



# **Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993**

**No. 1 of 1994**

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# **Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993**

**No. 1 of 1994**

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**An Act to amend the *Aboriginal and Torres Strait Islander  
Commission Act 1989*, and for related purposes**

[Assented to 14 January 1994]

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title etc.**

**1.(1)** This Act may be cited as the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993*.

**(2)** In this Act, “**Principal Act**” means the *Aboriginal and Torres Strait Islander Commission Act 1989*<sup>1</sup>.

### **Commencement**

**2.(1)** Subject to this section, this Act commences on the day on which it receives the Royal Assent.

**(2)** Part 25 commences on the day after the day on which this Act receives the Royal Assent.

**(3)** The following provisions commence on 1 July 1994:

**(a)** Part 18 and Schedule 1;

**(b)** Part 28 (other than Subdivision A of Division 2) and Schedules 2 and 3.

**(4)** Part 31 and Schedule 4 commence on 1 July 1996.

## **PART 2—AMENDMENTS RELATING TO THE DIRECTOR OF THE OFFICE OF EVALUATION AND AUDIT**

### **Insertion of new sections**

**3.** After section 77 of the Principal Act the following sections are inserted:

#### **Period of appointment**

“77A.(1) The Director of Evaluation and Audit holds office for the period specified in, or worked out under, the instrument of appointment.

“(2) The period must not be longer than 5 years.

“(3) A person who is 65 or over cannot hold office as Director of Evaluation and Audit.

#### **Remuneration and allowances**

“77B. The Director of Evaluation and Audit is entitled to remuneration and allowances in accordance with section 194.

#### **Leave of absence**

“77C.(1) Subject to section 87E of the *Public Service Act 1922*, the Director of Evaluation and Audit is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.

“(2) The Minister may, with the Commission Chairperson’s agreement, grant the Director of Evaluation and Audit leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister, with the Commission Chairperson’s agreement, determines in writing.

#### **Acting Director of Evaluation and Audit**

“77D.(1) The Minister may, after consulting the Commission Chairperson, appoint a person to act as the Director of Evaluation and Audit: 35

- (a) during a vacancy in the office of Director of Evaluation and Audit;  
or
- (b) during any period, or during all periods, when the Director of Evaluation and Audit 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 must not continue so to act for more than 6 months.

“(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

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

### **Disclosure of interests**

“77E.(1) The Director of Evaluation and Audit must make to the Minister and the Commission Chairperson a written disclosure of:

- (a) the Director’s financial interests; and
- (b) the financial interests of the Director’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) The Director of Evaluation and Audit must make a disclosure under subsection (1) within one month after being appointed as Director.

“(3) The Director of Evaluation and Audit must from time to time make such further disclosures as are necessary to ensure that the information available to the Minister and the Commission Chairperson about the financial interests of the Director, and of the members of the Director’s immediate family, is up-to-date.

“(4) In this section:

**‘Director of Evaluation and Audit’** includes an acting Director of Evaluation and Audit.

### **Resignation**

“77F. The Director of Evaluation and Audit may resign by writing signed by him or her and sent to the Minister.

### **Termination of appointment**

“77G.(1) The Minister may, after consulting the Commission, terminate the appointment of the Director of Evaluation and Audit because of incompetence, misbehaviour or physical or mental incapacity.

“(2) If the Director of Evaluation and Audit:

- (a) is absent from duty, except on leave granted under section 77C, for 14 consecutive days or for 28 days in any period of 12 months; or
- (b) becomes bankrupt; or
- (c) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (d) compounds with his or her creditors; or
- (e) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (f) fails, without reasonable excuse, to comply with section 77E; or
- (g) engages in paid employment outside the duties of the office of Director of Evaluation and Audit without the written consent of the Minister given after consulting the Commission;

the Minister must terminate the Director’s appointment.

#### **Director of Evaluation and Audit not personally liable**

“77H. The Director of Evaluation and Audit is not personally liable to an action or other proceeding for damages for or in relation to anything done or omitted to be done in good faith:

- (a) by the Office of Evaluation and Audit; or
- (b) by the Director in the capacity of Director.

#### **Other terms and conditions**

“77J. The Director of Evaluation and Audit 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 in the *Gazette*.”.

#### **Application of amendments**

**4.(1)** This section applies to a person who held the office of Director of Evaluation and Audit immediately before the commencement of this section.

**(2)** The period specified in the person’s instrument of appointment has effect, after the commencement of this section, as if it were the period specified for the purposes of section 77A of the amended Act.

**(3)** Subsection 77E(2) of the amended Act has effect, in relation to the person, as if the person had been appointed immediately after the commencement of this section.

**(4)** In this section:

“**amended Act**” means the Principal Act as amended by this Act.

### **PART 3—AMENDMENTS RELATING TO THE FUNCTIONS OF THE OFFICE OF EVALUATION AND AUDIT**

#### **Repeal of section and substitution of new section**

5. Section 76 of the Principal Act is repealed and the following section is substituted:

#### **Functions of Office**

“76.(1) The Office has the following functions:

- (a) to evaluate and audit the operations of the following bodies regularly:
  - (i) the Commission;
  - (ii) Aboriginal Hostels Limited;
  - (iii) the Corporation;
- (b) when requested to do so by the Minister or the Commission, to evaluate or audit particular aspects of the operations of the following bodies:
  - (i) the Commission;
  - (ii) Aboriginal Hostels Limited;
  - (iii) the Corporation;
  - (iv) a Regional Council;
- (c) when requested to do so by Aboriginal Hostels Limited:
  - (i) to evaluate or audit particular aspects of the operations of Aboriginal Hostels Limited; or
  - (ii) to evaluate or audit particular aspects of the operations of a body that has received money from Aboriginal Hostels Limited, but only to the extent that the evaluation or audit concerns that money;
- (d) when requested to do so by the Corporation:
  - (i) to evaluate or audit particular aspects of the operations of the Corporation; or
  - (ii) to evaluate or audit particular aspects of the operations of a body that has received money from the Corporation, but only to the extent that the evaluation or audit concerns that money;
- (e) when requested to do so by the Minister or the Commission, to evaluate or audit the activities of an individual who has received one or more grants or loans from the Commission, but only to the extent that the evaluation or audit concerns those grants or loans;
- (f) when requested to do so by the Minister or the Commission, to evaluate or audit the operations of a body corporate that has received one or more grants or loans from the Commission, but only to the extent that the evaluation or audit concerns those grants or loans;



- (g) when requested to do so by the Minister or the Commission, to evaluate or audit the operations of an unincorporated body that has received one or more grants or loans from the Commission, but only to the extent that the evaluation or audit concerns those grants or loans;
- (h) when requested to do so by the Minister or the Commission, to evaluate or audit the activities of a borrower, being an individual one or more of whose loans have been guaranteed by the Commission, but only to the extent that the evaluation or audit concerns those guarantees;
- (i) when requested to do so by the Minister or the Commission, to evaluate or audit the operations of a borrower, being a body corporate one or more of whose loans have been guaranteed by the Commission, but only to the extent that the evaluation or audit concerns those guarantees;
- (j) when requested to do so by the Minister or the Commission, to evaluate or audit the operations of a borrower, being an unincorporated body one or more of whose loans have been guaranteed by the Commission, but only to the extent that the evaluation or audit concerns those guarantees;
- (k) to report on evaluations and audits conducted in accordance with paragraph (a) or (b), in writing, to the Commission and the Minister at least every 3 months;
- (l) to report on evaluations and audits conducted in accordance with paragraph (c), in writing, to Aboriginal Hostels Limited and the Minister at least every 3 months;
- (m) to report on evaluations and audits conducted in accordance with paragraph (d), in writing, to the Corporation and the Minister at least every 3 months;
- (n) to report on evaluations and audits conducted in accordance with paragraph (e), (f), (g), (h), (i) or (j), in writing, to the Commission and the Minister at least every 3 months;
- (o) to tell the Minister and the Commission about particular problems that have arisen or may arise in relation to:
  - (i) the operations of the Commission; or
  - (ii) the operations of any other body that exercises powers, performs functions or receives money under this Act; or
  - (iii) the activities of an individual who receives money under this Act.

“(2) The functions conferred on the Office of Evaluation and Audit under this section are in addition to, and not in substitution for, any functions conferred on the Auditor-General or any other person by or under any other law of the Commonwealth.”.

#### **PART 4—AMENDMENTS RELATING TO THE TERM OF APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER OF THE COMMISSION**

##### **Period of appointment**

6. Section 47 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) The period must not be longer than 5 years.”.

#### **PART 5—AMENDMENTS RELATING TO ADVISORY COMMITTEES ESTABLISHED UNDER SECTION 13 OF THE PRINCIPAL ACT**

##### **Advisory committees**

7. Section 13 of the Principal Act is amended by adding at the end the following subsection:

“(3) A member of an advisory committee holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Commission by notice in the *Gazette*.”.

##### **Insertion of new sections**

8. After section 13 of the Principal Act the following sections are inserted:

##### **Advisory committee—disclosure of interests at meetings**

“13A.(1) A member of an advisory committee established under section 13 who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the committee must, 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 committee.

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

##### **Advisory committee—member’s appointment to be terminated for non-disclosure of interests**

“13B.(1) This section applies to an advisory committee established under section 13.

“(2) The Commission must terminate the appointment of a member of the committee if the member fails, without reasonable excuse, to comply with section 13A.

“(3) Subsection (2) does not, by implication, limit the Commission’s power to terminate the appointment of a member of the committee.

**Advisory committee—resignation**

“13C. A member of an advisory committee established under section 13 may resign from the committee by writing signed by the member and sent to the Commission.”.

**PART 6—AMENDMENTS RELATING TO THE TORRES STRAIT ISLANDER ADVISORY BOARD**

**Insertion of new sections**

9. After section 86 of the Principal Act the following sections are inserted:

**Advisory Board—disclosure of interests at meetings**

“86A.(1) A member of the Advisory Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board must, 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 Board.

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

**Advisory Board—member’s appointment to be terminated for non-disclosure of interests**

“86B.(1) The Minister must terminate the appointment of a member of the Advisory Board if the member fails, without reasonable excuse, to comply with section 86A.

“(2) Subsection (1) does not, by implication, limit the Minister’s power to terminate the appointment of a member of the Advisory Board.

**Advisory Board—resignation**

“86C. A member of the Advisory Board may resign from the Board by writing signed by the member and sent to the Minister.”.

**PART 7—AMENDMENTS RELATING TO ADMINISTRATORS**

**Interpretation**

10. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘**Administrator**’ means an Administrator appointed under:

- (a) section 115; or
- (b) section 123; or
- (c) section 124J;

to administer the affairs of a Regional Council;”.

### **Constitution of Regional Councils**

**11.** Section 115 of the Principal Act is amended by omitting from subsection (3) “Minister” and substituting “Commission”.

### **Removal of Regional Council**

**12.** Section 123 of the Principal Act is amended by omitting “Minister” (wherever occurring) and substituting “Commission”.

### **Powers of Administrator**

**13.** Section 124 of the Principal Act is amended by omitting “under section 115 or 123 or Schedule 4”.

### **Insertion of new sections**

**14.** After section 124 of the Principal Act the following sections are inserted:

#### **Remuneration and allowances**

“124A. An Administrator is entitled to remuneration and allowances in accordance with section 194.

#### **Administrator holds office on a full-time basis**

“124B. An Administrator holds office on a full-time basis.

#### **Disclosure of interests**

“124C.(1) An Administrator must make to the Commission Chairperson a written disclosure of:

- (a) the Administrator’s financial interests; and
- (b) the financial interests of the Administrator’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) An Administrator must make a disclosure under subsection (1) within one month after being appointed as an Administrator.

“(3) An Administrator must from time to time make such further disclosures as are necessary to ensure that the information available to the Commission Chairperson about the financial interests of the Administrator, and of the members of the Administrator’s immediate family, is up-to-date.

“(4) In this section:

‘**Administrator**’ includes an acting Administrator.

### **Resignation of Administrator**

“124D. An Administrator may resign by writing signed by him or her and sent to the Commission.

### **Leave of absence**

“124E.(1) Subject to section 87E of the *Public Service Act 1922*, an Administrator is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.

“(2) The Commission may grant an Administrator leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Commission determines in writing.

### **Termination of appointment**

#### *Commission may terminate Administrator's appointment*

“124F.(1) The Commission may terminate the appointment of an Administrator because of misbehaviour or physical or mental incapacity.

#### *Commission must terminate Administrator's appointment*

“(2) If an Administrator:

- (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
- (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
- (c) fails, without reasonable excuse, to comply with section 124C; or
- (d) is absent from duty, except on leave of absence granted under section 124E, for 14 consecutive days or for 28 days in any period of 12 months; or
- (e) becomes bankrupt; or
- (f) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (g) compounds with his or her creditors; or
- (h) makes an assignment of his or her remuneration for the benefit of his or her creditors;

the Commission must terminate the Administrator's appointment.

### **Acting Administrator**

“124G.(1) The Commission may appoint a person to act as an Administrator:

- (a) during a vacancy in an office of Administrator; or
- (b) during any period, or during all periods, when an Administrator 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 must not continue so to act for more than 6 months.

“(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

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

### **Other terms and conditions**

“124H. An Administrator holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Commission by notice in the *Gazette*.

### **Commission may appoint replacement Administrator if there is a vacancy in an office of Administrator**

“124J. If there is a vacancy in an office of Administrator caused by the death, resignation or termination of appointment of the Administrator, the Commission may, by notice in the *Gazette*, appoint a replacement Administrator to administer the affairs of the Regional Council concerned.”.

### **Members of Regional Councils, and Administrators, not personally liable**

15. Section 125 of the Principal Act is amended by omitting from subsection (2) “appointed under section 115 or 123 or Schedule 4”.

### **Application of amendments**

16.(1) This section applies to a person who held office as an Administrator immediately before the commencement of this section.

(2) Sections 124A, 124B, 124D, 124E, 124F, 124G and 124H of the amended Act do not apply to the person in relation to that office.

(3) Subsection 124C(2) of the amended Act has effect, in relation to the person, as if the person had been appointed immediately after the commencement of this section.

(4) The person may resign from that office by writing signed by him or her and sent to the Minister.

(5) In this section:

“**amended Act**” means the Principal Act as amended by this Act.

## **PART 8—AMENDMENTS RELATING TO THE ABORIGINAL AND TORRES STRAIT ISLANDER COMMERCIAL DEVELOPMENT CORPORATION**

### **Appointment of Directors**

17. Section 157 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) At least one Director must be a Commissioner.”.

### **Selection of Directors**

18. Section 158 of the Principal Act is amended by omitting all the words after “office” and substituting the following:

“of Director, the Minister:

- (a) must consult the Corporation about a suitable appointee; and
- (b) may consult the Commission about a suitable appointee.”.

### **Period of appointment**

19. Section 159 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) A Director holds office for such period as is specified in the instrument of appointment.

“(1A) The period must not be longer than 5 years.”.

### **Termination of appointment**

20. Section 165 of the Principal Act is amended by omitting from subsection (1) “with the Commission” and substituting “the Commission and the Corporation”.

### **Application of amendments—section 157 of the Principal Act**

21. The amendments of section 157 of the Principal Act made by this Part apply in relation to the first vacancy on the Board of Directors of the Corporation that occurs after the commencement of this section and to each later vacancy.

### **Transitional provision—section 159 of the Principal Act**

22.(1) This section applies to a person who held office as a Director of the Corporation immediately before the commencement of this section.

(2) The period specified in the person’s instrument of appointment has effect, after the commencement of this section, as if it were the period specified for the purposes of section 159 of the Principal Act as amended by this Act.

## **PART 9—AMENDMENT RELATING TO TAXATION**

### **Exemption from taxation**

**23.** Section 71 of the Principal Act is amended by adding at the end the following subsection:

“(2) Excise duty is not payable by the Commission, or by any other person, on goods that are for use by the Commission.”.

### **Application of amendment**

**24.** Subsection 71(2) of the Principal Act as amended by this Act applies to excise duty that becomes payable after the commencement of this section.

## **PART 10—REPEAL OF REDUNDANT PROVISIONS**

### **Heading to Part 6**

**25.** The heading to Part 6 of the Principal Act is amended by omitting “CONSEQUENTIAL AND”.

### **Repeal of Division 2 of Part 6**

**26.** Division 2 of Part 6 of the Principal Act is repealed.

### **Repeal of Division 5 of Part 6**

**27.** Division 5 of Part 6 of the Principal Act is repealed.

### **Savings**

**28.(1)** Despite the repeal of Division 2 of Part 6 of the Principal Act made by this Part, subsection 203(2) of the Principal Act continues to apply, after the commencement of this section, as if the repeal had not been made.

**(2)** The repeal of Division 5 of Part 6 of the Principal Act made by this Part does not affect the operation of an amendment made by the repealed Division.

## **PART 11—AMENDMENTS RELATING TO REVIEWS OF THE OPERATION OF THE PRINCIPAL ACT**

### **Repeal of section and substitution of new section**

**29.** Section 26 of the Principal Act is repealed and the following section is substituted:

### **Review of operation of Act**

“26.(1) The Commission may, from time to time:



- (a) review such aspects of the operation of this Act as it determines in writing; and
- (b) report to the Minister accordingly.

“(2) The Commission must not review a matter mentioned in section 141.

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

“(4) The Minister must 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.”.

## **PART 12—AMENDMENT RELATING TO ABORIGINAL HOSTELS LIMITED**

### **Aboriginal Hostels Limited**

**30.** Section 200 of the Principal Act is amended by adding at the end the following subsections:

“(4) For the purposes of Part XI of the *Audit Act 1901*, Aboriginal Hostels Limited is taken to be a body corporate incorporated for a public purpose by an Act.

“(5) Aboriginal Hostels Limited is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

“(6) For the purposes of the *Administrative Decisions (Judicial Review) Act 1977*, if Aboriginal Hostels Limited makes a decision relating to any of the following applications:

- (a) an application by an incorporated body for the provision of accommodation for one or more Aboriginal persons or Torres Strait Islanders;
- (b) an application for a grant under the scheme known as the Community Support Hostel Grant Scheme, where the grant relates to expenditure associated with the establishment or operation of a hostel;
- (c) an application for a grant under the scheme known as the Student Rent Subsidy Scheme;

the decision is taken to be a decision of an administrative character made under an enactment.

“(7) The Minister may, on behalf of the Commonwealth, enter into an agreement with Aboriginal Hostels Limited.

“(8) The Minister must cause notice of the making of the agreement to be published in the *Gazette*.

“(9) An agreement between the Commonwealth and Aboriginal Hostels Limited that was in force immediately before the commencement of this subsection is taken to have been made under subsection (7).”.

### **Application of amendments**

**31.** Subsections 200(4) and (5) of the Principal Act as amended by this Act apply in relation to Aboriginal Hostels Limited in relation to the financial year beginning on 1 July 1994 and each later financial year.

## **PART 13—AMENDMENT TO RELOCATE HEADING TO PART 5**

### **Heading to Part 5**

**32.** The Principal Act is amended by relocating the heading to Part 5 from after section 192 of that Act to before section 192 of that Act.

