of all ballot papers expressing a first preference vote for an excluded candidate;
- (c) a transfer under paragraph 8 (b) of all ballot papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value.

24. In this Schedule:

“adjusted notional vote”, in relation to a continuing candidate, means, in a case where a candidate or candidates has or have been elected, the sum of:

- (a) the number of notional votes of the continuing candidate;
- and

SCHEDULE 2—continued

(b) the number, before the transfer of any of the surplus votes, of those surplus votes;

“continuing candidate” means a candidate not already elected or excluded from the count;

“leading shortfall”, in relation to a particular stage during the scrutiny in a Regional Council election, means the shortfall of the continuing candidate standing highest in the poll at that stage;

“notional vote”, in relation to a continuing candidate, means the aggregate of the votes obtained by that candidate and the votes obtained by each other candidate who stands lower in the poll than him or her;

“shortfall”, in relation to a continuing candidate at a particular stage during the scrutiny in a Regional Council election, means the number of votes that the candidate requires at that stage in order to reach the quota referred to in clause 3;

“vacancy shortfall”, in relation to a particular stage during the scrutiny in a Regional Council election, means the aggregate of the shortfalls of that number of leading candidates equal to the number of remaining unfilled vacancies, the leading candidates being ascertained by taking the continuing candidate who stands highest in the poll, the continuing candidate who stands next highest in the poll, and so on in the order in which the continuing candidates stand in the poll.

25. In this Schedule, a reference to votes or ballot papers, as the case may be, of or obtained or received by a candidate includes votes or ballot papers, as the case may be, obtained or received by the candidate on any transfer under this Schedule.

26. For the purposes of this Schedule, at any time after the counting of first preference votes the order of standing of the continuing candidates in the poll shall be determined as follows:

(a) subject to paragraph (b), the continuing candidates shall stand in the poll in the order of the relative number of votes of each continuing candidate, with the continuing candidate with the greatest number of votes standing highest in the poll and the continuing candidate with the fewest number of votes standing lowest in the poll;

(b) if 2 or more continuing candidates have the same number of votes, those candidates shall stand in the poll in the order of the relative number of votes of each of those candidates at the last count at which each of them had a different number of votes, with the continuing candidate with the greater or greatest number of votes at that count standing higher in the poll and the continuing candidate with the fewer or fewest number of votes at that count standing lower in the poll, but if there has been no such count the authorised

SCHEDULE 2—continued

electoral officer shall determine the order of standing of those candidates in the poll.

SCHEDULE 3

Section 137

**METHOD OF DETERMINING
SUCCESSFUL CANDIDATES AT ZONE ELECTIONS**

Absolute majority required for election

1. A candidate needs an absolute majority of votes to be elected.

Candidate with absolute majority of first preference votes elected

2. A candidate who receives an absolute majority of first preference votes is elected.

Distribution of preferences

3. (1) If there is no candidate who receives an absolute majority of first preference votes, the candidate who has received the fewest first preference votes shall be excluded, and each of that candidate's ballot papers shall be transferred to the unexcluded candidate for whom the next available preference is expressed.

- (2) If there is then no candidate who has an absolute majority of votes, the process of excluding the candidate who has the fewest votes, and transferring that candidate's ballot papers to the unexcluded candidates for whom the next available preferences are expressed, shall be repeated as often as necessary until one candidate receives an absolute majority of votes.

- (3) A candidate who receives an absolute majority of votes at any stage of the process described in this clause is elected.

- (4) Without limiting the generality of section 138, the rules made by the Minister under that section may include provisions about:

- (a) the determination of an absolute majority of votes;
- (b) the method of choosing between 2 or more candidates, each of whom has the same number of votes, in order to work out which candidate to exclude; and
- (c) determining when a ballot paper is exhausted.

SCHEDULE 4

Section 140

DISPUTES ABOUT ELECTORAL MATTERS

Part 1—Interpretation

Interpretation

1. (1) In this Schedule:

“bribery” or “corruption” means a contravention of subsection 198 (1) or (2);

“Court” means the Federal Court of Australia;

“election” means a Regional Council election or a zone election;

“election petition” means a petition addressed to the Court under subclause 2 (1);

“Electoral Commission” means the Australian Electoral Commission;

“illegal practice” means a contravention of this Act, the Regional Council election rules or the zone election rules;

“reference” means a reference of a question to the Court under clause 17;

“returned” means declared to be elected at a poll for an election;

“undue influence” means a contravention of subsection 198 (3) of this Act or section 28 of the *Crimes Act 1914*.

(2) For the purposes of this Schedule, a person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the contravention of a provision of this Act, the *Crimes Act 1914*, the Regional Council election rules or the zone election rules shall be deemed to have contravened that provision.

Part 2—Disputed Elections

Method of disputing elections

2. (1) The validity of any election, or of the declaration of a poll for an election, may be disputed by petition addressed to the Court and not otherwise.

(2) The Court has jurisdiction to try election petitions.

(3) The jurisdiction of the Court to try election petitions may be exercised by a single judge of the Court.

Requisites of election petitions

3. Subject to clause 5, every election petition shall:

(a) set out the facts relied on to invalidate the election or declaration;

(b) contain a request for the relief the petitioner claims to be entitled to;

SCHEDULE 4—continued

- (c) be signed by a candidate at the election in dispute or by a person who was, or who claimed to be, qualified to vote at that election;
- (d) be attested by 2 witnesses whose occupations and addresses are stated; and
- (e) be filed in a Registry of the Court within 40 days after the end of the election period.

Deposit as security for costs

4. At the time of filing an election petition the petitioner shall deposit with the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court the sum of \$100 as security for costs.

Petition by Electoral Commission

5. (1) The Electoral Commission is entitled to file an election petition disputing an election.

(2) Paragraphs 3 (c) and (d) do not apply in relation to an election petition filed by the Electoral Commission disputing an election but such a petition shall be signed by the Electoral Commissioner for and on behalf of the Commission.

No proceedings unless requisites complied with

6. No proceedings shall be had on an election petition unless the requirements of clauses 3, 4 and 5 are complied with.

Right of Electoral Commission to be represented

7. (1) The Electoral Commission shall be entitled by leave of the Court to enter an appearance in any proceedings in which the validity of any election or declaration of a poll is disputed.

(2) Where the Electoral Commission enters an appearance in such proceedings the Electoral Commission:

- (a) is entitled to be represented and heard in the proceedings; and
- (b) shall be taken to be a party respondent to the proceedings.

Right of Minister to be represented

8. (1) If the Minister thinks that it is in the public interest to do so, the Minister is entitled to enter an appearance in any proceedings in which the validity of any election or declaration of a poll is disputed.

(2) When the Minister enters an appearance in such proceedings, the Minister:

- (a) is entitled to be represented and heard in the proceedings; and
- (b) shall be taken to be a party respondent to the proceedings.

Election petitions to be tried in open court

9. When trying an election petition, the Court shall sit as an open court.

SCHEDULE 4—continued

Powers of Court

10. (1) The powers of the Court in trying an election petition, include, but are not limited to, the following powers:

- (a) to adjourn the proceedings;
- (b) to compel the attendance of witnesses and the production of documents;
- (c) to grant to any party to the petition leave to inspect, in the presence of a person who was an authorised electoral officer for the purposes of Division 4 or 7 of Part 3 in relation to the election concerned, the documents (except ballot papers) used at or in connection with the election and to take, in the presence of the prescribed officer, extracts from those documents;
- (d) to examine witnesses on oath;
- (e) to declare that any person who was returned was not duly elected;
- (f) to declare any candidate duly elected who was not returned;
- (g) to declare the election absolutely void;
- (h) to dismiss or uphold the petition in whole or in part;
- (j) to make any order, or give any direction, that the Court thinks is necessary or convenient for the purpose of giving effect to any declaration or other decision of the Court in the proceedings;
- (k) to award costs;
- (m) to punish any contempt of its authority by fine or imprisonment.

(2) The Court may exercise all or any or its powers under this clause on such grounds as the Court in its discretion thinks just and sufficient.

(3) Without limiting the powers conferred by this clause, it is hereby declared that the power of the Court to declare that any person who was returned was not duly elected, or to declare an election absolutely void, may be exercised on the ground that illegal practices were committed in connection with the election.

(4) The power of the Court under paragraph (1) (k) to award costs includes the power to order costs to be paid by the Commonwealth where the Court considers it appropriate to do so.

Inquiries by Court

11. The Court shall inquire whether or not an election petition is duly signed, and so far as rolls and voting are concerned may inquire into the identity of persons, and whether their votes were improperly admitted or rejected, assuming the Commonwealth Electoral Roll to be correct, but the Court shall not inquire into the correctness of the Commonwealth Electoral Roll.

SCHEDULE 4—continued

Voiding election for illegal practices

12. (1) If the Court finds that a candidate at an election has committed or has attempted to commit bribery or undue influence, the candidate's election, if he or she is a successful candidate, shall be declared void.

(2) No finding by the Court shall bar or prejudice any prosecution for any illegal practice.