## **PART 14—AMENDMENT RELATING TO SECRECY**

### **Secrecy**

**33.** Section 90 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) This section applies to a person who is or has been:

- (a) a Commissioner; or
- (b) a member of an advisory committee established under section 13; or
- (c) the Chief Executive Officer; or
- (d) a member of the staff of the Commission; or
- (e) engaged as a consultant under section 56; or
- (f) the Director of Evaluation and Audit; or
- (g) a member of the Torres Strait Islander Advisory Board; or
- (h) a Regional Councillor; or
- (i) a member of an advisory committee established under section 96; or
- (j) an Administrator.”.

## **PART 15—AMENDMENTS RELATING TO THE ANNUAL REPORTS OF REGIONAL COUNCILS**

### ***Division 1—Amendments relating to the annual reports of Regional Councils***

#### **Annual report**

**34.** Section 99 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) Each Regional Council must, as soon as practicable after the end of each financial year and, in any event, within 4 months after the end of each financial year, prepare and give to the Commission a report dealing with:

- (a) the operations of the Regional Council during that year; and
- (b) the implementation during that year of the regional plan for the region concerned; and
- (c) such other matters (if any) relating to that year as the Commission determines in writing.

“(1A) If:

- (a) a grant was made to an individual or body during a financial year; and
- (b) the grant was covered by Regional Council estimates relating to the region concerned;

then, in addition to the matters referred to in subsection (1), a report relating to the year must also set out:

- (c) the name of the individual or body; and
- (d) the amount and purpose of the grant.”;

- (b) by omitting from subsection (3) all the words after “Regional Council” (second occurring) and substituting the following:

“must:

- (a) make copies of the report available for inspection and purchase by residents of the region; and
- (b) if the report deals with the implementation of a particular version of the regional plan for the region—make copies of the version of the plan available for inspection and purchase by residents of the region.”;

- (c) by omitting subsection (4) and substituting the following subsection:

“(4) The Commission must make copies of the report and the regional plan for the region concerned available for inspection and purchase at each office of the Commission that serves the region.”.

### **Application of amendments**

**35.** The amendments of section 99 of the Principal Act made by this Division apply to annual reports of Regional Councils for the financial year ending on 30 June 1994 and for each later financial year.

***Division 2—Transitional provisions relating to the annual reports of  
Regional Councils***

**This Division does not apply to the Torres Strait Regional Council**

**36.** This Division does not apply to the Torres Strait Regional Council.

**Definitions**

**37.** In this Division:

“**amended Act**” means the Principal Act as amended by this Act;

“**new Regional Council**” means a Regional Council consisting of members elected in the round of Regional Council elections for 1993 (ignoring any member who fills a casual vacancy);

“**old Regional Council**” means a Regional Council consisting of members elected in the first round of Regional Council elections (ignoring any member who fills a casual vacancy).

**Minister may determine the predecessor or predecessors of a new Regional Council**

**38.(1)** The Minister may make a written determination that:

- (a) a specified old Regional Council is the predecessor of a specified new Regional Council for the purposes of this Division; or
- (b) 2 or more specified old Regional Councils are the predecessors of a single specified new Regional Council for the purposes of this Division.

(2) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Transitional provision—annual report of new Regional Council to deal with the operations of its predecessor or predecessors**

**39.(1)** This section applies to the annual report of a new Regional Council prepared under section 99 of the amended Act for the financial year ending on 30 June 1994.

(2) In addition to the matters which section 99 of the amended Act requires the report to deal with, the report must also deal with the operations during that financial year of the predecessor, or predecessors, of the new Regional Council.

**Transitional provision—annual report of new Regional Council**

**40.(1)** This section applies to the annual report of a new Regional Council prepared under section 99 of the amended Act for the financial year ending on 30 June 1994.

(2) In addition to the matters which section 99 of the amended Act requires the report to deal with, the Minister may determine that the report must also deal with:

- (a) specified aspects of the operations during that year of a specified old Regional Council; and
- (b) specified aspects of the implementation during that year of the regional plan for the former region corresponding to that old Regional Council.

## **PART 16—AMENDMENTS RELATING TO THE DRAFT BUDGETS OF REGIONAL COUNCILS**

### **Regional Councils to prepare draft budgets**

41. Section 97 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- “(2) In preparing a draft budget, the Regional Council must:
- (a) have regard to the regional plan for the region concerned; and
  - (b) consider any guidelines given to it by the Commission under subsection 63(12).”.

### **Application of amendments**

42. The amendments made by this Part apply to a draft budget that a Regional Council starts preparing after 28 October 1993.

## **PART 17—AMENDMENT RELATING TO DELEGATIONS**

### **Delegation to Chief Executive Officer, Director of Evaluation and Audit or staff member of Commission**

43. Section 45 of the Principal Act is amended by adding at the end the following subsections:

#### *Delegation to Director of Evaluation and Audit of powers relating to consultants*

“(2) The Commission may, by writing under its seal, delegate to the Director of Evaluation and Audit any or all of its powers under section 56 (which deals with consultants).

#### *Chief Executive Officer may sub-delegate function or power*

“(3) If the Commission delegates a function or power to the Chief Executive Officer, he or she may, by writing, sub-delegate the function or power to a member of the staff of the Commission.

*Delegation may prohibit sub-delegation*

“(4) The Chief Executive Officer must not sub-delegate a function or power if the instrument of delegation prohibits the sub-delegation of that function or power.

*Application of certain provisions of the Acts Interpretation Act 1901*

“(5) Section 34AA and paragraphs 34AB(a), (b) and (d) of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.

*Application of certain provisions of the Acts Interpretation Act 1901*

“(6) Section 34A and paragraphs 34AB(c) and (d) of the *Acts Interpretation Act 1901* apply to a sub-delegation as if it were a delegation.”.

## **PART 18—AMENDMENTS RELATING TO THE COMMISSION’S GENERAL FUNDING POWERS**

### *Division 1—Commission’s general funding powers*

#### **Repeal of sections and substitution of new sections**

**44.** Sections 14 to 19 (inclusive) of the Principal Act are repealed and the following sections are substituted:

#### **Commission may make grants and loans**

“14.(1) The Commission may:

- (a) make a grant of money; or
- (b) grant an interest in land; or
- (c) grant an interest in personal property; or
- (d) make a loan of money (whether secured or unsecured);

to:

- (e) an individual; or
- (f) a body corporate (other than a Regional Council or the TSRA); or
- (g) an unincorporated body;

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

“(2) A grant or loan is subject to such terms and conditions as the Commission determines.

“(3) The Commission may acquire by agreement an interest in land, or personal property, for the purpose of making a grant under this section.

**Commission may give guarantees**

“15.(1) If the Commission is satisfied that the purpose of a loan made or to be made to:

- (a) an individual; or
- (b) a body corporate; or
- (c) an unincorporated 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 money (including interest) payable by the borrower in accordance with the terms and conditions of the loan.

“(2) The Commission’s power to give guarantees 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.

“(3) A guarantee is subject to such terms and conditions as the Commission determines.

**Commission may make grants and loans to State and Territory governments etc.**

“16.(1) The Commission may make a grant of money to:

- (a) a State; or
- (b) the Australian Capital Territory; or
- (c) the Northern Territory; or
- (d) an authority of a State or a Territory (including a local government body);

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

“(2) The Commission may make a loan of money to:

- (a) a State; or
- (b) the Australian Capital Territory; or
- (c) the Northern Territory; or
- (d) an authority of a State or a Territory (including a local government body);

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

“(3) A grant or loan is subject to such terms and conditions as the Commission determines.

**Commission may subscribe for shares in the capital of a body corporate etc.**

“17. The Commission may subscribe for, or otherwise acquire, shares or stock in the capital of a body corporate for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.”.

**Repeal of sections and substitution of new section**

**45.** Sections 22, 23, 24 and 25 of the Principal Act are repealed and the following section is substituted:

**Commission to formulate decision-making principles about grants, loans and guarantees**

“22.(1) The Commission must formulate written principles (**‘decision-making principles’**), not inconsistent with the objects of this Act, about:

- (a) making grants and loans under section 14 or 16; and
- (b) giving guarantees under section 15; and
- (c) subscribing for, or otherwise acquiring, shares or stock under section 17.

“(2) Subject to section 74, the Commission must perform its functions and exercise its powers under sections 14, 15, 16 and 17 in accordance with applicable provisions of the decision-making principles in force from time to time.

“(3) Without limiting the operation of the *Freedom of Information Act 1982*, the Chief Executive Officer must ensure that copies of the decision-making principles as in force from time to time are:

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

“(4) The Chief Executive Officer must cause notice of the making of decision-making principles to be published in the *Gazette*.”.

**Amendments relating to the Commission’s general funding powers**

**46.** The Principal Act is amended as set out in Schedule 1 to this Act.



***Division 2—Transitional provisions relating to the Commission's  
general funding powers***

**Transitional provision—repeal of section 24**

47. Despite the repeal of section 24 of the Principal Act made by this Part, that section continues to apply, in relation to loans, grants, acquisitions or guarantees under Division 2 of Part 2 of the Principal Act made or given before the commencement of this section, as if that repeal had not been made.

**Transitional provision—sections 20, 76 and 197**

48.(1) A reference in section 20 of the Principal Act as amended by this Act to a grant or loan includes a reference to a grant or loan made under the Principal Act before the commencement of this section.

(2) A reference in section 76 of the Principal Act as amended by this Act to a grant or loan made by the Commission or to a guarantee given by the Commission includes a reference to a grant or loan made by the Commission or a guarantee given by the Commission, as the case requires, under the Principal Act before the commencement of this section.

(3) A reference in section 197 of the Principal Act as amended by this Act to a guarantee includes a reference to a guarantee given under the Principal Act before the commencement of this section.

(4) This section is enacted for the avoidance of doubt.

**Transitional provision—section 21**

49. Despite the amendments of section 21 of the Principal Act made by this Part, that section continues to apply, in relation to a disposal of an interest that was acquired before the commencement of this section, as if those amendments had not been made.

**Transitional provision—amendments of section 67**

50. Despite the amendments of subsection 67(2) of the Principal Act made by this Part, that subsection continues to apply, in relation to loans made by the Commission before the commencement of this section, as if those amendments had not been made.

**Transitional provision—amendment of section 90**

51. The amendments of paragraphs 90(2)(a) and (b) of the Principal Act made by this Part apply to grants made after the commencement of this section.

**Transitional provision—amendments of sections 195 and 196**

52. Despite the amendments of sections 195 and 196 of the Principal Act made by this Part, those sections continue to apply, in relation to decisions made by the Commission before the commencement of this section, as if those amendments had not been made.

**PART 19—AMENDMENTS TO ALLOW BY-ELECTIONS TO FILL  
CASUAL VACANCIES IN REGIONAL COUNCILS**

**Rules for conduct of elections**

53. Section 113 of the Principal Act is amended:

- (a) by inserting in paragraph (1)(a) “, but not limited to,” after “including”;
- (b) by adding at the end of paragraph (1)(b) “(including, but not limited to, the holding of by-elections)”.

**Term of office of members of Regional Council**

54. Section 117 of the Principal Act is amended:

- (a) by inserting “otherwise than at a by-election to fill a casual vacancy” after “Council”;
- (b) by adding at the end the following subsection:

“(2) A person elected, or declared to have been elected, as a member of a Regional Council at a by-election to fill a casual vacancy:

- (a) takes office as member immediately after the day on which the poll is declared in relation to that by-election; and
- (b) holds office, subject to this Part, until immediately before the last day on which a poll is declared in relation to an election in the next round of Regional Council elections.”.

**PART 20—AMENDMENTS RELATING TO MEMBERS OF STAFF  
OF THE COMMISSION AND CONSULTANTS TO THE  
COMMISSION**

**Corporate plan**

55. Section 11 of the Principal Act is amended:

- (a) by adding at the end of paragraph (1)(a) “and”;
- (b) by omitting paragraphs (1)(c) and (d).

### **Staff**

**56.** Section 55 of the Principal Act is amended by adding at the end of subsection (1) the following Notes:

“Note 1: A member of the staff of the Commission is not qualified to stand for election, or to be elected, as a member for a Regional Council ward (see paragraph 102(1)(c)).

Note 2: The Commission may declare that a Regional Councillor has become an employee of the Commission. The Regional Councillor is taken to have resigned from the Regional Council on the date of the declaration (see subsections 121(3) and (4)).”.

### **Consultants**

**57.** Section 56 of the Principal Act is amended by adding at the end the following subsections and Notes:

“(3) The Commission must, by written instrument:

- (a) set out criteria for the engagement of consultants by the Commission; and
- (b) set out standard terms and conditions for the engagement of consultants by the Commission.

“(4) The Commission must notify the making of an instrument under subsection (3) in the *Gazette*.

Note 1: A consultant to the Commission is not qualified to stand for election, or to be elected, as a member for a Regional Council ward (see paragraph 102(1)(c)).

Note 2: The Commission may declare that a Regional Councillor has become a consultant to the Commission. The Regional Councillor is taken to have resigned from the Regional Council on the date of the declaration (see subsections 121(3) and (4)).”.

### **Annual report and financial statements**

**58.** Section 72 of the Principal Act is amended by omitting from subsection (7) “corporate plan” and substituting “instrument referred to in subsection 56(3)”.

### **Application of amendments**

**59.** The amendments of sections 11, 56 and 72 of the Principal Act made by this Part apply to consultants engaged after the commencement of this section.

## **PART 21—AMENDMENTS RELATING TO DRAFT BUDGETS**

### **Form of estimates**

**60.** Section 62 of the Principal Act is amended by omitting from subsection (1) “subsections 63(4) and (5)” and substituting “subsection 63(4)”.

### **Commission to prepare draft budget**

**61.** Section 63 of the Principal Act is amended:

- (a) by omitting from paragraph (3)(b) “subsections (4) and (5)” and substituting “subsection (4)”;
- (b) by omitting paragraphs (4)(b) to (k) (inclusive) and substituting the following paragraphs:
  - “(b) Aboriginal Hostels Limited
  - (c) additional capital for the Corporation;
  - (d) administrative expenses of the Commission and Regional Councils;
  - (e) Community Development Employment Projects (other than amounts that may be allocated by Regional Councils in respect of those projects);
  - (f) programs appropriately conducted on a national basis;
  - (g) any other heading approved by the Minister.”;
- (c) by omitting subsection (5) and substituting the following subsection:
 

“(5) For the purposes of subparagraph (1)(b)(i), a draft budget must subdivide a share into the following components:

  - (a) amounts in respect of wages for participants in Community Development Employment Projects;
  - (b) amounts in respect of other expenditure under Community Development Employment Projects;
  - (c) amounts that the Commission requires the Regional Council to apply to specified purposes;
  - (d) amounts not covered by the components mentioned in paragraph (a), (b) or (c).”.

### **Regional Councils to prepare draft budgets**

- 62.** Section 97 of the Principal Act is amended:
- (a) by omitting subsection (3) and substituting the following subsection:
 

“(3) A draft budget for a Regional Council for a financial year must set out the proposed allocation in accordance with subsection (4) of each of the components referred to in subsection 63(5) of the amount specified under subparagraph 63(1)(b)(i) in the regional statement for the region for that financial year.”;
  - (b) by omitting paragraphs (a) and (b) of the definition of “program” in subsection (5) and substituting the following paragraph:
 

“(a) a program of a kind to which amounts could be allocated under a paragraph of subsection 63(4) (other than paragraph 63(4)(a)); or”;
  - (c) by omitting paragraph (c) of that definition and substituting the following paragraph:

“(c) any other program declared by the Commission to be excluded from the scope of Regional Council draft budgets; or”.

### **Application of amendments**

**63.(1)** The amendments of sections 62 and 63 of the Principal Act made by this Part apply in relation to:

- (a) estimates and draft budgets prepared for the financial year beginning on 1 July 1994 and for each later financial year; and
- (b) estimates prepared for a period other than a financial year, if the period begins on or after 1 July 1994.

**(2)** The amendments of section 97 of the Principal Act made by this Part apply in relation to the draft budget prepared by a Regional Council for the financial year beginning on 1 July 1994 and for each later financial year.

## **PART 22—AMENDMENT RELATING TO THE HOUSING FUND OF THE COMMISSION**

### **Housing Fund**

**64.** Section 67 of the Principal Act is amended by adding at the end of subsection (2) the following word and paragraphs:

“; and (c) such amounts as are paid to the Commission by any other person for the purposes of the Housing Fund; and  
(d) such amounts of the Commission’s money as the Commission determines in writing.”.

## **PART 23—AMENDMENTS RELATING TO THE REGIONAL LAND FUND OF THE COMMISSION**

### **Regional Councils to prepare draft budgets**

**65.** Section 97 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) For the purposes of subsection (3), a draft budget:  
(a) may allocate some of the amount to the Land Fund; and  
(b) must allocate the amount, or so much of it as is not allocated to the Land Fund, among programs to improve the economic, social and cultural status of Aboriginal persons and Torres Strait Islanders living in the region concerned.”.

### **Application of amendments**

**66.** The amendments made by this Part apply in relation to the draft budget prepared by a Regional Council for the financial year beginning on 1 July 1994 and for each later financial year.

## **PART 24—AMENDMENT RELATING TO THE REVISION OF REGIONAL COUNCIL ESTIMATES ETC.**

### **Estimates**

**67.** Section 61 of the Principal Act is amended by inserting after subsection (6) the following subsections:

“(6A) Subject to subsection (6B), the Commission may revise estimates.

“(6B) The Commission may revise Regional Council estimates only if each of the Regional Councils concerned has approved the revision in writing.”.

### **Application of amendment**

**68.** The amendment of section 61 of the Principal Act made by this Part applies in relation to:

- (a) estimates prepared for the financial year beginning on 1 July 1994 and for each later financial year; and
- (b) estimates prepared for a period other than a financial year, if the period begins on or after 1 July 1994.

## **PART 25—AMENDMENTS TO ALLOW THE COMMISSION TO REMOVE REGIONAL COUNCILLORS FROM OFFICE AND APPOINT AN ADMINISTRATOR IF THE REGIONAL COUNCIL CONTRAVENES CERTAIN STATUTORY OBLIGATIONS**

### **Interpretation**

**69.** Section 4 of the Principal Act is amended by inserting after paragraph (b) of the definition of “Administrator” in subsection (1) the following paragraph:

“(ba) section 123A; or”.

### **Delegation to Chief Executive Officer, Director of Evaluation and Audit or staff member of Commission**

**70.** Section 45 of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

“(ca) its powers under section 123A to:

- (i) remove Regional Councillors from office; and
- (ii) appoint an Administrator to administer the affairs of a Regional Council;”.

### **Insertion of new section**

**71.** After section 123 of the Principal Act the following section is inserted:

**Removal of Regional Councillors if Regional Council contravenes certain statutory obligations**

“123A.(1) If a Regional Council:

- (a) refuses or fails to perform the functions conferred on it by paragraph 94(1)(a) (which relates to regional plans); or
- (b) refuses or fails to comply with section 97 (which deals with draft budgets); or
- (c) refuses or fails to comply with section 99 (which deals with annual reports);

the Commission may, by notice in the *Gazette*:

- (d) remove the Regional Councillors from office; and
- (e) appoint an Administrator to administer the affairs of the Regional Council.

“(2) The Commission must not remove the Regional Councillors from office unless the Commission has:

- (a) by written notice served on the Regional Councillors:
  - (i) given the Regional Councillors 28 days within which to show cause why they should not be removed; and
  - (ii) given reasons for the removal; and
- (b) told the Minister that it intends to so remove the Regional Councillors.