(3) The Court shall not declare that any person returned was not duly elected, or declare any election void:

- (a)** on the ground of any illegal practice committed by any person other than the candidate and without his or her knowledge or authority; or
- (b)** on the ground of any illegal practice other than bribery or corruption or attempted bribery or corruption;

unless the Court is satisfied that the result of the election was likely to be affected, and that it is just that the candidate should be declared not to be duly elected or that the election should be declared void.

Court to report cases of illegal practices

13. When the Court finds that any person has committed an illegal practice, the Registrar of the Court shall forthwith report the finding to the Minister.

Immaterial errors not to vitiate election

14. (1) No election shall be avoided on account of any delay in the declaration of nominations, the polling, or the declaration of the poll, or on account of the absence or error of or omission by any officer which did not affect the result of the election.

(2) Where any elector was, on account of the absence or error of, or omission by, any officer, prevented from voting in any election, the Court shall not, for the purpose of determining whether the absence or error of, or omission by, the officer did or did not affect the result of the election, admit any evidence of the way in which the elector intended to vote in the election.

Evidence that person not permitted to vote

15. On the trial of any election petition the Court shall not admit the evidence of any witness that he or she was not permitted to vote in the election during the hours of polling on a polling day unless the witness satisfies the Court:

- (a)** that he or she claimed to vote, in the election, pursuant to that provision of this Act or the Regional Council election rules under which he or she was entitled or might be permitted to vote; and
- (b)** that he or she complied with the requirements of this Act, and whichever of the Regional Council election rules and the zone

SCHEDULE 4—continued

election rules is applicable, relative to voting by electors in so far as he or she was permitted so to do.

Deposit applicable for costs

16. If costs are awarded to any party against a petitioner, the deposit shall be applicable in payment of the sum ordered, but otherwise the deposit shall be repaid to the petitioner.

Part 3—Qualifications and vacancies

Reference of question as to qualification or vacancy

17. (1) Any question respecting:

- (a) the qualifications of a member of a Regional Council; or
- (b) a vacancy in a Regional Council;

may be referred to the Court by the Minister.

(2) The Court has jurisdiction to hear and determine the question.

(3) The jurisdiction of the Court to hear and determine questions may be exercised by a single Judge of the Court.

Minister to state case

18. Where the Minister refers a question to the Court under this Part, the Minister shall also give to the Court a statement of the question upon which the determination of the Court is desired, and any documents relating to the question that are in the Minister's possession.

Parties to the reference

19. (1) The Court may:

- (a) allow any person who, in the Court's opinion, is interested in the determination of a question to be heard on the hearing of the reference; or
- (b) direct notice of a reference to be served on any person.

(2) A person who is:

- (a) allowed to be heard under paragraph (1) (a); or
- (b) directed to be served under paragraph (1) (b);

is a party to the reference.

References to be heard in open court

20. When hearing a reference, the Court shall sit as an open court.

SCHEDULE 4—continued

Powers of Court

21. The powers of the Court in hearing a reference include, but are not limited to, the following powers:

- (a) the powers conferred on the Court under clause 10, so far as they are applicable;
- (b) the power to declare that any person was not qualified to be a member of a Regional Council;
- (c) the power to declare that there is a vacancy in a Regional Council.

Order etc. to be sent to Minister, Commission and Regional Council affected

22. After the hearing and determination of a reference, the Registrar of the Court shall send a copy of the declaration or other decision of the Court to:

- (a) the Minister;
- (b) the Commission; and
- (c) the Regional Council concerned.

Part 4—General

Real justice to be observed

23. The Court shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in accordance with the law of evidence or not.

Decisions to be final

24. All decisions of the Court shall be final and conclusive and without appeal, and shall not be questioned in any way.

Counsel or solicitor

25. (1) No party to an election petition or a reference shall, except by consent of all parties, or by leave of the Court, be represented by counsel or solicitor.

(2) In no case shall more than one counsel or one solicitor appear on behalf of any party.

Costs

26. The Court may award costs against an unsuccessful party to a petition or reference.

SCHEDULE 4—continued

Effect of declarations etc.

27. (1) A declaration made by the Court in proceedings under this Schedule has effect according to its terms.

(2) The validity of anything done by the Commission, or by the person in the capacity of a Commissioner, is not affected by the fact that a person appointed as a Commissioner has since ceased to hold office as a Commissioner because of a declaration of the Court under this Schedule.

(3) The validity of anything done by the Commission or by a Regional Council is not affected by the fact that a person has since ceased to be a member of a Regional Council because of a declaration of the Court under this Schedule.

Power to make Rules of Court

28. (1) The judges of the Court or a majority of them may make Rules of Court not inconsistent with this Act, and the Regional Council election rules and the zone election rules, for carrying this Schedule into effect and in particular for regulating the practice and procedure of the Court, the forms to be used and the fees to be paid by parties.