“(3) If:

- (a) on a particular day (the ‘**appointment day**’), the Commission makes a decision under subsection (1) to:
  - (i) remove Regional Councillors from office; and
  - (ii) appoint an Administrator to administer the affairs of the Regional Council concerned; and
- (b) on a later day (the ‘**review day**’), a court or the Administrative Appeals Tribunal makes a decision or order quashing or setting aside the decision of the Commission;

anything done, or omitted to be done, by the Administrator during the period:

- (c) beginning on the appointment day; and
- (d) ending on whichever is the later of the following days:
  - (i) the review day;
  - (ii) the day on which the decision or order of the court or the Administrative Appeals Tribunal takes effect;

is as valid as it would have been if the decision of the Commission had been validly made and had not been quashed or set aside.”.

### **Review by Administrative Appeals Tribunal**

72. Section 196 of the Principal Act is amended by inserting after paragraph (1)(f) the following paragraph:

- “(fa) a decision of the Commission under section 123A to:
- (i) remove Regional Councillors from office; and
  - (ii) appoint an Administrator to administer the affairs of a Regional Council;”.

## **PART 26—AMENDMENT RELATING TO THE POWER OF THE DIRECTOR OF EVALUATION AND AUDIT TO EXAMINE DOCUMENTS**

### **Insertion of new section**

73. After section 78 of the Principal Act the following section is inserted:

#### **Examination of documents etc.**

*This section applies to the evaluation and audit of certain individuals and bodies*

- “78A.(1) This section applies if the Office of Evaluation and Audit:
- (a) evaluates or audits the operations of a body in accordance with paragraph 76(1)(b), (f) or (g); or
  - (b) evaluates or audits the activities of an individual in accordance with paragraph 76(1)(e).

#### *Authorised person*

“(2) The Director of Evaluation and Audit may, by notice in the *Gazette*, authorise a person (the ‘**authorised person**’) who is a member of the staff of, or a consultant to, the Commission to perform functions and exercise powers for the purposes of this section.

#### *Power of Director or authorised person to examine documents*

“(3) For the purposes of a particular evaluation or audit, the Director of Evaluation and Audit or an authorised person may examine documents relating to the individual or body concerned.

#### *Authorised person must report to the Director on the results of examination*

“(4) An authorised person must report to the Director of Evaluation and Audit on the results of an examination conducted in accordance with subsection (3), drawing the Director’s attention to any irregularity that is relevant to the evaluation or audit of the individual or body concerned.



*Director or authorised person entitled to access to documents*

“(5) For the purposes of performing the function conferred by subsection (3), the Director of Evaluation and Audit or the authorised person:

- (a) is entitled at all reasonable times to full and free access to documents relating to the individual or body; and
- (b) may make copies, or take extracts from, any such document; and
- (c) may require a person:
  - (i) to answer such questions; and
  - (ii) to produce such documents in the person’s possession or to which the person has access;

as the Director of Evaluation and Audit or the authorised person, as the case requires, considers necessary for that purpose.

*Penalty for failure to comply with paragraph (5)(c)*

“(6) A person who, without reasonable excuse, refuses or fails to comply with a requirement under paragraph (5)(c) is guilty of an offence punishable upon conviction by a fine not exceeding 20 penalty units.

*Self-incrimination*

“(7) For the purposes of subsection (6), it is not a reasonable excuse for a person to refuse or fail:

- (a) to give information; or
- (b) to produce a document;

in accordance with a requirement made of the person, on the ground that the information or production of the document, as the case may be, might tend to incriminate the person or make the person liable to a penalty. However:

- (c) giving the information or producing the document; or
- (d) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or producing the document;

is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against, or arising out of, subsection (6) or (8).

*Penalty for knowingly making a statement that is false or misleading*

“(8) A person who, in purported compliance with a requirement under paragraph (5)(c), makes a statement that is, to the person’s knowledge, false or misleading in a material particular, is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

*Authorised person must produce written authority before exercising powers*

“(9) Before exercising powers under subsection (5), an authorised person must produce written authority given by the Director of Evaluation and Audit. If the authorised person fails to do so, he or she has no powers under that subsection.

*Functions and powers conferred are additional to functions and powers conferred on Auditor-General*

“(10) The functions and powers conferred by this section are in addition to, and not in substitution for, any functions or powers conferred on the Auditor-General, or any other person, by or under any other law of the Commonwealth.”.

## **PART 27—AMENDMENTS RELATING TO THE ELECTORAL COMMISSIONER**

### **Polling places**

74. Section 105 of the Principal Act is amended:

- (a) by omitting from subsection (1) “Australian Electoral Commission” and substituting “Electoral Commissioner”;
- (b) by omitting from subsection (1) “it” and substituting “he or she”;
- (c) by omitting from subsection (3) “Australian Electoral Commission” and substituting “Electoral Commissioner”.

### **Application of amendments**

75. The amendments made by this Part do not apply until immediately after the end of the election period for the round of Regional Council elections for 1993.

## **PART 28—AMENDMENTS RELATING TO THE ESTABLISHMENT OF THE TORRES STRAIT REGIONAL AUTHORITY**

### *Division 1—Establishment of the Torres Strait Regional Authority*

#### **Insertion of new Part**

76. After Part 3 of the Principal Act the following Part is inserted:

### **“PART 3A—TORRES STRAIT REGIONAL AUTHORITY**

#### *“Division 1—Torres Strait Regional Authority*

#### **Torres Strait Regional Authority**

“142.(1) A Torres Strait Regional Authority is established.

“(2) The TSRA:

- (a) is a body corporate, with perpetual succession; and
- (b) is to have a common seal; and
- (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 TSRA is to be kept in such custody as the TSRA directs and must not be used except as authorised by the TSRA.

“(4) All courts, judges and persons acting judicially must:

- (a) take judicial notice of the imprint of the common seal of the TSRA appearing on a document; and
- (b) presume that the imprint was duly affixed.

*“Division 2—Functions of TSRA*

**Functions of TSRA**

*Functions*

“142A.(1) The TSRA has the following functions:

- (a) to recognise and maintain the special and unique Ailan Kastom of Torres Strait Islanders living in the Torres Strait area;
- (b) to formulate and implement programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
- (c) to monitor the effectiveness of programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area, including programs conducted by other bodies;
- (d) to develop policy proposals to meet national, State and regional needs and priorities of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
- (e) to assist, advise and co-operate with Torres Strait Islander and Aboriginal communities, organisations and individuals at national, State, Territory and regional levels;
- (f) to advise the Minister on:
  - (i) matters relating to Torres Strait Islander affairs, and Aboriginal affairs, in the Torres Strait area, including the administration of legislation;
  - (ii) the co-ordination of the activities of other Commonwealth bodies that affect Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area;
- (g) when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister;

- (h) to take such reasonable action as it considers necessary to protect Torres Strait Islander and Aboriginal cultural material and information relating to the Torres Strait area if the material or information is considered sacred or otherwise significant by Torres Strait Islanders or Aboriginal persons;
- (i) at the request of, or with the agreement of, the Australian Bureau of Statistics but not otherwise, to collect and publish statistical information relating to Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
- (j) such other functions as are conferred on the TSRA by this Act or any other Act;
- (k) such other functions as are expressly conferred on the TSRA 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 142B;
- (l) to undertake such research as is necessary to enable the TSRA to perform any of its other functions;
- (m) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

*TSRA not to disregard Aboriginal tradition and custom*

“(2) The express mention in paragraph (1)(a) of the Ailan Kastom of Torres Strait Islanders living in the Torres Strait area does not imply that the TSRA may disregard Aboriginal tradition and custom.

*Minister may require information about expenditure*

“(3) The information that may be required by the Minister under paragraph (1)(g) includes, but is not limited to, information about the TSRA’s expenditure.

*Minister must not specify content of information*

“(4) When requesting information under paragraph (1)(g), the Minister must not specify the content of the information that is to be provided.

*TSRA must not disclose certain material or information*

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

*TSRA must ensure that privacy is not infringed*

“(6) In performing its function under paragraph (1)(i), the TSRA must ensure that the collection and publication of statistical information covered by that paragraph does not infringe the privacy of any individual.

*Limitations on TSRA's function to acquire land*

“(7) This Act does not confer on the TSRA a function of acquiring land except:

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

**Minister may approve performance of functions under State or Territory laws**

“142B. The Minister may, in writing, approve the performance by the TSRA of a function expressly conferred on the TSRA by a law of a State or an internal Territory.

**Powers of TSRA**

“142C.(1) The TSRA 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 TSRA include, but are not limited to, the following powers:

- (a) to accept gifts, grants, bequests and devises made to it;
- (b) to act as trustee of money and other property vested in it on trust.

“(3) Despite anything in this Act, any money or other property held by the TSRA on trust must be dealt with in accordance with the powers and duties of the TSRA as trustee.

“(4) The powers of the TSRA may be exercised in or out of Australia.

**Torres Strait Development Plan**

“142D.(1) The TSRA must formulate, and revise from time to time, a plan to be known as the Torres Strait Development Plan (the ‘Plan’).

“(2) The aim of the Plan is to improve the economic, social and cultural status of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area.

“(3) The Plan must outline the strategies and policies that the TSRA intends to adopt in order to implement the Plan, including, but not limited to, a marine strategy for the Torres Strait area.

“(4) Each Plan must relate to a period of at least 3 years and not more than 5 years.

“(5) The TSRA must review the Plan regularly.

“(6) The TSRA must perform its functions under this section in consultation with the Minister.

“(7) Without limiting the operation of the *Freedom of Information Act 1982*, the TSRA General Manager must ensure that copies of the Plan as in force from time to time are available for inspection and purchase at each office of the TSRA.

“(8) The TSRA General Manager must cause notice of the publication of the Plan to be published in the *Gazette*.

### **Directions by Minister**

“142E.(1) The TSRA must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.

“(2) The Minister must not give directions about the content of any advice, information or recommendation that may be given by the TSRA to a Minister, Department of State or authority of the Commonwealth.

“(3) The Minister must not give directions about the content of any advice, information or recommendation that may be given by the TSRA to:

- (a) a Minister of a State or Territory; or
- (b) a Department of State of a State or Territory; or
- (c) an authority of a State or Territory;

except for the purpose of protecting the confidentiality of information given to the TSRA by the Commonwealth or an authority of the Commonwealth.

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

“(5) The rule in subsection (4) does not apply if the laying of a copy of a direction before each House of the Parliament would result in the disclosure of a matter in a manner that would be inconsistent with the views or sensitivities of Torres Strait Islanders or Aboriginal persons.

### ***“Division 3—General funding powers of TSRA***

#### **TSRA may make grants and loans**

“142F.(1) The TSRA may:

- (a) make a grant of money; or
- (b) grant an interest in land; or
- (c) grant an interest in personal property; or
- (d) make a loan of money (whether secured or unsecured);

to:

- (e) an individual; or
- (f) a body corporate (other than a Regional Council); or
- (g) an unincorporated body;

for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area.

“(2) A grant or loan is subject to such terms and conditions as the TSRA determines.

“(3) The TSRA may acquire by agreement an interest in land, or personal property, for the purpose of making a grant under this section.

### **TSRA may give guarantees**

“142G.(1) If the TSRA is satisfied that the purpose of a loan made or to be made to:

- (a) an individual; or
- (b) a body corporate; or
- (c) an unincorporated body;

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

“(2) The TSRA’s power to give guarantees 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.

“(3) A guarantee is subject to such terms and conditions as the TSRA determines.

### **Grants and loans to be repayable if conditions breached etc.**

“142H.(1) The TSRA may give written notice to an individual or body to whom a grant has been made under this Part, stating that the TSRA is satisfied that the individual or body has failed to fulfil a term or condition of the grant.

“(2) An individual or body who is given notice under subsection (1) is liable to pay to the TSRA an amount equal to:

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

“(3) The TSRA may give written notice to an individual or body to whom a loan has been made under this Part, stating that the TSRA is satisfied that the individual or body has failed to fulfil a term or condition of the loan.

“(4) An individual or body who is given notice under subsection (3) is liable to pay to the TSRA, 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 TSRA specifies in the notice.

### **Restriction on right to dispose of interest in land**

“142J.(1) This section applies if:

- (a) an individual or body has acquired an interest in land; and
- (b) any of the following applies:
  - (i) the interest was acquired using money granted to the individual or body by the TSRA under paragraph 142F(1)(a);
  - (ii) the interest was acquired from the TSRA under paragraph 142F(1)(b);
  - (iii) the acquisition of the interest was financed by a loan that was guaranteed by the TSRA under section 142G.

“(2) The individual or body must not dispose of the interest without the TSRA’s written consent.

“(3) If the individual or body purports to dispose of the interest without the TSRA’s written consent, the purported disposition is of no effect.

### **TSRA to formulate decision-making principles about grants, loans and guarantees**

“142K.(1) The TSRA must formulate principles (the ‘**decision-making principles**’), not inconsistent with the objects of this Act, about:

- (a) the making of grants and loans under section 142F; and
- (b) the giving of guarantees under section 142G.

“(2) Subject to section 144ZD, the TSRA must perform its functions and exercise its powers under sections 142F and 142G in accordance with applicable provisions of the decision-making principles in force from time to time.

“(3) Without limiting the operation of the *Freedom of Information Act 1982*, the TSRA General Manager must ensure that copies of the decision-making principles as in force from time to time are available for inspection and purchase at each of the TSRA’s offices.

“(4) The TSRA General Manager must cause notice of the making of decision-making principles to be published in the *Gazette*.

### **Review of operation of Part etc.**

“142L.(1) The TSRA may, from time to time:

- (a) review such aspects of the operation of:
    - (i) this Part; and
    - (ii) the remaining provisions of this Act, in so far as they relate to the TSRA;
- as the TSRA determines in writing; and



(b) report to the Minister accordingly.

“(2) The TSRA must not review a matter mentioned in section 141.

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

“(4) The Minister must 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. 5

“(5) This section does not, by implication, limit the powers of the Commission under section 26.

### **Advisory committees**

“142M.(1) The TSRA may establish one or more advisory committees to advise the TSRA in relation to the performance of the TSRA’s functions.

“(2) An advisory committee may include members of the TSRA.

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

“(4) A member of an advisory committee holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the TSRA by notice in the *Gazette*.

### **Advisory committee—disclosure of interests at meetings**

“142N.(1) A member of an advisory committee established under section 142M who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the committee must, 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 committee.

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

### **Advisory committee—member’s appointment to be terminated for non-disclosure of interests**

“142P.(1) This section applies to an advisory committee established under section 142M.

“(2) The TSRA must terminate the appointment of a member of a committee if the member fails, without reasonable excuse, to comply with section 142N.

“(3) Subsection (2) does not, by implication, limit the TSRA’s power to terminate the appointment of a member of a committee.

### **Advisory committee—resignation**

“142Q. A member of an advisory committee established under section 142M may resign from the committee by writing signed by the member and sent to the TSRA.

### **“Division 4—Constitution of TSRA**

#### **Constitution of TSRA**

“142R.(1) Subject to any notice in force under section 142S, the TSRA consists of the eligible number of members elected in accordance with Division 5 of this Part.

“(2) The performance of the functions or the exercise of the powers of the TSRA is not affected by reason only that there are fewer than the eligible number of members of the TSRA because:

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

“(3) If there are fewer than 7 members of the TSRA, the Minister may, subject to subsection (4), by notice in the *Gazette*:

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

“(4) Subsection (3) does not apply if:

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

#### **Minister may determine manner of representation on TSRA**

“142S.(1) The Minister may, by notice in the *Gazette*, declare that he or she is satisfied that the TSRA would best be able to represent the Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area if it consisted of, or included, persons elected to represent particular communities in that area under the Queensland Act.

“(2) The notice must also set out details of how the TSRA 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 TSRA to be persons elected under the Queensland Act to represent particular communities in the Torres Strait area;
- (b) provision for some of the members of the TSRA to be elected under this Act to represent particular communities in the Torres Strait area;
- (c) provision for the method of election of members of the TSRA to whom provisions under paragraph (b) apply;
- (d) provision for the term of office of members of the TSRA holding office under this section.

“(3) The notice may make such other provisions in relation to the constitution and operation of the TSRA as the Minister thinks necessary.

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

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

#### **“Division 5—TSRA elections**

##### **TSRA elections**

“142T. The Australian Electoral Commission is to conduct TSRA elections in accordance with:

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

##### **People entitled to vote at TSRA elections**

“142U. A person is entitled to vote at an election for the members of the TSRA if and only if:

- (a) the person is a Torres Strait Islander or an Aboriginal person; 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 Torres Strait area; or
  - (ii) the person is entitled to vote at the election under rules made under subsection 143G(3).

##### **People qualified to be elected to the TSRA**

“142V.(1) A person is not qualified to stand for election, or to be elected, as a member of the TSRA if:

- (a) the person is not entitled to vote at the TSRA election; or
- (b) the person is a member of the staff of, or a consultant to, the TSRA or the Commission; or

- (c) the person is bankrupt; or
- (d) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy; or
- (e) 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
- (f) 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) Despite subsection (1), a person covered by paragraph (1)(e) or (f) is not disqualified by that paragraph from standing for election, or being elected, as a member of the TSRA if:

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

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

### **Term of office of members of TSRA**

“142W.(1) Persons elected, or declared to have been elected, as members of the TSRA otherwise than at a by-election to fill a casual vacancy:

- (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.

“(2) A person elected, or declared to have been elected, as a member of the TSRA at a by-election to fill a casual vacancy:

- (a) takes office as member immediately after the day on which the poll is declared in relation to that by-election; and
- (b) holds office, subject to this Part, until immediately before the last day on which a poll is declared in relation to the next TSRA election.

### **Errors in Commonwealth Electoral Roll not to affect entitlements**

“142X.(1) For the purposes of the application of this Act to the TSRA, a person’s name is taken to be on the Commonwealth Electoral Roll if the name 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
- (b) a wrong given name has been entered on the Roll; or
- (c) the person’s surname has been misspelt on the Roll; or
- (d) the Roll does not show the person’s correct address.

“(2) For the purposes of the application of this Act to the TSRA, a person’s name is 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 TSRA elections**

“142Y.(1) Subject to this section, TSRA elections must be held every 3 years during periods determined under the TSRA election rules having regard to the day or days fixed for the polling in accordance with this section.

“(2) The Minister must, by written notice, fix a day or days for the polling in each TSRA election.

“(3) The polling day or days for each TSRA election must be not later than the anniversary in the third calendar year, and each later third calendar year, of the day in 1994 on which the triennial election for an Island Council is held under the Queensland Act.

### **Polling places**

“142Z.(1) The Electoral Commissioner must, by written notice, appoint by name such polling places as he or she considers necessary for the Torres Strait area.

“(2) The Electoral Commissioner must give a copy of the notice relating to elections for the TSRA to the Minister and the TSRA.

“(3) The TSRA must take reasonable steps to ensure that a copy of the most recent notice appointing polling places for an election is available for inspection at each office of the TSRA.

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

“143.(1) The Minister must cause a copy of the notice under subsection 142Y(2) fixing a polling day or polling days for a TSRA election to be published in the *Gazette* at least 90 days before the day, or the first of the days, so fixed.

“(2) The Minister must cause to be published, together with the copy referred to in subsection (1):

- (a) a copy of the most recent notice appointing polling places under section 142Z; and
- (b) a notice setting out an estimate by the Minister, in relation to the Torres Strait area, of:
  - (i) the number of persons who will be entitled to vote at the forthcoming TSRA election; and
  - (ii) the number of persons living in that area who are Torres Strait Islanders or Aboriginal persons.

“(3) 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**

“143A.(1) If the number of candidates nominated for election to the TSRA is equal to or less than the eligible number, an authorised electoral officer must declare the candidates nominated to be duly elected.

“(2) A poll must be held if the number of candidates nominated for election to the TSRA is more than the eligible number.

### **Voting not compulsory**

“143B. Voting at TSRA elections is not compulsory.

### **Voting by secret ballot**

“143C. Voting at TSRA elections must be by secret ballot.

### **Voting**

“143D.(1) A voter must cast a vote at a TSRA election by marking the ballot paper to show the order of the voter’s preference for the candidates.

- “(2) A ballot paper is formal if, and only if:
- (a) an authorised electoral officer is satisfied that it is an authentic ballot paper; and
  - (b) it indicates the voter’s first preference for one, and only one, candidate; and
  - (c) it does not have any identifying mark on it.

“(3) A ballot paper that is formal must 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 an 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**

“143E. Votes cast at a TSRA election must be counted, and candidates must be elected, as provided in Schedule 2B and in the TSRA election rules.

### **General obligation to inform people about elections**

“143F. In addition to its specific obligations in relation to TSRA elections, the Australian Electoral Commission must take any steps that it considers reasonable to inform people who are, or may be, entitled to vote at TSRA elections about:

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

### **Rules for conduct of elections**

#### *Minister may make rules*

“143G.(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 TSRA elections are to be conducted (including, but not limited to, elections conducted because previous elections have been declared to be void); and
- (b) the manner in which casual vacancies in the TSRA are to be filled (including, but not limited to, the holding of by-elections).

#### *Matters that may be dealt with in rules*

“(2) The matters that may be dealt with in the rules 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 people who have cast votes;
- (b) the functions of Torres Strait Islander and Aboriginal 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;
- (i) the scrutiny and counting of votes;
- (j) the declaration of the poll.

*Rules may deal with situations where persons would otherwise not be entitled to vote*

“(3) The rules may make provision entitling Torres Strait Islanders and Aboriginal persons to vote at TSRA elections even if they would not be entitled so to vote under subparagraph 142U(b)(i) and, without limiting the generality of the foregoing, may make provision about the following matters:

- (a) the determination of whether a person is entitled to vote if:
  - (i) the person’s name is on the Commonwealth Electoral Roll; but
  - (ii) because 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 if:
  - (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 under rules made under paragraph (c) is to be accepted.

*Penalties for breach of rules*

“(4) The rules may provide penalties for breaches of the rules not exceeding 10 penalty units.

*Penalty under Commonwealth Electoral Act 1918 may be substituted for penalty under rules*

“(5) If:



- (a) the rules create an offence in relation to TSRA elections (**‘TSRA election offence’**) that corresponds to an offence under the *Commonwealth Electoral Act 1918* (**‘Commonwealth election offence’**); and
- (b) the maximum pecuniary penalty for the Commonwealth election offence is more than the penalty that, by subsection (4), could be imposed for a breach of the rules;

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the rules may provide a maximum penalty for the TSRA election offence not exceeding the maximum pecuniary penalty for the corresponding Commonwealth election offence. However, nothing in this subsection enables the rules to provide penalties of imprisonment.

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*Minister to have regard to desirability of TSRA elections being conducted in a manner similar to elections for the Parliament*

“(6) In making rules, the Minister must have regard to the desirability of providing for TSRA elections to be conducted in a manner similar to the manner in which elections for the Parliament are conducted, with the aim of increasing the understanding of, and participation in, elections for the Parliament by Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area.

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*Rules may take account of special circumstances*

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“(7) Subsection (6) does not prevent the Minister making rules:

- (a) that take account of the special circumstances of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; or
- (b) that will enable significant reductions in the costs of conducting TSRA elections.

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*Rules are a disallowable instrument*

“(8) Rules are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Authorised electoral officer**

“143H. A reference in this Division or Schedule 2B to an authorised electoral officer is, in relation to a particular TSRA 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 election.

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**“Division 6 — Administrative provisions**

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**Part-time basis of holding office**

“143J. A member of the TSRA (other than the Chairperson) holds office on a part-time basis.

### **Remuneration and allowances**

“143K. A member of the TSRA is entitled to remuneration and allowances in accordance with section 194.

### **Chairperson and Deputy Chairperson**

“143L.(1) The TSRA must, at its first meeting after it is elected, elect from among its members by secret ballot:

- (a) a Chairperson; and
- (b) a Deputy Chairperson.

“(2) The first meeting of the TSRA after it is elected must be held as soon as practicable after it is elected.

“(3) The TSRA must not elect a Commissioner to be the Chairperson or the Deputy Chairperson of the TSRA.

“(4) At any other meeting of the TSRA, the TSRA must elect:

- (a) a new Chairperson if there is a vacancy in the office of Chairperson of the TSRA; and
- (b) a new Deputy Chairperson if there is a vacancy in the office of Deputy Chairperson of the TSRA.

“(5) Elections under this section must be conducted in accordance with the regulations.

### **Acting appointments**

“143M.(1) The Minister may, after consulting the TSRA, appoint a person to act in the office of a member of the TSRA during any period, or during all periods, when the member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

“(2) The Minister must not appoint a person to act in the office of a member of the TSRA unless, having regard to section 142V, the person is qualified to be elected as a member.

“(3) The appointment of a person to act in the office of a member of the TSRA who is also the Chairperson of the TSRA does not constitute an appointment of the person to act as the Chairperson.

“(4) The appointment of a person to act in the office of a member of the TSRA who is also the Deputy Chairperson of the TSRA does not constitute an appointment of the person to act as the Deputy Chairperson.

“(5) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment;
- or

- (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**

*Member must disclose direct or indirect pecuniary interest at meeting of the TSRA*

“143N.(1) A member of the TSRA who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the TSRA must, 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 TSRA.

*Consequences of disclosure*

“(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and the member must not:

- (a) unless the Minister otherwise determines in writing—be present during any deliberation of the TSRA with respect to that matter; or
- (b) unless the Minister otherwise determines in writing—take part in any decision of the TSRA with respect to that matter.

*Delegation of powers to Chairperson of TSRA*

“(3) The Minister may, by writing, delegate to the Chairperson of the TSRA either or both of the Minister’s powers under subsection (2).

*Minister may determine that specified interests are pecuniary interests*

“(4) The Minister may make a written determination providing that specified interests are taken to be direct or indirect pecuniary interests for the purposes of this section.

*Minister may determine that specified interests are not pecuniary interests*

“(5) The Minister may make a written determination providing that specified interests are taken not to be direct or indirect pecuniary interests for the purposes of this section.

*Determinations are disallowable instruments*

“(6) A determination under subsection (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **Disclosure of interests**

“143P.(1) Each member of the TSRA must make to the Minister a written disclosure of:

(a) the member's financial interests; and

(b) the financial interests of the member'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) The member must make a disclosure under subsection (1) within one month after being elected as member.

“(3) The member must 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 the member, and of the members of his or her immediate family, is up-to-date.

“(4) In this section:

‘**member**’ includes an acting member.

### **Resignation**

“143Q. A member of the TSRA may resign by writing signed by him or her and sent to the Minister.

### **Members taken to have resigned from TSRA in certain circumstances**

#### *Member living outside Torres Strait area*

“143R.(1) If the TSRA is satisfied that a member of the TSRA:

(a) does not live in the Torres Strait area; and

(b) has not lived in the Torres Strait area at all during the immediately preceding period of 6 months;

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

#### *Member taken to have resigned if TSRA makes a declaration*

“(2) Subject to the *Administrative Appeals Tribunal Act 1975*, if the TSRA makes a declaration under subsection (1), the member concerned is, for all purposes, taken to have resigned on the date of the declaration.

#### *TSRA may declare that member has become employee etc. of TSRA or Commission*

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

#### *Member taken to have resigned if TSRA makes a declaration*

“(4) If the TSRA makes a declaration under subsection (3), the member concerned must, for all purposes, be taken to have resigned on the date of the declaration.

### **Suspension and removal from office of members of the TSRA**

#### *Minister may suspend member of the TSRA*

“143S.(1) Subject to subsection (2), the Minister may suspend a member of the TSRA from office because of misbehaviour or physical or mental incapacity.

#### *Minister must give member of the TSRA notice before suspension*

“(2) The Minister must not suspend the member from office unless the Minister has:

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

#### *Statement to be laid before each House of the Parliament*

“(3) The Minister must cause a statement identifying the member 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.

#### *Member of the TSRA must be restored to office if declaration made by both Houses of Parliament*

“(4) If 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 member of the TSRA ought to be restored to office. If each House so passes such a resolution, the Minister must terminate the suspension.

#### *Minister may remove member of the TSRA from office if no declaration made*

“(5) If, at the end 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 remove the member of the TSRA from office.

#### *Minister must remove member from office*

“(6) If a member of the TSRA:

- (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
- (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or

- (c) who is the Chairperson of the TSRA, is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
- (d) who is a part-time member, has been absent from 3 consecutive meetings of the TSRA without leave of the Minister and without reasonable excuse; or
- (e) fails, without reasonable excuse, to comply with section 143N; or
- (f) becomes bankrupt; or
- (g) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (h) compounds with his or her creditors; or
- (i) makes an assignment of his or her remuneration for the benefit of his or her creditors;

the Minister must remove the member from office.

*Statement to be laid before Parliament if member of the TSRA removed from office*

“(7) If the Minister removes a member of the TSRA from office, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the removal, a statement:

- (a) identifying the member; and
- (b) stating that he or she has been removed from office; and
- (c) setting out the ground of the removal.

*Circumstances in which member of TSRA taken to be guilty of misbehaviour*

“(8) Without limiting the generality of this section, a member of the TSRA is 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 TSRA, whether under section 142E or 144ZD or any other provision of this Act.

### **Recall of member of the TSRA**

“143T.(1) If the Minister receives a valid petition calling for the removal of a member of the TSRA from office, the Minister must remove that member from office as soon as possible.

“(2) In this section:

‘**eligible person**’ means a person who would be entitled to vote at an election for that member of the TSRA;

‘**sufficient number**’ means a number that is more than 66% of the Torres Strait area number;

‘**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; and
- (b) that sets out legibly:
  - (i) the name of each person who signed the petition; and
  - (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 before the delivery of the petition to the Minister.

**Members of TSRA, and TSRA Administrators, not personally liable**

“143U.(1) A member of the TSRA is not personally liable to an action or other proceeding for damages for or in relation to anything done or omitted to be done in good faith:

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

“(2) A TSRA Administrator 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 Torres Strait Regional Council before the TSRA Administrator was appointed; or
- (b) by the TSRA before the TSRA Administrator was appointed; or
- (c) in good faith by the TSRA Administrator in the capacity of TSRA Administrator.

**Other terms and conditions**

“143V. A member of the TSRA 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 in the *Gazette*.

**Provisions relating to Chairperson**

“143W.(1) The Chairperson of the TSRA holds office on a full-time basis.

“(2) If the Chairperson of the TSRA becomes a Commissioner, he or she ceases to be the Chairperson of the TSRA.

“(3) The Chairperson of the TSRA holds office for the period starting when he or she is elected and ending when a new Chairperson of the TSRA is elected.

**Resignation of Chairperson**

“143X.(1) The Chairperson of the TSRA may resign by writing signed by him or her and sent to the Minister.

- “(2) The Chairperson of the TSRA is taken to have resigned if:
- (a) he or she resigns from the TSRA; or
  - (b) under section 143R, he or she is taken to have resigned from the TSRA.

### **Suspension and removal from office of Chairperson**

#### *Minister may suspend Chairperson*

“143Y.(1) Subject to subsection (2), the Minister may suspend the Chairperson of the TSRA from office because of misbehaviour or physical or mental incapacity.

#### *Minister must give Chairperson notice before suspension*

- “(2) The Minister must not suspend the Chairperson from office unless the Minister has:
- (a) by written notice served on the Chairperson, given the Chairperson 7 days within which to show cause why the Chairperson should not be suspended; and
  - (b) consulted the TSRA.

#### *Statement to be laid before each House of the Parliament*

“(3) The Minister must cause a statement identifying the Chairperson 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.

#### *Chairperson must be restored to office if declaration made by both Houses of Parliament*

“(4) If 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 Chairperson ought to be restored to office. If each House so passes such a resolution, the Minister must terminate the suspension.

#### *Minister may remove Chairperson from office if no declaration made*

“(5) If, at the end 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 remove the Chairperson from office.

#### *Minister must remove Chairperson from office if he or she ceases to be a member of the TSRA*

“(6) If the Chairperson of the TSRA ceases to be a member of the TSRA otherwise than by resigning from the TSRA, the Minister must remove the Chairperson from office.



*Statement to be laid before Parliament if Chairperson removed from office*

“(7) If the Minister removes a person from the office of Chairperson of the TSRA, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the removal, a statement:

- (a) identifying the Chairperson; and
- (b) stating that he or she has been removed from office; and
- (c) setting out the ground of the removal from office.

### **Leave of absence for Chairpersons**

“143Z.(1) Subject to section 87E of the *Public Service Act 1922*, the Chairperson of the TSRA has such recreation leave entitlements as are determined by the Remuneration Tribunal.

“(2) The Minister may grant the Chairperson of the TSRA leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister determines in writing.

“(3) The Minister must not grant to the Chairperson of the TSRA leave of absence for a continuous period of more than 6 months unless the grant of that leave is required or expressly permitted by any other law of the Commonwealth.

### **Provisions relating to Deputy Chairpersons**

“144.(1) The Deputy Chairperson of the TSRA holds office on a part-time basis.

“(2) If the Deputy Chairperson of the TSRA becomes a Commissioner, he or she ceases to be the Deputy Chairperson of the TSRA.

“(3) The Deputy Chairperson of the TSRA holds office for the period starting when he or she is elected and ending when a new Deputy Chairperson of the TSRA is elected.

### **Resignation of Deputy Chairpersons**

“144A.(1) The Deputy Chairperson of the TSRA may resign by writing signed by him or her and sent to the Minister.

- “(2) The Deputy Chairperson of the TSRA is taken to have resigned if:
- (a) he or she resigns from the TSRA; or
  - (b) under section 143R, he or she is taken to have resigned from the TSRA.

### **Suspension and removal from office of Deputy Chairperson**

*Minister may suspend Deputy Chairperson*

“144B.(1) Subject to subsection (2), the Minister may suspend the Deputy Chairperson of the TSRA from office because of misbehaviour or physical or mental incapacity.

*Minister must give Deputy Chairperson notice before suspension*

“(2) The Minister must not suspend the Deputy Chairperson from office unless the Minister has:

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

*Statement to be laid before each House of the Parliament*

“(3) The Minister must cause a statement identifying the Deputy Chairperson 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.

*Deputy Chairperson must be restored to office if declaration made by both Houses of Parliament*

“(4) If 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 Deputy Chairperson ought to be restored to office. If each House so passes such a resolution, the Minister must terminate the suspension.

*Minister may remove Deputy Chairperson from office if no declaration made*

“(5) If, at the end 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 remove the Deputy Chairperson from office.

*Minister must remove Deputy Chairperson from office if he or she ceases to be a member of the TSRA*

“(6) If the Deputy Chairperson of the TSRA ceases to be a member of the TSRA otherwise than by resigning from the TSRA, the Minister must remove the Deputy Chairperson from office.

*Statement to be laid before Parliament if Deputy Chairperson removed from office*

“(7) If the Minister removes a person from the office of Deputy Chairperson of the TSRA, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the removal, a statement:

- (a) identifying the Deputy Chairperson; and

- (b) stating that he or she has been removed from office; and
- (c) setting out the ground of the removal from office.

### **Deputy Chairperson to act as Chairperson**

“144C.(1) The Deputy Chairperson of the TSRA is to act as the Chairperson of the TSRA:

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

“(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because the occasion to act had not arisen or had ceased.

### **Alternate Deputy Chairperson**

#### *Election of alternate*

“144D.(1) The TSRA may elect a member of the TSRA to be the alternate of the Deputy Chairperson.

#### *Commissioner not to be elected as alternate*

“(2) The TSRA must not elect a Commissioner to be the alternate of the Deputy Chairperson.

#### *Term of office*

“(3) The alternate of the Deputy Chairperson holds office for such period as is determined by the TSRA. However, the alternate of the Deputy Chairperson may be re-elected under subsection (1).

#### *Alternate ceases to hold office if he or she becomes a Commissioner*

“(4) If the alternate of the Deputy Chairperson becomes a Commissioner, he or she ceases to be the alternate of the Deputy Chairperson.

#### *Alternate to act as Deputy Chairperson*

“(5) The alternate of the Deputy Chairperson is to act as the Deputy Chairperson:

- (a) during a vacancy in the office of Deputy Chairperson, whether or not an election has previously been conducted for the office; 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.

*Alternate to act as Chairperson*

“(6) The alternate of the Deputy Chairperson is to act as the Chairperson:

- (a) during a vacancy in the offices of both the Chairperson and the Deputy Chairperson, whether or not elections have previously been conducted for the offices; or
- (b) during any period, or during all periods, when both of the following subparagraphs apply:
  - (i) the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Chairperson;
  - (ii) the Deputy Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Deputy Chairperson; or
- (c) during any period, or during all periods, when both of the following subparagraphs apply:
  - (i) the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Chairperson;
  - (ii) there is a vacancy in the office of Deputy Chairperson, whether or not an election has previously been conducted for the office; or
- (d) during any period, or during all periods, when both of the following subparagraphs apply:
  - (i) there is a vacancy in the office of Chairperson, whether or not an election has previously been conducted for the office;
  - (ii) the Deputy Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Deputy Chairperson.

*Validation of acts of alternate*

“(7) Anything done by or in relation to a person purporting to act under subsection (5) or (6) is not invalid merely because the occasion to act had not arisen or had ceased.

*Removal of alternate from office*

“(8) The TSRA may remove the alternate of the Deputy Chairperson from office.

*Resignation of alternate*

“(9) The alternate of the Deputy Chairperson may resign the office of alternate Deputy Chairperson by writing signed by the alternate and given to the TSRA.

## **Meetings of TSRA**

### *Meetings to be convened at least 4 times a year*

“144E.(1) The Chairperson of the TSRA:

- (a) must convene at least 4 meetings of the TSRA in each financial year; and
- (b) may convene other meetings of the TSRA if, in the Chairperson’s opinion, the meetings are necessary for the efficient performance of the TSRA’s functions.

### *Minister may convene meeting at any time*

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

### *Chairperson must convene meeting if 8 members of the TSRA request it*

“(3) The Chairperson of the TSRA must convene a meeting of the TSRA upon receipt of a written request for a meeting signed by at least 8 members of the TSRA.

### *Quorum*

“(4) At a meeting of the TSRA, a quorum is constituted by 12 members of the TSRA.

### *Reduced quorum—disclosure of interest requirement*

“(5) If:

- (a) a member of the TSRA is required by section 143N not to be present during the deliberations, or to take part in any decision, of the TSRA with respect to a particular matter; and
- (b) when the member leaves the meeting concerned there is no longer a quorum present; and
- (c) there are at least 8 members remaining at the meeting;

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

### *Chairperson of the TSRA to preside at meetings*

“(6) The Chairperson of the TSRA must preside at all meetings of the TSRA at which he or she is present.