(2) Sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to Rules of Court made under this clause as if references in those sections of that Act to regulations were references to Rules of Court.

NOTES

1. No. 79, 1984, as amended. For previous amendments, see Statutory Rules No. 176, 1984 (as amended by Statutory Rules No. 153, 1987); No. 83, 1986; No. 39, 1987; and No. 99, 1988.
2. No. 186, 1976, as amended. For previous amendments, see No. 56, 1978; Nos. 61, 92, 153 and 176, 1981; No. 80, 1982; Nos. 10 and 165, 1984; No. 193, 1985; and No. 99, 1988.
3. No. 164, 1986.
4. No. 34, 1987, as amended. For previous amendments, see No. 99, 1988.
5. No. 191, 1976, as amended. For previous amendments, see Nos. 21, 83 and 70, 1978; No. 189, 1979; No. 72, 1980; No. 92, 1981; Nos. 16 and 80, 1982; Nos. 63 and 72, 1984; Nos. 65, 93 and 166, 1985; No. 18, 1987 (as amended by No. 38, 1988); Nos. 40, 75 and 141, 1987; and No. 38, 1988.
6. No. 59, 1977, as amended. For previous amendments, see No. 66, 1978; No. 111, 1980; Nos. 111, 115, 122, 137, 140 and 153, 1982; Nos. 62 and 144, 1983; Nos. 76, 159 and 164, 1984; Nos. 4, 47 and 65, 1985; Nos. 41, 76, 102, 112 and 153, 1986; Nos. 62, 76, 141 and 145, 1987; and Nos. 5, 8, 63, 87, 109, 111 and 127, 1988.

NOTES—continued

7. No. 3, 1982, as amended. For previous amendments, see Nos. 7 and 81, 1983; No. 63, 1984; No. 187, 1985; Nos. 102 and 111, 1986; and Nos. 6, 87, 109, 119, 121, 126, 127 and 129, 1988.
8. No. 21, 1922, as amended. For previous amendments, see No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947; Nos. 35 and 75, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; Nos. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; Nos. 59, 1974; No. 40, 1975; Nos. 193 and 194, 1976; Nos. 6 and 80, 1977; Nos. 36 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 61, 1981; Nos. 26 and 80, 1982; No. 111, 1982 (as amended by No. 39, 1983); Nos. 39, 56 and 92, 1983; No. 63, 1984 (as amended by No. 165, 1984); No. 165, 1984; Nos. 65, 166 and 187, 1985; Nos. 28, 29, 76 and 153, 1986; Nos. 92, 99 and 141, 1987; and Nos. 75, 87, 99 and 109, 1988.
9. No. 215, 1973, as amended. For previous amendments, see No. 80, 1974; No. 96, 1975; Nos. 60 and 178, 1978; Nos. 26, 108, 136 and 155, 1979; No. 160, 1980; Nos. 61, 74 and 176, 1981; Nos. 78 and 111, 1982; Nos. 39 and 128, 1983; Nos. 63, 73 and 164, 1984; Nos. 65 and 187, 1985; and Nos. 87, 109 and 123, 1988.
10. No. 60, 1935, as amended. For previous amendments, see No. 41, 1936; No. 78, 1938; No. 32, 1939; Nos. 29 and 76, 1940; No. 32, 1941; No. 6, 1942; Nos. 35 and 44, 1943; No. 31, 1944; No. 36, 1945; Nos. 12 and 67, 1946; No. 65, 1947; No. 42, 1948; No. 54, 1949; No. 37, 1950; No. 42, 1951; No. 44, 1952; No. 53, 1953; No. 45, 1954; No. 5, 1956; No. 71, 1957; Nos. 17 and 92, 1959; Nos. 65 and 88, 1960; Nos. 1 and 76, 1961; No. 4, 1962; No. 44, 1963; No. 30, 1965; Nos. 26 and 62, 1966; Nos. 21, 29 and 80, 1967; No. 78, 1970; Nos. 67 and 87, 1972; Nos. 17, 181 and 216, 1973; No. 24, 1975; No. 175, 1976; No. 107, 1978; Nos. 3, 94 and 157, 1979; No. 142, 1981; Nos. 64, 93 and 115, 1982; Nos. 63, 84 and 136, 1983; Nos. 81, 123 and 165, 1984; Nos. 65, 67, 145 and 178, 1985; No. 28, 1986; Nos. 42, 76, 135 and 140, 1987; and Nos. 78, 89 and 152, 1988.

[*Minister's second reading speech made in—
House of Representatives on 4 May 1989
Senate on 26 May 1989*]