### *Deputy Chairperson to preside if Chairperson not present etc.*

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

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

- (b) if:
- (i) the Deputy Chairperson of the TSRA is not present; and
  - (ii) the alternate of the Deputy Chairperson of the TSRA is present;
- the alternate of the Deputy Chairperson is to preside at the meeting; and
- (c) in any other case—the members of the TSRA present must elect one of their number to preside at the meeting.

*Questions determined by majority*

“(8) Questions arising at a meeting of the TSRA must be determined by a majority of the votes of the members of the TSRA present and voting.

*Person presiding may vote*

“(9) The person presiding at a meeting of the TSRA has a deliberative vote and, if the votes are equal, also has a casting vote.

*TSRA may regulate conduct of proceedings*

“(10) The TSRA may regulate the conduct of proceedings at its meetings as it thinks fit and, in particular, may conduct its meetings in accordance with Torres Strait Islander or Aboriginal tradition and custom.

*TSRA must keep minutes*

“(11) The TSRA must cause minutes of the proceedings at its meetings to be kept.

*TSRA may meet by telephone etc.*

“(12) If the TSRA so determines in writing (the ‘**meeting determination**’), a member of the TSRA may participate in, and form part of a quorum at, a meeting of the TSRA by means of any of the following methods of communication:

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

*Determination may be made for a particular meeting or for all meetings*

- “(13) The TSRA may make a meeting determination:
- (a) for a particular meeting of the TSRA; or
  - (b) for all meetings of the TSRA.

*Member who participates in telephone meeting taken to be present at the meeting*

“(14) A member of the TSRA who participates in a meeting as provided by subsection (12) is taken for the purposes of this section and section 143N to be present at the meeting.

### **Delegation to TSRA General Manager or staff member of TSRA**

*Delegation of certain functions and powers*

“144F.(1) The TSRA 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 land for the purposes of section 142J; and
- (b) its power to make declarations under section 143R; and
- (c) its power to reconsider matters under section 195A;

to the TSRA General Manager or to a member of the staff of the TSRA.

*TSRA General Manager may sub-delegate function or power*

“(2) If the TSRA delegates a function or power to the TSRA General Manager, he or she may, by writing, sub-delegate the function or power to a member of the staff of the TSRA.

*Delegation may prohibit sub-delegation*

“(3) The TSRA General Manager must not sub-delegate a function or power if the instrument of delegation prohibits the sub-delegation of that function or power.

*Application of certain provisions of the Acts Interpretation Act 1901*

“(4) Section 34AA and paragraphs 34AB(a), (b) and (d) of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.

*Application of certain provisions of the Acts Interpretation Act 1901*

“(5) Section 34A and paragraphs 34AB(c) and (d) of the *Acts Interpretation Act 1901* apply to a sub-delegation as if it were a delegation.

*Certain members of the staff of the Commission to be treated as members of the staff of the TSRA*

“(6) For the purposes of this section, if a member of the staff of the Commission is covered by an arrangement made under section 144S, the member is taken to be a member of the staff of the TSRA.

### **“Division 7—General Manager of TSRA**

#### **TSRA General Manager**

“144G.(1) There is to be a General Manager of the TSRA.

“(2) The TSRA General Manager is to be appointed by the Minister.

“(3) The Minister must not appoint a person as the TSRA General Manager unless the TSRA agrees to the appointment. However, this rule does not apply to the first TSRA General Manager.

“(4) Subject to subsection (5), the TSRA General Manager must manage the day-to-day administration of the TSRA.

“(5) In managing the day-to-day administration of the TSRA and in exercising any powers conferred on the TSRA General Manager by this Act, the TSRA General Manager must act in accordance with any policies determined, and any directions given to him or her, by the TSRA in writing.

### **Period of appointment**

“144H.(1) The TSRA General Manager holds office for such period as is specified in the instrument of appointment.

“(2) The period must not be longer than:

- (a) in the case of the first TSRA General Manager—2 years; and
- (b) in any other case—5 years.

“(3) A person who is 65 or over cannot hold office as TSRA General Manager.

### **Remuneration and allowances**

“144J. The TSRA General Manager is entitled to remuneration and allowances in accordance with section 194.

### **Leave of absence**

“144K.(1) Subject to section 87E of the *Public Service Act 1922*, the TSRA General Manager is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.

“(2) The Minister may, with the TSRA’s agreement, grant the TSRA General Manager leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister, with the TSRA’s agreement, determines in writing.

### **Acting TSRA General Manager**

“144L.(1) The Minister may, after consulting the TSRA, appoint a person to act as the TSRA General Manager:

- (a) during a vacancy in the office of TSRA 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 TSRA 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 must not continue so to act for more than 6 months.

“(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

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

“(3) This Act does not prevent the Chief Executive Officer, or a member of the staff of the Commission, from acting as the TSRA General Manager.

### **Disclosure of interests**

“144M.(1) The TSRA General Manager must give written notice to the Minister and the TSRA of all direct or indirect pecuniary interests that the TSRA General Manager has or acquires in any business or in any body corporate that carries on a business.

“(2) If the TSRA General Manager has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the TSRA, the TSRA General Manager must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Chairperson of the TSRA in writing.

### **Resignation**

“144N. The TSRA General Manager may resign by writing signed by him or her and sent to the Minister and the TSRA.

### **Termination of appointment**

“144P.(1) The Minister may, with the TSRA’s agreement, terminate the appointment of the TSRA General Manager because of incompetence, misbehaviour or physical or mental incapacity.

“(2) If the TSRA General Manager:

- (a) is absent from duty, except on leave granted under section 144K for 14 consecutive days or for 28 days in any period of 12 months; or
- (b) becomes bankrupt; or
- (c) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (d) compounds with his or her creditors; or
- (e) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

- (f) fails, without reasonable excuse, to comply with section 144M; or
- (g) engages in paid employment outside the duties of the office of TSRA General Manager without the written consent of the Minister given after consulting the TSRA;

the Minister must terminate the appointment of the TSRA General Manager.

### **Other terms and conditions**

“144Q. The TSRA 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 Minister, with the TSRA’s agreement, by notice in the *Gazette*.

### **“Division 8—Staff**

#### **Staff**

“144R.(1) Subject to section 144T, the staff required to assist the TSRA in the performance of its functions are to be persons appointed or employed under the *Public Service Act 1922*.

“(2) The TSRA General Manager 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.

Note 1: A member of the staff of the TSRA or the Commission is not qualified to stand for election, or to be elected, as a member of the TSRA (see paragraph 142V(1)(b)).

Note 2: The TSRA may declare that a member of the TSRA has become an employee of the TSRA or the Commission. The member is taken to have resigned from the TSRA on the date of the declaration (see subsections 143R(3) and (4)).

#### **Arrangements for Commission staff to perform duties on behalf of the TSRA**

“144S. The TSRA may make arrangements with the Chief Executive Officer for the performance of duties by the staff of the Commission on behalf of the TSRA.

#### **Consultants**

“144T.(1) The TSRA may engage consultants to the TSRA. A consultant must have suitable qualifications and experience.

“(2) The terms and conditions on which consultants are engaged are to be determined by the TSRA in writing.

“(3) The TSRA must, by written instrument:

- (a) set out criteria for the engagement of consultants by the TSRA; and

(b) set out standard terms and conditions for the engagement of consultants by the TSRA.

“(4) The TSRA must notify the making of an instrument under subsection (3) in the *Gazette*.

Note 1: A consultant to the TSRA or the Commission is not qualified to stand for election, or to be elected, as a member of the TSRA (see paragraph 142V(1)(b)).

Note 2: The TSRA may declare that a member of the TSRA has become a consultant to the TSRA or the Commission. The member is taken to have resigned from the TSRA on the date of the declaration (see subsections 143R(3) and (4)).

### **“Division 9—Finances**

#### **Application of money of the TSRA**

“144U.(1) Money of the TSRA must be applied only:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the TSRA in the performance of its functions or the exercise of its powers under this Act or any other law; and
- (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 TSRA is authorised or required to make under this Act or any other law.

“(2) In this section:

**‘money of the TSRA’** does not include:

- (a) money held in trust by the TSRA; or
- (b) money in the TSRA Housing Fund or the TSRA Land and Natural Resources Fund.

#### **TSRA Housing Fund**

“144V.(1) There is established by this subsection a fund to be known as the TSRA Housing Fund.

“(2) The following amounts are to be paid into the TSRA Housing Fund:

- (a) such amounts as are paid to the TSRA as repayment of, or otherwise in respect of, housing loans made by the TSRA under section 142F;
- (b) such amounts as are paid to the TSRA by any other person for the purposes of the TSRA Housing Fund;
- (c) such amounts of the TSRA’s money as the TSRA determines in writing.

“(3) Money in the TSRA Housing Fund may only be applied:

- (a) in making housing loans to individuals or bodies; or
- (b) in making loans to individuals or bodies to enable the individuals or bodies to provide housing for Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; or

(c) in making grants of money for the purposes of enabling Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area to obtain housing loans from lenders operating on a commercial basis.

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

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

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

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

#### **TSRA Land and Natural Resources Fund**

“144W.(1) There is established by this subsection a fund to be known as the TSRA Land and Natural Resources Fund.

“(2) There is to be paid into the TSRA Land and Natural Resources Fund such amounts of the TSRA’s money as the TSRA determines in writing.

“(3) Money in the TSRA Land and Natural Resources Fund may only be spent:

- (a) in making a grant of money under section 142F on condition that the money be spent in acquiring an interest in land; or
- (b) in acquiring an interest in land under subsection 142F(3).

“(4) Money in the TSRA Land and Natural Resources Fund that is not immediately required for the purposes of that fund may be invested:

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

#### **Borrowing on overdraft to meet temporary deficit**

“144X.(1) The TSRA may borrow money on overdraft from an approved bank for the sole purpose of meeting a temporary deficit in the money of the TSRA.

“(2) 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 TSRA 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 TSRA's powers to raise money**

“144Y.(1) The TSRA must not borrow money except in accordance with section 144X.

“(2) The TSRA must not raise money except by borrowing.

### **Exemption from taxation**

“144Z.(1) The TSRA is not subject to taxation under any law of the Commonwealth or of a State or Territory.

“(2) Excise duty is not payable by the TSRA, or by any other person, on goods that are for use by the TSRA.

### **Estimates**

“144ZA.(1) The TSRA must:

- (a) prepare estimates, in such form as the Minister directs, of the expenditure of the TSRA for each financial year and, if the Minister so directs, for any other period specified by the Minister; and
- (b) give those estimates to the Minister not later than such date as the Minister directs.

“(2) Money paid to the TSRA under section 58 must not be expended by the TSRA otherwise than in accordance with estimates of expenditure approved by the Minister.

“(3) Despite subsection (2), the amount spent by the TSRA in relation to a matter covered by a particular item in approved estimates may differ from the amount allocated to that item in those estimates by not more than 10% of the amount so allocated.

“(4) Subsection (3) does not empower the TSRA to spend or pay amounts that exceed in total the total amount covered by approved estimates.

### **Annual report and financial statements**

#### *TSRA must prepare report*

“144ZB.(1) Subject to this section, the TSRA must, as soon as practicable after the end of each financial year, prepare and give to the Minister:

- (a) a report about:
  - (i) its operations during the year; and
  - (ii) the implementation of the Torres Strait Development Plan during the year; and

- (b) financial statements in respect of the year in such form as the Minister for Finance approves.

*Certain matters must be included in report*

“(2) The TSRA must include in each report details of:

- (a) any directions given by the Minister under section 142E; and  
(b) any consultants engaged under section 144T;

during the period to which the report relates.

*Report must include details of grants*

“(3) If a grant was made by the TSRA during a financial year to an individual or body, then, in addition to the matters referred to in subsections (1) and (2), the report relating to the year must set out:

- (a) the name of the individual or body; and  
(b) the amount and purpose of the grant.

*Report must not disclose sacred matters*

“(4) The TSRA must not disclose in any report under this section any matters known to the TSRA to be held sacred by Torres Strait Islanders or Aboriginal persons.

*Report must include certain details about consultants*

“(5) If a report under this section gives details of a consultant engaged under section 144T, the report must 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 TSRA as set out in the instrument referred to in subsection 144T(3).

*Financial statements must be given to Auditor-General first*

“(6) Before giving financial statements to the Minister, the TSRA must give them to the Auditor-General. The Auditor-General must report to the Minister:

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

*Report etc. must be laid before each House of the Parliament*

“(7) The Minister must cause a copy of each of the following:

- (a) the TSRA’s report;
- (b) the financial statements;
- (c) the Auditor-General’s report;

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**

“144ZC.(1) The TSRA 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 TSRA as if:

- (a) the TSRA were not a Department for the purposes of Part VII of that Act; and
- (b) section 63H of that Act were omitted.

### **TSRA Finance Directions**

*Minister must give directions to TSRA*

“144ZD.(1) The Minister must give to the TSRA written directions (**‘TSRA Finance Directions’**), not inconsistent with this Act or the regulations, about the administration of the TSRA’s finances.

*TSRA must comply with directions*

“(2) The TSRA must comply with a TSRA Finance Direction that is in force even if it is inconsistent with:

- (a) the Torres Strait Development Plan; or
- (b) decision-making principles in force under section 142K.

*Directions may apply directions given under Audit Act etc.*

“(3) The TSRA 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 (**‘Audit Act Directions’**). The Audit Act Directions may be those as in force at a particular time or as in force from time to time.

*TSRA must make directions available*

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

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

*Notice of giving of directions to be published in the Gazette*

“(5) The TSRA General Manager must cause notice of the giving of TSRA Finance Directions to be published in the *Gazette*.

**“Division 10—Minister or Commission may ask TSRA for information**

**Minister or Commission may ask TSRA for information**

“144ZE.(1) The Minister or the Commission may from time to time ask the TSRA for information about the TSRA’s activities.

“(2) The TSRA must give the Minister the information he or she asks for.

“(3) The TSRA may give the Commission the information it asks for.

**“Division 11—TSRA Administrators**

**Powers of TSRA Administrator**

“144ZF. A TSRA Administrator appointed to administer the affairs of the TSRA:

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

**Remuneration and allowances**

“144ZG. A TSRA Administrator is entitled to remuneration and allowances in accordance with section 194.

**TSRA Administrator holds office on a full-time basis**

“144ZH. A TSRA Administrator holds office on a full-time basis.

**Resignation of TSRA Administrator**

“144ZJ. A TSRA Administrator may resign by writing signed by him or her and sent to the Minister.

**Leave of absence**

“144ZK.(1) Subject to section 87E of the *Public Service Act 1922*, a TSRA Administrator is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.

“(2) The Minister may grant a TSRA Administrator leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister determines in writing.



### **Other terms and conditions**

“144ZL. A TSRA Administrator 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 in the *Gazette*.

### **Disclosure of interests**

“144ZM.(1) A TSRA Administrator must make to the Minister a written disclosure of:

- (a) the TSRA Administrator’s financial interests; and
- (b) the financial interests of the TSRA Administrator’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 TSRA Administrator must make a disclosure under subsection (1) within one month after being appointed as a TSRA Administrator.

“(3) A TSRA Administrator must 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 the TSRA Administrator, and of the members of the TSRA Administrator’s immediate family, is up-to-date.

“(4) In this section:

‘**TSRA Administrator**’ includes an acting TSRA Administrator.

### **Termination of appointment**

#### *Minister may terminate TSRA Administrator’s appointment*

“144ZN.(1) The Minister may terminate the appointment of a TSRA Administrator because of misbehaviour or physical or mental incapacity.

#### *Minister must terminate TSRA Administrator’s appointment*

“(2) If a TSRA Administrator:

- (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
- (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
- (c) is absent from duty, except on leave of absence granted under section 144ZK, for 14 consecutive days or for 28 days in any period of 12 months; or
- (d) fails, without reasonable excuse, to comply with section 144ZM; or

- (e) becomes bankrupt; or
- (f) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (g) compounds with his or her creditors; or
- (h) makes an assignment of his or her remuneration for the benefit of his or her creditors;

the Minister must terminate the TSRA Administrator's appointment.

### **Acting TSRA Administrator**

"144ZP.(1) The Minister may appoint a person to act as a TSRA Administrator:

- (a) during a vacancy in an office of TSRA Administrator; or
- (b) during any period, or during all periods, when a TSRA Administrator 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 must not continue so to act for more than 6 months.

"(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

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

### **Minister may appoint replacement TSRA Administrator if there is a vacancy in an office of TSRA Administrator**

"144ZQ. If there is a vacancy in an office of TSRA Administrator caused by the death, resignation or termination of appointment of the TSRA Administrator, the Minister may, by notice in the *Gazette*, appoint a replacement TSRA Administrator to administer the affairs of the TSRA."

### **Insertion of new Schedule**

77. After Schedule 2A to the Principal Act the following Schedule is inserted:

#### **"SCHEDULE 2B**

Section 143E

#### METHOD OF COUNTING VOTES AND DETERMINING SUCCESSFUL CANDIDATES AT TSRA ELECTIONS

Schedule 2 applies in relation to TSRA elections as if:

- (a) the reference in clause 1 to a Regional Council ward election for 2 or more members for the ward concerned were a reference to a TSRA election; and

- (b) each reference to the authorised electoral officer were a reference to a person who is an authorised electoral officer for the purposes of Division 5 of Part 3A; and
- (c) the reference in clause 3 to the designated number in relation to the ward were a reference to the eligible number; and
- (d) the reference in the definition of ‘leading shortfall’ in clause 24 to a Regional Council ward election were a reference to a TSRA election; and
- (e) the reference in the definition of ‘shortfall’ in clause 24 to a Regional Council ward election were a reference to a TSRA election; and
- (f) the reference in the definition of ‘vacancy shortfall’ in clause 24 to a Regional Council ward election were a reference to a TSRA election.”.

#### **Schedule 4**

**78.** Schedule 4 to the Principal Act is amended:

- (a) by inserting “, a TSRA election” after “Regional Council election” in the definition of “election” in subclause 1(1);
- (b) by inserting “, the TSRA election rules” after “Regional Council election rules” in the definition of “illegal practice” in subclause 1(1);
- (c) by inserting “, the TSRA election rules” after “Regional Council election rules” in subclause 1(2);
- (d) by inserting after paragraph 10(1)(c) the following paragraph:
  - “(ca) 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 5 of Part 3A 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;”;
- (e) by omitting from paragraph 15(a) “or the Regional Council election rules” and substituting “, the Regional Council election rules or the TSRA election rules”;
- (f) by inserting in paragraph 15(b) “, the TSRA election rules” after “Regional Council election rules”;
- (g) by inserting after paragraph 17(1)(b) the following word and paragraphs:
  - “or (c) the qualifications of a member of the TSRA; or
  - (d) a vacancy in the TSRA;”;
- (h) by adding at the end of clause 21 the following paragraphs:

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- “(d) the power to declare that any person was not qualified to be a member of the TSRA;
- (e) the power to declare that there is a vacancy in the TSRA.”;
- (i) by adding at the end of paragraph 22(a) “and”;
- (j) by omitting paragraph 22(c) and substituting the following paragraphs:
  - “(c) if the reference relates to a Regional Council—the Regional Council; and
  - (d) if the reference relates to the TSRA—the TSRA.”;
- (k) by adding at the end of clause 27 the following subclause:
  - “(4) The validity of anything done by the TSRA is not affected by the fact that a person has since ceased to be a member of the TSRA because of a declaration of the Court under this Schedule.”;
- (l) by omitting from subclause 28(1) “and” (first occurring);
- (m) by inserting in subclause 28(1) “, the TSRA election rules” after “Regional Council election rules”.

**Amendments relating to the establishment of the Torres Strait Regional Authority**

*Amendments*

**79.(1)** The Principal Act is amended as set out in Schedule 2 to this Act.

*Application*

- (2) The amendments of sections 61 and 63 of the Principal Act made by this Part apply in relation to:
  - (a) estimates and draft budgets prepared for the financial year beginning on 1 July 1994 and for each later financial year; and
  - (b) estimates prepared for a period other than a financial year, if the period begins on or after 1 July 1994.

**Amendments of other Acts consequential upon the establishment of the Torres Strait Regional Authority**

**80.** The Acts specified in Schedule 3 to this Act are amended as set out in that Schedule.

***Division 2—Transitional provisions relating to the establishment of the  
Torres Strait Regional Authority***

***Subdivision A—Preparation for the establishment of the Torres Strait  
Regional Authority***

**Torres Strait Regional Council may be known as Torres Strait  
Regional Authority**

**81.(1)** The Torres Strait Regional Council may be known as the Torres Strait Regional Authority during the period:

- (a) beginning at the start of the election period for the 1994 election for that Regional Council; and
- (b) ending on 30 June 1994.

(2) Without limiting the generality of subsection (1), it is the intention of the Parliament that the Australian Electoral Commission may, in conducting the 1994 election for the Torres Strait Regional Council, refer to that Regional Council as the Torres Strait Regional Authority.

(3) This section does not apply to a reference to the Torres Strait Regional Authority in a provision of this Act (other than this section) or in any other law of the Commonwealth.

**Torres Strait Regional Council may plan the establishment of the  
Torres Strait Regional Authority**

**82.(1)** In addition to the functions referred to in section 94 of the Principal Act as amended by this Act, the Torres Strait Regional Council has the following functions:

- (a) to plan the establishment of the Torres Strait Regional Authority;
- (b) to prepare estimates, in such form as the Minister directs, of the expenditure of the Torres Strait Regional Authority for the financial year beginning on 1 July 1994;
- (c) to give those estimates to the Minister not later than such date as the Minister directs.

(2) Subsection (1) does not apply until the end of the election period for the 1994 election for the Torres Strait Regional Council.

**Consultation about initial appropriation**

**83.** The Minister must consult:

- (a) the Commission Chairperson; and
- (b) the Chairperson of the Torres Strait Regional Council; and
- (c) the Commissioner representing the Torres Strait zone;

about the amount proposed to be appropriated to the Commission for the purposes of the Torres Strait Regional Authority for the financial year beginning on 1 July 1994.

***Subdivision B—Establishment of the Torres Strait Regional Authority***

**Interpretation**

**84.** In this Subdivision, unless the contrary intention appears:

**“amended Act”** means the Principal Act as amended by this Act;

**“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:
  - (i) whether arising under or because of an instrument or otherwise; and
  - (ii) whether liquidated or unliquidated, certain or contingent, accrued or accruing;

**“authorised officer”** means:

- (a) the Minister; or
- (b) the TSRA General Manager; or
- (c) a person authorised under section 85;

**“commencement”** means the commencement of this Subdivision;

**“Commission instrument”** means an instrument:

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

if the instrument subsisted immediately before the commencement;

**“liabilities”** means liabilities of every kind, and, without limiting the generality of the foregoing, includes obligations of every kind:

- (a) whether arising under or because of an instrument or otherwise; and
- (b) whether liquidated or unliquidated, certain or contingent, accrued or accruing.

**Authorised officer**

**85.** The Minister may, by notice in the *Gazette*, authorise a member of the staff of the Commission to perform functions and exercise powers under this Subdivision.

### **Transfer of certain assets and liabilities of the Commission**

**86.(1)** The Minister may, by notice in the *Gazette*, declare that a specified asset of the Commission that was used by the Commission before the commencement is to be transferred to the TSRA.

**(2)** If the Minister makes a declaration under subsection (1), the asset specified in the declaration becomes an asset of the TSRA.

**(3)** The Minister may, by notice in the *Gazette*, declare that a specified liability of the Commission incurred before the commencement in connection with the operation of the Commission is to become a liability of the TSRA.

**(4)** If the Minister makes a declaration under subsection (3), the liability specified in the declaration becomes a liability of the TSRA.

**(5)** Liabilities of the Commission that have become liabilities of the TSRA because of subsection (4) are, after the commencement, taken to be liabilities incurred by the TSRA in the performance of its functions and the exercise of its powers.

**(6)** The following provisions apply to assets and liabilities that have become assets and liabilities of the TSRA:

- (a)** an asset that was, immediately before the commencement, held by the Commission on trust must, after the commencement, be held by the TSRA on trust and subject to the terms of the trust on which the asset was so held by the Commission;
- (b)** liabilities of the Commission to make payments are, after the commencement, taken to be liabilities incurred by the TSRA in the performance of its functions and the exercise of its powers.

### **Certificates in relation to estates or interests in land**

**87.** If:

- (a)** under section 86, an estate or interest in land becomes an asset of the TSRA; and
- (b)** a certificate that:
  - (i)** identifies the land and the estate or interest; and
  - (ii)** states that the estate or interest has, because of section 86, become an asset of the TSRA; 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, as the case may be, to the TSRA that had been duly executed under the laws in force in that State or Territory.

### **Commission instruments**

**88.** The Minister may, by notice in the *Gazette*, determine that a specified 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 Commission were a reference to the TSRA.

### **Certificates relating to assets and liabilities**

**89.(1)** An authorised officer may certify in writing that:

- (a) an asset specified or described in the certificate became, because of section 86, an asset of the TSRA; or
- (b) a liability specified or described in the certificate became, because of section 86, a liability of the TSRA.

**(2)** A certificate under subsection (1) is, in all courts and for all purposes, *prima facie* evidence of the matter stated in the certificate.

**(3)** If a document purports to be a certificate under subsection (1) signed by a person purporting to be an authorised officer, judicial notice must be taken:

- (a) of the signature of the person; and
- (b) of the fact that the person is or was an authorised officer.

**(4)** The authorised officer must cause notice of the making of a certificate to be published in the *Gazette*.

### **Transfer of responsibility for certain loans and grants**

**90.** The Minister may, by notice in the *Gazette*, determine that:

- (a) section 142H of the amended Act has effect as if a specified loan or grant made by the Commission before the commencement had been made by the TSRA under Part 3A of the amended Act; and
- (b) section 20 of the amended Act does not apply in relation to the loan or grant.

### **Restriction on right to dispose of interest in land—transfer of responsibility**

**91.(1)** This section applies to an interest in land if:

- (a) a body acquired the interest in land before the commencement; and



- (b) either of the following applies:
  - (i) the interest was acquired from the Commission under subsection 14(1) of the Principal Act;
  - (ii) the interest was acquired using money granted to the body by the Commission under section 15 of the Principal Act.
- (2) The Minister may, by notice in the *Gazette*, determine that:
  - (a) section 142J of the amended Act has effect as if a specified interest in land had been acquired from the TSRA under paragraph 142F(1)(b) of the amended Act; and
  - (b) section 21 of the amended Act does not apply in relation to the interest.

### **Pending proceedings**

**92.(1)** This section applies to proceedings to which the Commission was a party and that were pending in any court or tribunal immediately before the commencement.

(2) The Minister may, by notice in the *Gazette*, determine that the TSRA is, after the commencement, to be substituted for the Commission as a party to specified proceedings and has the same rights in the proceedings as the Commission had.

### **Ombudsman investigations**

**93.(1)** This section applies to:

- (a) a complaint if:
  - (i) before the commencement, the complaint was made to the Ombudsman under the *Ombudsman Act 1976* in relation to action taken by the Commission; and
  - (ii) immediately before the commencement, the Ombudsman had not finally disposed of the matter in accordance with that Act; or
- (b) an investigation if:
  - (i) before the commencement, the Ombudsman commenced the investigation under the *Ombudsman Act 1976* in relation to action taken by the Commission; and
  - (ii) immediately before the commencement, the Ombudsman had not finally disposed of the matter in accordance with that Act.

(2) The Minister may, by written notice given to the Commission, the TSRA, the complainant (if any) and the Ombudsman, determine that the *Ombudsman Act 1976* applies after the commencement to a specified complaint or a specified investigation as if the action taken by the Commission had been taken by the TSRA.

### **Advisory committees**

**94.(1)** This section applies to an advisory committee (the “**old committee**”) that was established under section 96 of the Principal Act for particular purposes and that was in existence immediately before the commencement.

**(2)** The amended Act has effect as if the TSRA had established a committee (the “**new committee**”) under section 142M of the amended Act for those purposes immediately after the commencement.

**(3)** The amended Act has effect as if the TSRA had appointed each member of the old committee to the new committee immediately after the commencement.

### **Transitional provision—Commission’s draft budget**

**95.** Section 63 of the amended Act does not apply in relation to the Torres Strait Regional Council for the financial year beginning on 1 July 1994.

### **Transitional provision—draft budget for Torres Strait Regional Council**

**96.** Section 97 of the amended Act does not apply in relation to the Torres Strait Regional Council for the financial year beginning on 1 July 1994.

### **Final annual report of Torres Strait Regional Council**

**97.(1)** The TSRA must, as soon as practicable after the end of the financial year ending on 30 June 1994, and, in any event within 4 months after the end of that financial year, prepare and give to the Commission a report dealing with:

- (a)** the operations of the Torres Strait Regional Council during that financial year; and
- (b)** the implementation during that year of the regional plan for the former Torres Strait region; and
- (c)** such other matters (if any) relating to that year as the Commission determines in writing.

**(2)** The report must be tabled at a meeting of the Commission before 31 December 1994.

**(3)** Within 7 days after the report is given to the Commission, the Chairperson of the TSRA must:

- (a)** make copies of the report available for inspection and purchase by residents of the Torres Strait area; and
- (b)** if the report deals with the implementation of a particular version of the regional plan for the former Torres Strait region—make copies of the version of the plan available for inspection and purchase by those residents.

(4) The TSRA must make copies of the report and the regional plan for the financial year ending on 30 June 1994 for the former Torres Strait region available for inspection and purchase at each office of the TSRA that serves the Torres Strait area.

(5) Section 99 of the amended Act does not apply to the Torres Strait Regional Council for the financial year ending on 30 June 1994.

**Transitional provision—notice dealing with constitution of the Torres Strait Regional Authority**

**98.(1)** A notice in force under section 116 of the Principal Act (the “old notice”) immediately before the commencement has effect after the commencement as if it were a notice (the “new notice”) given under section 142S of the amended Act immediately after the commencement.

- (2) The amended Act has effect as if:
- (a) a reference in the new notice to the Torres Strait Regional Council were a reference to the TSRA; and
  - (b) a reference in the new notice to the Torres Strait region were a reference to the Torres Strait area; and
  - (c) a reference in the new notice to the Torres Strait Regional Council Rules were a reference to the TSRA Rules; and
  - (d) a reference in the new notice to section 127 of the *Aboriginal and Torres Strait Islander Commission Act 1989* were a reference to section 143L of the *Aboriginal and Torres Strait Islander Commission Act 1989*; and
  - (e) a reference in the new notice to the Regional Council Election Rules were a reference to the TSRA election rules; and
  - (f) a reference in the new notice to section 113 of the *Aboriginal and Torres Strait Islander Commission Act 1989* were a reference to section 143G of the *Aboriginal and Torres Strait Islander Commission Act 1989*; and
  - (g) a reference in the new notice to the Regional Council elections were a reference to the TSRA elections; and
  - (h) a reference in the new notice to each round of Regional Council elections were a reference to each TSRA election; and
  - (i) a reference in the new notice to section 104 of the *Aboriginal and Torres Strait Islander Commission Act 1989* were a reference to section 142Y of the *Aboriginal and Torres Strait Islander Commission Act 1989*; and

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- (j) a reference in the new notice to section 117 of the *Aboriginal and Torres Strait Islander Commission Act 1989* were a reference to section 142W of the *Aboriginal and Torres Strait Islander Commission Act 1989*; and
  - (k) a reference in the new notice to a member of the Executive Committee of the Torres Strait Regional Council were a reference to the Deputy Chairperson of the TSRA; and
  - (l) a reference in the new notice to the Council were a reference to the TSRA; and
  - (m) a reference in the new notice to Division 6 of Part 3 of the *Aboriginal and Torres Strait Islander Commission Act 1989* were a reference to section 143L and sections 143W to 144E (inclusive) of the *Aboriginal and Torres Strait Islander Commission Act 1989*; and
  - (n) the new notice were further modified as set out in the regulations.
- (3) The amended Act has effect as if:
- (a) a person who was elected as a member of the Torres Strait Regional Council in accordance with a particular provision of the old notice and who held office as such a member immediately before the commencement were elected as a member of the TSRA under the corresponding provision of the new notice immediately after the commencement; and
  - (b) a person who was appointed as a member of the Torres Strait Regional Council in accordance with a particular provision of the old notice and who held office as such a member immediately before the commencement were appointed as a member of the TSRA under the corresponding provision of the new notice immediately after the commencement; and
  - (c) a person who was selected as a member of the Torres Strait Regional Council in accordance with a particular provision of the old notice and who held office as such a member immediately before the commencement were selected as a member of the TSRA under the corresponding provision of the new notice immediately after the commencement; and
  - (d) a person who was appointed under subrule 8(1) of the old notice and who held such an appointment immediately before the commencement were appointed under subrule 8(1) of the new notice immediately after the commencement.
- (4) Subsection 142S(5) of the amended Act does not apply to the new notice.

(5) Despite section 142W of the amended Act, a person referred to in paragraph (3)(a) of this section takes office as a member of the TSRA at the commencement of this section.

(6) In this section:  
“**modified**” includes added, omitted and substituted.

### **Members of Torres Strait Regional Council**

**99.** A person who held office as a member of the Torres Strait Regional Council immediately before the commencement ceases to hold that office on the commencement.

### **Chairperson of Torres Strait Regional Council**

**100.(1)** A person who held office as Chairperson of the Torres Strait Regional Council immediately before the commencement ceases to hold that office on the commencement.

(2) The amended Act has effect as if the members of the Torres Strait Regional Authority had elected the person as Chairperson of the Authority immediately after the commencement.

### **Deputy Chairperson of Torres Strait Regional Council**

**101.(1)** A person who held office as Deputy Chairperson of the Torres Strait Regional Council immediately before the commencement ceases to hold that office on the commencement.

(2) The amended Act has effect as if the members of the Torres Strait Regional Authority had elected the person as Deputy Chairperson of the Authority immediately after the commencement.

### **Alternate of the Deputy Chairperson of Torres Strait Regional Council**

**102.(1)** A person who held office as the alternate of the Deputy Chairperson of the Torres Strait Regional Council immediately before the commencement ceases to hold that office on the commencement.

(2) The amended Act has effect as if the members of the Torres Strait Regional Authority had elected the person as the alternate of the Deputy Chairperson of the Authority immediately after the commencement.

### **Zone representative for the Torres Strait zone**

**103.(1)** This section applies to a person who held office as the Commissioner representing the Torres Strait zone immediately before the commencement of this section.

(2) The amended Act has effect, in relation to the person, as if the person had been elected by the members of the Torres Strait Regional Authority as the Commissioner representing the Torres Strait zone immediately after the commencement.

### **Estimates**

104. Estimates prepared or given, or a direction given, under Subdivision A have effect after the commencement as if they had been prepared or given, as the case may be, under section 144ZA of the amended Act by the TSRA or the Minister, as the case requires, immediately after the commencement.

## **PART 29—AMENDMENT RELATING TO THE TORRES STRAIT REGIONAL COUNCIL**

### **Torres Strait Regional Council**

105. Section 116 of the Principal Act is amended by omitting subsection (6).

## **PART 30—AMENDMENTS RELATING TO REVIEW PANELS**

### **Interpretation**

106. Section 4 of the Principal Act is amended:

- (a) by omitting “91(1)” from paragraph (a) of the definition of “electorate notice” in subsection (1) and substituting “91(4)”;
- (b) by inserting in subsection (1) the following definition:
 

“‘**recognised Aboriginal or Torres Strait Islander organisation**’ means:

  - (a) a body the majority of whose members are Aboriginal persons or Torres Strait Islanders, or both; or
  - (b) a body controlled, directly or indirectly, by Aboriginal persons or Torres Strait Islanders, or both; or
  - (c) a body incorporated under the *Aboriginal Councils and Associations Act 1976*.”.

### **Regions**

107. Section 91 of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:
 

“(2) The Minister must not make a determination under subsection (1) except in accordance with a final boundary recommendation under Division 9.”;

- (b) by omitting from subsection (4) “The Minister shall include, in a determination changing boundaries under subsection (1)” and substituting “If the Minister causes to be published a *Gazette* notice about the making of a determination under subsection (1), the Minister must also cause to be published in the same issue of the *Gazette* a notice consisting of”.

### **Regional Council wards**

108. Section 100A of the Principal Act is amended by inserting after subsection (4) the following subsections:

#### *Rules about wards not to be made except in accordance with a final boundary recommendation*

“(4A) The Minister must not make Regional Council election rules for the purposes of this section except in accordance with a final boundary recommendation under Division 9.

#### *Minister not required to consult before making rules about wards*

“(4B) Despite subsection 113(1), the Minister is not required to consult the Aboriginal and Torres Strait Islander Commission and the Electoral Commissioner before making rules for the purposes of this section.”.

### **Zones**

109. Section 130 of the Principal Act is amended:

- (a) by omitting from subsection (2) “regulations may” and substituting “Minister may, by written determination,”;
- (b) by omitting from subsection (3) “regulation” (wherever occurring) and substituting “determination”;
- (c) by adding at the end the following subsections:

“(4) The Minister must not make a determination under subsection (2) except in accordance with a final boundary recommendation under Division 9.

“(5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

### **Repeal of Division and substitution of new Division**

110. Division 9 of Part 3 of the Principal Act is repealed and the following Division is substituted:

***“Division 9—Review Panels***

***“Subdivision A—Review Panels to be convened after elections***

**Review Panels**

“141.(1) The Minister must convene a Review Panel within 90 days after the last declaration of the poll in a round of zone elections (other than zone elections for the Torres Strait zone).

“(2) A Review Panel must:

- (a) review the following matters:
  - (i) whether a determination under subsection 91(1) relating to boundaries of regions should be made, revoked or varied and, if so, the precise terms of such a determination, revocation or variation;
  - (ii) whether a determination under subsection 130(2) relating to zones should be made, revoked or varied and, if so, the precise terms of such a determination, revocation or variation;
  - (iii) whether Regional Council election rules under section 100A relating to wards should be made, revoked or varied and, if so, the precise terms of the rules, revocation or variation; and
- (b) make draft recommendations about those matters in accordance with the provisions of this Division.

“(3) A Review Panel must also:

- (a) review such other matters relating to the following:
  - (i) the Regional Council electoral system;
  - (ii) the zone electoral system;
 as it determines in writing; and
- (b) report to the Minister accordingly.

“(4) A report to the Minister under subsection (3) may include suggestions for amendments of this Act, the Regional Council election rules or the zone election rules to solve problems identified in the report.

“(5) For the purposes of a review under subsection (3), a Review Panel must give the following bodies an opportunity to express their views about the matters under review:

- (a) Regional Councils;
- (b) recognised Aboriginal or Torres Strait Islander organisations.

***“Subdivision B—Review Panels—constitution and procedure***

**Constitution of Review Panel**

“141A.(1) A Review Panel consists of the following members:



- (a) the Commission Chairperson;
- (b) the Electoral Commissioner or a person nominated by the Electoral Commissioner to represent the Australian Electoral Commission;
- (c) 2 persons appointed by the Minister, being persons each of whom is an Aboriginal person or a Torres Strait Islander and neither of whom is a Commissioner or a Regional Councillor;
- (d) the General Manager of the Australian Surveying and Land Information Group or a person nominated by him or her to represent that organisation.

“(2) The performance of the functions or the exercise of the powers of a Review Panel is not affected only because:

- (a) there are fewer than 5 members because of the death, resignation or termination of appointment of one or more members; or
- (b) of the incapacity or absence from Australia of one or more members.

#### **Commission Chairperson to chair Review Panel**

“141B. The Commission Chairperson is the Chairperson of a Review Panel.

#### **Review Panel must invite submissions**

“141C.(1) As soon as practicable, but in any event not later than 30 days, after it is convened, a Review Panel must invite written submissions by notice in:

- (a) the *Gazette*; and
- (b) at least 2 newspapers or periodicals, being such newspapers or periodicals as the Review Panel considers are likely to be read by a reasonable number of persons having an interest in the matters under review.

“(2) The notice must set out the effect of section 141D (which deals with deadlines for lodging submissions).

#### **Submissions must be given to the Review Panel within 90 days**

“141D. Submissions must be given to the Review Panel within 90 days after the day on which the notice is published in the *Gazette*.

#### **Submissions must be made available for inspection**

“141E. The Chairperson of the Review Panel must make the submissions available for inspection at each office of:

- (a) the Australian Electoral Commission; and
- (b) the Aboriginal and Torres Strait Islander Commission.

### **Conduct of review etc.**

“141F.(1) Within 240 days after the day on which the notice is published in the *Gazette*, the Review Panel must:

- (a) consider all the submissions; and
- (b) in the case of a review under subsection 141(2)—make one or more written draft recommendations (the ‘**draft boundary recommendations**’) about the matters under review; and
- (c) in the case of a review under subsection 141(3)—give the Minister a written report under that subsection about the matters under review.

“(2) If a report is given to the Minister under subsection 141(3), the Minister must 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.

### **Notice of making of draft boundary recommendation to be published in the *Gazette* etc.**

“141G.(1) Within 14 days after the day on which a Review Panel makes a draft boundary recommendation, the Chairperson of the Panel must cause notice of the making of the recommendation to be published in:

- (a) the *Gazette*; and
- (b) at least 2 newspapers or periodicals, being such newspapers or periodicals as the Review Panel considers are likely to be read by a reasonable number of persons having an interest in the matters under review.

“(2) The notice must include a statement:

- (a) to the effect that a person may give the Review Panel a written objection against the draft boundary recommendation; and
- (b) setting out the effect of section 141H (which deals with deadlines for lodging objections).

### **Objections against draft boundary recommendation**

“141H. A person may give the Review Panel a written objection against a particular draft boundary recommendation within 90 days after the date of publication of the *Gazette* notice under section 141G.

### **If no objections received, then draft boundary recommendation becomes final boundary recommendation etc.**

“141J. If no objections are received before the end of that period of 90 days:

- (a) the draft boundary recommendation becomes a final boundary recommendation; and

- (b) the Review Panel must, within 14 days after the end of that period, give the Minister the final boundary recommendation and all the submissions.

**Minister must cause copy of final boundary recommendation to be laid before each House of the Parliament**

“141K. The Minister must cause a copy of the final boundary recommendation to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

**Proceedings at meetings of Review Panel**

*Chairperson to preside at meetings*

“141L.(1) The Chairperson of a Review Panel must preside at all meetings of a Review Panel at which he or she is present.

*Members to elect one of their number to preside if Chairperson not present*

“(2) If the Chairperson of a Review Panel is not present at a meeting of a Review Panel, the members present are to elect one of their number to preside at the meeting.

*Quorum*

“(3) At a meeting of a Review Panel, 3 members constitute a quorum.

*Questions arising to be determined by majority*

“(4) Questions arising at a meeting of a Review Panel must be determined by a majority of the votes of the members present and voting.

*Member presiding has deliberative and casting vote*

“(5) The member presiding at a meeting of a Review Panel has a deliberative vote and, if the votes are equal, also has a casting vote.

*Review Panel may regulate conduct of its meetings*

“(6) A Review Panel may regulate the conduct of proceedings at its meetings as it thinks fit.

*Review Panel may inform itself as it considers fit*

“(7) A Review Panel may inform itself on any matter in such manner as it thinks fit and may consult with such persons as it thinks fit.

*Australian Electoral Commission must assist Review Panel*

“(8) The Australian Electoral Commission must, on request by a Review Panel, give the Panel such information and assistance as the Panel reasonably requires for the purposes of this Division.

**Matters Review Panel must consider before making draft boundary recommendation**

“141M. Before making a draft boundary recommendation, the Review Panel must consider:

- (a) the community of interest, or communities of interest, of the Aboriginal persons or Torres Strait Islanders concerned; and
- (b) the physical features and area of the wards, regions and zones concerned; and
- (c) the areas of operation of recognised Aboriginal and Torres Strait Islander organisations; and
- (d) such other matters as the Review Panel considers relevant.

***“Subdivision C—Augmented Review Panel to be convened to consider objections against draft boundary recommendations***

**Minister must convene Augmented Review Panel if objection received**

“141N. If one or more objections are received before the end of the period referred to in section 141H, the Minister must convene an Augmented Review Panel within 30 days after the end of that period.

**Consideration of objections**

“141P. Within 90 days after the end of the period referred to in section 141H, the Augmented Review Panel must:

- (a) consider the objections; and
- (b) make a written decision:
  - (i) confirming the draft boundary recommendation concerned; or
  - (ii) varying the draft boundary recommendation concerned; or
  - (iii) setting aside the draft boundary recommendation concerned and making a draft boundary recommendation in substitution for the draft recommendation so set aside.

**Draft boundary recommendation to become final boundary recommendation**

“141Q.(1) If, on a particular day, the Augmented Review Panel makes a decision confirming a draft boundary recommendation, the draft boundary recommendation becomes a final boundary recommendation at the end of the period of 7 days after that day.

“(2) If, on a particular day, the Augmented Review Panel makes a decision varying a draft boundary recommendation, the draft boundary recommendation as varied becomes a final boundary recommendation at the end of the period of 7 days after that day.

“(3) If, on a particular day, the Augmented Review Panel sets aside a draft boundary recommendation and makes a draft boundary recommendation in substitution for the draft recommendation so set aside, the substituted draft boundary recommendation becomes a final boundary recommendation at the end of the period of 7 days after that day.

**Augmented Review Panel may invite submissions etc.**

“141R. For the purposes of considering objections, the Augmented Review Panel may:

- (a) invite further submissions; and
- (b) hold public hearings.

**Constitution of Augmented Review Panel**

“141S.(1) An Augmented Review Panel consists of the following members:

- (a) the Commission Chairperson;
- (b) the Electoral Commissioner or a person nominated by the Electoral Commissioner to represent the Australian Electoral Commission;
- (c) the General Manager of the Australian Surveying and Land Information Group or a person nominated by him or her to represent that organisation;
- (d) 2 persons appointed by the Minister, being persons each of whom is an Aboriginal person or a Torres Strait Islander and neither of whom is a Commissioner or a Regional Councillor;
- (e) 2 other persons appointed by the Minister, being persons at least one of whom is an Aboriginal person or a Torres Strait Islander.

“(2) The performance of the functions or the exercise of the powers of an Augmented Review Panel is not affected only because:

- (a) there are fewer than 7 members because of the death, resignation or termination of appointment of one or more members; or
- (b) of the incapacity or absence from Australia of one or more members.

**Commission Chairperson to be Chairperson of Augmented Review Panel**

“141T. The Commission Chairperson is the Chairperson of an Augmented Review Panel.

**Chairperson must give copy of decision to each person who objected**

“141U. Within 14 days after the day on which the Augmented Review Panel makes a decision in relation to an objection, the Chairperson of the Augmented Review Panel must give a copy of the decision to each person who made the objection.

**Notice of making of decision to be published in the *Gazette* etc.**

“141V. Within 14 days after the day on which an Augmented Review Panel makes a decision, the Chairperson of the Panel must cause notice of the making of the decision to be published in:

- (a) the *Gazette*; and
- (b) at least 2 newspapers or periodicals, being such newspapers or periodicals as the Augmented Review Panel considers are likely to be read by a reasonable number of persons having an interest in the outcome of the objections.

**Augmented Review Panel must give decision to Minister**

“141W. Within 14 days after the day on which notice of the making of the decision is published in the *Gazette*, the Augmented Review Panel must give the decision to the Minister, together with a copy of the recommendation to which the decision relates.

**Minister must cause copy of final boundary recommendation to be laid before each House of the Parliament**

“141X. The Minister must cause a copy of a final boundary recommendation to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

**Proceedings at meetings of Augmented Review Panel etc.**

*Chairperson of Panel must preside at meetings*

“141Y.(1) The Chairperson of an Augmented Review Panel must preside at all meetings of an Augmented Review Panel at which he or she is present.

*Members present to elect one of their number to preside if Chairperson not present*

“(2) If the Chairperson of an Augmented Review Panel is not present at a meeting of an Augmented Review Panel:

- (a) the Electoral Commissioner or the person nominated by the Electoral Commissioner must preside; or
- (b) if the person referred to in paragraph (a) is not present at the meeting—the members present must elect one of their number to preside.

*Quorum*

“(3) At a meeting of an Augmented Review Panel, 4 members constitute a quorum. At least one of the members constituting the quorum must be a member referred to in paragraph 141S(1)(e).

*Questions arising to be determined by majority*

“(4) Questions arising at a meeting of an Augmented Review Panel must be determined by a majority of the votes of the members present and voting.

*Member presiding to have deliberative and casting vote*

“(5) The member presiding at a meeting of an Augmented Review Panel has a deliberative vote and, if the votes are equal, also has a casting vote.

*Augmented Review Panel may regulate conduct of its meetings*

“(6) An Augmented Review Panel may regulate the conduct of proceedings at its meetings as it considers fit.

*Augmented Review Panel may inform itself as it considers fit*

“(7) An Augmented Review Panel may inform itself on any matter in such manner as it considers fit.

*Australian Electoral Commission must assist Augmented Review Panel*

“(8) The Australian Electoral Commission must, on the written request of an Augmented Review Panel, give the Augmented Review Panel such information and assistance as the Panel reasonably requires for the purposes of this Division.

***“Subdivision D—Administrative provisions***

**Subdivision applies to members of Review Panels and members of Augmented Review Panels**

“141Z. This Subdivision applies to members of Review Panels and members of Augmented Review Panels.

**Remuneration and allowances**

“141ZA. A member of a Panel is entitled to remuneration and allowances in accordance with section 194.

**Panel—disclosure of interests at meetings**

“141ZB.(1) A member of a Panel who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Panel must, 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 Panel.

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

**Other terms and conditions**

“141ZC. A member of a Panel 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 in the *Gazette*.

### **Panel—resignation**

“141ZD. A member of a Panel, being a member appointed by the Minister, may resign from the Panel by writing signed by the member and sent to the Minister.

### ***“Subdivision E—Implementation of final boundary recommendation***

#### **Minister must give effect to final boundary recommendation**

“141ZE.(1) If, on a particular day, a draft boundary recommendation becomes a final boundary recommendation, the Minister must give effect to the final boundary recommendation before the end of the period of 90 days beginning on that day.

“(2) The Federal Court of Australia may extend the period referred to in subsection (1) in special circumstances.

“(3) The Federal Court of Australia may make an order requiring the Minister to comply with subsection (1), even if the period referred to in that subsection has ended.”.

#### **Transitional provision—Review Panels not to review the boundaries of the Torres Strait region or the Torres Strait zone**

**111.(1)** A Review Panel or an Augmented Review Panel must not do anything that is capable of resulting in a change to the boundaries of the Torres Strait region or the Torres Strait zone.

(2) Subsection (1) ceases to have effect on 1 July 1994.

#### **Transitional provision—Regional Council electorate notices**

**112.(1)** The amended Act has effect as if so much of a notice or determination made under subsection 91(1) of the Principal Act before the commencement of this section as is attributable to subsection 91(4) of that Act were an electorate notice.

(2) In this section:

“**amended Act**” means the Principal Act as amended by this Act.

## **PART 31—AMENDMENTS TO REDUCE THE NUMBER OF COMMISSIONERS FROM 19 TO 17**

### **Constitution of the Commission**

**113.** Section 27 of the Principal Act is amended:

(a) by omitting from subsection (1) “a Chairperson and 18 other” and substituting “17”;



- (b) by omitting from subsection (2) “Seventeen of the” and substituting “The”;
- (c) by omitting subsections (3) and (4).

### **Amendments relating to the reduction in the number of Commissioners**

114. The Principal Act is amended as set out in Schedule 4 to this Act.

### **Application of amendments**

115.(1) Despite the amendments made by this Part, the Principal Act continues to apply, until immediately before the eligible appointment day, as if those amendments had not been made.

(2) A person who held office as a non-elected Commissioner, or as the Commission Chairperson, immediately before the eligible appointment day ceases to hold that office on that day.

(3) In this section:

“**eligible appointment day**” means the day, or the earliest day, on which the Minister appoints a person as a Commissioner after the person has been elected in the first zone election (other than a zone election for the Torres Strait zone) held after the end of the election period for the round of Regional Council elections for 1996.

## **PART 32—AMENDMENT RELATING TO THE CHIEF EXECUTIVE OFFICER OF THE COMMISSION**

### **Disclosure of interests**

116. Section 51 of the Principal Act is amended by inserting in subsection (1) “Chairperson” after “Commission”.

### **Transitional provision—disclosure of interests**

117.(1) The amended Act has effect as if a disclosure made to the Commission under subsection 51(1) of the Principal Act before the commencement of this section had also been made to the Commission Chairperson.

(2) In this section:

“**amended Act**” means the Principal Act as amended by this Act.

## **PART 33—INSERTION OF PREAMBLE TO THE PRINCIPAL ACT**

### **Insertion of Preamble**

118. After the title to the Principal Act the following Preamble is inserted:

“WHEREAS the people of Australia voted overwhelmingly to amend the Constitution so that the Parliament of Australia would be able to make special laws for peoples of the aboriginal race;

AND WHEREAS the people whose descendants are now known as Aboriginal persons and Torres Strait Islanders were the inhabitants of Australia before European settlement;

AND WHEREAS they have been progressively dispossessed of their lands and this dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal persons and Torres Strait Islanders concerning the use of their lands;

AND WHEREAS it is the intention of the people of Australia to make provision for rectification, by such measures as are agreed by the Parliament from time to time, including the measures referred to in this Act, of the consequences of past injustices and to ensure that Aboriginal persons and Torres Strait Islanders receive that full recognition within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire;

AND WHEREAS it is also the wish of the people of Australia that there be reached with Aboriginal persons and Torres Strait Islanders a real and lasting reconciliation of these matters;

AND WHEREAS it is the firm objective of the people of Australia that policies be maintained and developed by the Australian Government that will overcome disadvantages of Aboriginal persons and Torres Strait Islanders to facilitate the enjoyment of their culture;

AND WHEREAS it is appropriate to further the aforementioned objective in a manner that is consistent with the aims of self-management and self-sufficiency for Aboriginal persons and Torres Strait Islanders;

AND WHEREAS it is also appropriate to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government;

AND WHEREAS the Parliament seeks to enable Aboriginal persons and Torres Strait Islanders to increase their economic status, promote their social well-being and improve the provision of community services;

AND WHEREAS the Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms through:

- (a) the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard-setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and
  - (b) the acceptance of the Universal Declaration of Human Rights:”.
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**SCHEDULE 1**

Section 46

**AMENDMENTS RELATING TO THE COMMISSION'S  
GENERAL FUNDING POWERS**

**1. Subsection 4(1) (definitions of “Aboriginal or Torres Strait Islander corporation” and “spouse”):**

Omit the definitions.

**2. Subsection 4(1):**

Insert:

- “ **‘housing loan’** means a loan for one or more of 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 a purpose referred to in paragraph (a) or (b);
  - (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);”.

**3. Paragraph 10(2)(b):**

Omit the paragraph, substitute:

- “(b) to enter into an agreement for the making of a grant or loan under section 16 to:
- (i) a State; or
  - (ii) the Australian Capital Territory; or
  - (iii) the Northern Territory; or
  - (iv) an authority of a State or a Territory (including a local government body);”.

**4. Subsection 21(1):**

Omit “where a body”, substitute “if”.

**5. Paragraph 21(1)(a):**

Omit the paragraph, substitute:

- “(a) both:
- (i) an individual or body has acquired an interest in land; and
  - (ii) any of the following applies:

**SCHEDULE 1—continued**

- (A) the interest was acquired using money granted to the individual or body by the Commission under paragraph 14(1)(a);
- (B) the interest was acquired from the Commission under paragraph 14(1)(b);
- (C) the acquisition of the interest was financed by a loan that was guaranteed by the Commission under section 15; or”.

**6. Paragraph 21(1)(b):**

Before “has” insert “a body”.

**7. Subsections 21(2) and (3):**

Insert “individual or” before “body”.

**8. Paragraph 45(b):**

Omit the paragraph.

**9. After section 45:**

Insert the following section in Division 5 of Part 2:

**Delegation to Regional Council**

*Commission may delegate powers under section 14, 15 or 16*

“45A.(1) The Commission may, by writing under its seal, delegate to a Regional Council any or all of its powers under section 14, 15 or 16.

*Delegate subject to Commission’s written directions*

“(2) In the exercise of a power delegated by the Commission, the delegate is subject to the Commission’s written directions (if any).

*Commission Chairperson may suspend delegation*

“(3) If the delegate contravenes a direction, the Commission Chairperson may, by written notice given to the delegate, suspend the delegation.

*Length of suspension*

“(4) The suspension remains in force for 3 months unless sooner terminated by the Commission.

**SCHEDULE 1—continued**

*Subsection (3) does not limit Commission’s power to revoke delegation*

“(5) Subsection (3) does not, by implication, limit the Commission’s power to revoke a delegation.

*Suspensions to be notified in the Gazette*

“(6) The Commission Chairperson must cause notice of the giving of a suspension to be published in the *Gazette*.

*Delegations to be notified in the Gazette*

“(7) The Commission Chairperson must cause notice of the making of a delegation to be published in the *Gazette*.

*Directions to be notified in the Gazette*

“(8) The Commission Chairperson must cause notice of the making of a direction to be published in the *Gazette*.

*Copies of delegations etc. must be given to Regional Councils*

“(9) Without limiting the operation of the *Freedom of Information Act 1982*, the Chief Executive Officer must ensure that copies of suspensions, delegations and 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.”.

**10. Subparagraph 63(1)(b)(iii):**

Omit “18”, substitute “16”.

**11. Subparagraph 67(2)(b)(i):**

Omit the subparagraph, substitute:

“(i) housing loans made by the Commission under section 14; or”.

**12. Subsection 67(3):**

Omit the subsection, substitute:

“(3) Money in the Housing Fund may only be applied:

- (a) in making housing loans to individuals or bodies; or
- (b) in making loans to individuals or bodies to enable the individuals or bodies to provide housing for Aboriginal persons or Torres Strait Islanders; or

**SCHEDULE 1—continued**

- (c) in making grants of money for the purpose of enabling Aboriginal persons or Torres Strait Islanders to obtain housing loans from lenders operating on a commercial basis.”.

**13. Subsection 68(3):**

Omit the subsection, substitute:

“(3) Money in the Land Fund may only be spent:

- (a) in making a grant of money under section 14, where:
- (i) the grant is made on condition that the money be spent in acquiring an interest in land; and
  - (ii) the acquisition has been proposed by a Regional Council; or
- (b) in acquiring an interest in land under subsection 14(3), where the acquisition has been proposed by a Regional Council.”.

**14. Subsection 68(5):**

Omit all the words from and including “time” (second occurring) to and including “exceed”, substitute “time on land in a region must not exceed”.

**15. Paragraph 68(5)(c):**

Re-letter as (a).

**16. Paragraph 68(5)(d):**

Re-letter as (b).

**17. Paragraph 74(2)(b):**

Omit the paragraph, substitute:

“(b) decision-making principles in force under section 22.”.

**18. Section 89:**

Repeal the section.

**19. Paragraph 90(2)(a):**

After “loan” insert “, grant”.

**20. Paragraph 90(2)(b):**

After “loan” insert “, grant”.

**21. Subsection 90(2):**

Omit the penalty, substitute:

“Penalty: Imprisonment for one year.”.

**SCHEDULE 1—continued**

**22. Paragraph 123A(1)(c):**

Add at the end “or”.

**23. After paragraph 123A(1)(c):**

Insert:

- “(ca) purports to exercise a power in its capacity as a delegate of the Commission in circumstances where no delegation of that power is in force; or
- (cb) purports to exercise a power delegated to it by the Commission in breach of a direction in force under section 45A;”.

**24. Subsection 195(1):**

Omit the subsection, substitute:

“(1) If a delegate of the Commission:

- (a) refuses a housing loan under section 14 to an individual; or
- (b) refuses a loan under section 14 to an individual to enable the individual to engage in a business enterprise; or
- (c) refuses to give a guarantee under section 15 in respect of a housing loan made or to be made to an individual; or
- (d) refuses to give a guarantee under section 15 in respect of a loan made or to be made to an individual, where the purpose of the loan is to enable the individual to engage in a business enterprise;

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

**25. Paragraphs 196(1)(a) and (b):**

Omit the paragraphs, substitute:

- “(a) a decision made by the Commission to refuse a housing loan under section 14 to an individual; or
- (aa) a decision made by the Commission to refuse a loan under section 14 to an individual to enable the individual to engage in a business enterprise; or
- (ab) a decision made by the Commission to refuse to give a guarantee under section 15 in respect of a housing loan made or to be made to an individual; or
- (b) a decision made by the Commission to refuse to give a guarantee under section 15 in respect of a loan made or to be made to an individual, where the purpose of the loan is to enable the individual to engage in a business enterprise; or”.



**SCHEDULE 1—continued**

**26. Paragraph 196(1)(c):**

Add at the end “or”.

**27. Paragraphs 196(1)(d) and (e):**

Omit the paragraphs.

**28. Paragraph 196(1)(f):**

Add at the end “or”.

**29. Paragraph 196(1)(fa):**

Add at the end “or”.

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**SCHEDULE 2**

Section 79

**AMENDMENTS RELATING TO THE ESTABLISHMENT OF THE  
TORRES STRAIT REGIONAL AUTHORITY**

**1. Title:**

After “**Commission**” insert “, a **Torres Strait Regional Authority**”.

**2. Subsection 4(1) (definition of “Torres Strait region”):**

Omit the definition.

**3. Subsection 4(1) (definition of “prescribed number”):**

Omit all the words after “ ‘**prescribed number**’ ” (except the table), substitute: “, in relation to a Regional Council, means the number determined by reference to the estimated population of the region concerned in accordance with the following table:”.

**4. Subsection 4(1):**

Insert:

“ ‘**Ailan Kastom**’ means the body of customs, traditions, observances and beliefs of some or all of the Torres Strait Islanders living in the Torres Strait area, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships;

‘**election period**’, in relation to a TSRA election, means the period:

- (a) starting on the day when the Minister fixes a day or days for the polling in accordance with subsection 142Y(2); and
- (b) ending on the last day on which a poll is declared in relation to that TSRA election;

‘**eligible number**’, in relation to the TSRA, means 20;

‘**estimated population**’, in relation to the Torres Strait area, means the number of persons living in that area set out in the most recent TSRA notice that includes such a number;

‘**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;

‘**Torres Strait area**’ means the area described in the map called ‘ATSIC Thursday Island Region—ATSIC 93/25’, being the map referred to in the determination made by the Minister under paragraph 91(1)(b) on 27 September 1993;

‘**Torres Strait area number**’, in relation to the Torres Strait area, means the number of potential voters set out in the most recent TSRA notice that includes such a number;

**SCHEDULE 2—continued**

**‘TSRA’** means the Torres Strait Regional Authority established by section 142;

**‘TSRA Administrator’** means a TSRA Administrator appointed under:

- (a) section 142R; or
- (b) section 144ZQ;

to administer the affairs of the TSRA;

**‘TSRA election’** means an election for members of the TSRA conducted under Division 5 of Part 3A;

**‘TSRA election rules’** means rules made by the Minister under section 143G;

**‘TSRA Finance Direction’** means a direction given to the TSRA by the Minister under section 144ZD;

**‘TSRA General Manager’** means the General Manager of the TSRA referred to in section 144G;

**‘TSRA Housing Fund’** means the TSRA Housing Fund established by section 144V;

**‘TSRA Land and Natural Resources Fund’** means the TSRA Land and Natural Resources Fund established by section 144W;

**‘TSRA notice’**, in relation to a TSRA election, means a notice under subsection 143(2);”.

**5. Subsection 20(1):**

Omit “Act”, substitute “Part”.

**6. Subsection 20(3):**

Omit “Act”, substitute “Part”.

**7. Subsection 32(1):**

After “zone election” insert “(other than an election for the Torres Strait zone)”.

**8. Subsection 39(2):**

Omit the subsection, substitute:

“(2) An elected Commissioner is taken to have resigned if:

(a) in the case of a Commissioner elected by the members of Regional Councils:

- (i) the Commissioner resigns from the Regional Council of which he or she was a member when elected to represent the zone concerned; or

**SCHEDULE 2—continued**

- (ii) under section 121, the Commissioner is taken to have resigned from that Regional Council; or
- (b) in the case of a Commissioner elected by the members of the TSRA:
  - (i) the Commissioner resigns from the TSRA; or
  - (ii) under section 143R, the Commissioner is taken to have resigned from the TSRA.”.

**9. Subsection 40(6):**

Omit the subsection, substitute:

“(6) The Minister may terminate the appointment of an elected Commissioner if:

- (a) in the case of a Commissioner elected by members of Regional Councils—he or she ceases to be a member of a Regional Council otherwise than by resigning from the Regional Council; or
- (b) in the case of a Commissioner elected by the members of the TSRA—he or she ceases to be a member of the TSRA otherwise than by resigning from the TSRA.”.

**10. Subsection 41(1):**

After “zone” insert “(other than the Torres Strait zone)”.

**11. After section 41:**

Insert:

**Recall of Commissioner elected by members of TSRA**

“41A.(1) If the Minister receives a valid petition calling for the removal of the Commissioner who represents the Torres Strait zone, the Minister must remove that Commissioner from office as soon as possible.

“(2) In this section:

**‘eligible person’** means a person who would be entitled to vote at a TSRA election;

**‘sufficient number’** means a number that is more than 66% of the Torres Strait area number;

**‘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; and
- (b) that sets out legibly:

**SCHEDULE 2—continued**

- (i) the name of each person who signed the petition; and
  - (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 before the delivery of the petition to the Minister.”.

**12. Section 55 (Note 1):**

After “Commission” insert “or the TSRA”.

**13. Section 55 (Note 2):**

After “Commission” (second occurring) insert “or the TSRA”.

**14. Section 56 (Note 1):**

After “Commission” insert “or the TSRA”.

**15. Section 56 (Note 2):**

After “Commission” (second occurring) insert “or the TSRA”.

**16. Section 58:**

Add at the end:

“(2) The Commission must pay to the TSRA money appropriated to the Commission for the purposes of the TSRA.

“(3) The Minister must consult:

- (a) the Commission Chairperson; and
- (b) the Chairperson of the TSRA; and
- (c) the Commissioner representing the Torres Strait zone;

about the amount proposed to be appropriated to the Commission for the purposes of the TSRA.”.

**17. Subsection 61(7) (paragraph (a) of the definition of “money of the Commission”):**

Add at the end “or”.

**18. Subsection 61(7) (definition of “money of the Commission”):**

Add at the end:

**SCHEDULE 2—continued**

“; or (d) money appropriated for the purposes of the TSRA.”.

**19. After paragraph 63(4)(f):**

Insert:

“(fa) the TSRA;”.

**20. Subsection 63(6):**

After “Minister” insert “and the Regional Councils”.

**21. Subsections 63(7), (8), (9), (10) and (11):**

Omit the subsections.

**22. Subsection 66(2) (paragraph (a) of the definition of “money of the Commission”):**

Add at the end “or”.

**23. Subsection 66(2) (definition of “money of the Commission”):**

Add at the end:

“; or (d) money appropriated for the purposes of the TSRA.”.

**24. Paragraph 76(1)(a):**

Add at the end:

“(iv) the TSRA;”.

**25. Paragraph 76(1)(b):**

Add at the end:

“(v) the TSRA;”.

**26. After paragraph 76(1)(j):**

Insert:

“(ja) when requested to do so by the Minister or the TSRA, to evaluate or audit the activities of an individual who has received one or more grants or loans from the TSRA, but only to the extent that the evaluation or audit concerns those grants or loans;

(jb) when requested to do so by the Minister or the TSRA, to evaluate or audit the operations of a body corporate that has received one or more grants or loans from the TSRA, but only to the extent that the evaluation or audit concerns those grants or loans;

**SCHEDULE 2—continued**

- (jc) when requested to do so by the Minister or the TSRA, to evaluate or audit the operations of an unincorporated body that has received one or more grants or loans from the TSRA, but only to the extent that the evaluation or audit concerns those grants or loans;
- (jd) when requested to do so by the Minister or the TSRA, to evaluate or audit the activities of a borrower, being an individual one or more of whose loans have been guaranteed by the TSRA, but only to the extent that the evaluation or audit concerns those guarantees;
- (je) when requested to do so by the Minister or the TSRA, to evaluate or audit the operations of a borrower, being a body corporate one or more of whose loans have been guaranteed by the TSRA, but only to the extent that the evaluation or audit concerns those guarantees;
- (jf) when requested to do so by the Minister or the TSRA, to evaluate or audit the operations of a borrower, being an unincorporated body one or more of whose loans have been guaranteed by the TSRA, but only to the extent that the evaluation or audit concerns those guarantees;”.

**27. After paragraph 76(1)(n):**

Insert:

“(na) to report on evaluations and audits conducted in accordance with paragraph (ja), (jb), (jc), (jd), (je) or (jf), in writing, to the TSRA and the Minister at least every 3 months;”.

**28. Subsection 76(1):**

Add at the end:

“(p) to tell the Minister and the TSRA about particular problems that have arisen or may arise in relation to:

- (i) the operations of the TSRA; or
- (ii) the operations of any other body that exercises powers, performs functions or receives money under Part 3A; or
- (iii) the activities of an individual who receives money under Part 3A.”.

**29. Paragraph 78A(1)(a):**

Omit “(g)”, substitute “, (g), (jb) or (jc)”.

**30. Paragraph 78A(1)(b):**

Add at the end “(ja)”.

**SCHEDULE 2—continued**

**31. Heading to Division 10 of Part 2:**

Omit “*Special provisions relating to*”.

**32. Section 79:**

Repeal the section.

**33. Paragraphs 81(1)(a) and (b):**

After “Commission,” insert “by the TSRA,”.

**34. Paragraph 81(1)(c):**

After “Commission,” insert “the TSRA”.

**35. Subsection 81(2):**

Omit “on the Australian mainland”, substitute “outside the Torres Strait area”.

**36. Subsection 83(1):**

(a) Omit “, the Commission and the Regional Council for the Torres Strait region”, substitute “and the Commission”.

(b) Add at the end “living outside the Torres Strait area”.

**37. Subsection 83(2):**

Omit “, the Commission or the Regional Council”, substitute “or the Commission”.

**38. Paragraph 84(1)(a):**

Omit all the words after “Minister,”, substitute “being the Commissioner who represents the Torres Strait zone; and”.

**39. Section 88:**

Repeal the section.

**40. Subsection 90(1):**

Add at the end:

“; or (k) a member of the TSRA; or

(l) a member of an advisory committee established under section 142M; or



**SCHEDULE 2—continued**

- (m) the TSRA General Manager; or
- (n) a member of the staff of the TSRA; or
- (o) engaged as a consultant under section 144T; or
- (p) a TSRA Administrator.”.

**41. Subsection 91(1):**

Omit “Australia”, substitute “so much of Australia as does not consist of the Torres Strait area”.

**42. Subsection 91(1):**

Omit “36”, substitute “35”.

**43. Paragraph 94(1)(b):**

After “Commission,” insert “the TSRA,”.

**44. Paragraph 94(1)(d):**

- (a) After “Commission” (first occurring) insert “and the TSRA”.
- (b) After “Commission,” insert “the TSRA,”.

**45. Paragraph 102(1)(c):**

Add at the end “or the TSRA”.

**46. Subsections 103(1) and (2):**

Omit “For the purposes of this Act”, substitute “For the purposes of the application of this Act to the Commission”.

**47. Section 104A:**

Repeal the section.

**48. Subsection 115(1):**

Omit “Subject to any notice in force under section 116, each”, substitute “Each”.

**49. Section 116:**

Repeal the section.

**50. Subsection 121(3):**

Add at the end “or the TSRA”.

**SCHEDULE 2—continued**

**51. Subsection 130(1):**

Omit the subsection, substitute:

“(1) For the purposes of this Act:

- (a) the regions are grouped, as shown in Schedule 1, into the zones set out in column A of that Schedule; and
- (b) the Torres Strait area is a zone known as the Torres Strait zone.”.

**52. After subsection 131(1):**

Insert:

“(1A) The members of the TSRA must elect one of their number to represent the Torres Strait zone.”.

**53. Paragraph 131(2)(b):**

Add at the end “or 41A”.

**54. Subsection 131(2):**

After “(1)” insert “or (1A)”.

**55. Subsection 132(1):**

After “Zone elections” insert “(other than zone elections for the Torres Strait zone)”.

**56. After subsection 132(1):**

Insert:

“(1A) A zone election for the Torres Strait zone is to 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 TSRA election.”.

**57. Section 133:**

- (a) After “zone elections” insert “(other than zone elections for the Torres Strait zone)”.
- (b) Add at the end:

“(2) Each zone election for the Torres Strait zone must be held as soon as practicable, and in any case within 3 months, after the end of the election period in relation to a TSRA election.”.

**SCHEDULE 2—continued**

**58. Section 140:**

After “Regional Council election” insert “, a TSRA election”.

**59. After subparagraph 141(3)(a)(i):**

Insert:

“(ia) the TSRA electoral system;”.

**60. Subsection 141(4):**

After “Regional Council election rules” insert “, the TSRA election rules”.

**61. After paragraph 141(5)(a):**

Insert:

“(aa) the TSRA;”.

**62. Paragraph 141A(1)(c):**

After “Commissioner” insert “, a member of the TSRA”.

**63. Paragraph 141S(1)(d):**

After “Commissioner” insert “, a member of the TSRA”.

**64. After section 195:**

Insert:

**Review by TSRA of delegates’ decisions**

“195A.(1) If a delegate of the TSRA:

- (a) refuses a loan under section 142F to an individual; or
- (b) refuses to give a guarantee under section 142G in respect of a loan made or to be made to an individual;

the individual may, within 30 days after being notified of the refusal, request the TSRA to reconsider the matter.

“(2) If a request is made, the TSRA must reconsider the matter and must decide whether to make the loan or to give the guarantee.”.

**65. After section 196:**

Insert:

**Review by Administrative Appeals Tribunal**

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

**SCHEDULE 2—continued**

- (a) a decision made by the TSRA to refuse a loan under section 142F to an individual; or
- (b) a decision made by the TSRA to refuse to give a guarantee under section 142G in respect of a loan made or to be made to an individual; or
- (c) a decision made by the TSRA to give notice to a person or body under subsection 142H(1) or (3); or
- (d) a decision of the TSRA to make a declaration under subsection 143R(1); or
- (e) any other decision of the TSRA included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section; or
- (f) any decision made under the TSRA election rules included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section.

“(2) If the TSRA notifies a person of a decision of a kind referred to subsection (1), the notice must 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 TSRA’** does not include a decision made by a delegate of the TSRA.”

**66. Paragraph 199(9)(a):**

After “Regional Council election rules” insert “, the TSRA election rules”.

**67. Paragraph 199(9)(b):**

After “Regional Council election rules” insert “, the TSRA election rules”.

**68. Subsection 201(1):**

After “Regional Council election rules” insert “, the TSRA election rules”.

**69. Paragraph 201(2)(b):**

Omit “or 127J”, substitute “,127J, 143L or 144D”.

**SCHEDULE 2—continued**

**70. Paragraph 201(2)(c):**

- (a) After “subsection 195(1)” insert “or subsection 195A(1)”.
- (b) Add at the end “or subsection 195A(2)”.

**71. Schedule 1 (column A):**

Omit “Torres Strait”.

**72. Schedule 1 (column B):**

Omit “Thursday Island”.

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**SCHEDULE 3**

Section 80

**AMENDMENTS OF OTHER ACTS CONSEQUENTIAL ON THE  
ESTABLISHMENT OF THE TORRES STRAIT REGIONAL  
AUTHORITY**

*Australian Institute of Aboriginal and Torres Strait Islander  
Studies Act 1989*

**1. Section 3:**

Insert:

“ ‘**TSRA**’ means the Torres Strait Regional Authority established by Part 3A of the Commission Act.”.

**2. Subsection 42(2):**

After “Commission” insert “and the TSRA”.

**3. Subsection 42(3):**

(a) After “Commission” (first occurring) insert “or the TSRA”.

(b) After “Commission” (last occurring) insert “or the TSRA, as the case may be,”.

**4. Subsection 43(1):**

Omit “or the Commission”, substitute “, the Commission or the TSRA”.

**5. Paragraph 43(2)(b):**

Add at the end “or the TSRA”.

*Council for Aboriginal Reconciliation Act 1991*

**6. After paragraph 6(2)(a):**

Insert:

“(aa) have regard to the fact that the Torres Strait Regional Authority has, under the *Aboriginal and Torres Strait Islander Commission Act 1989*, specific functions and responsibilities in relation to matters involving Torres Strait Islanders, and Aborigines, living in the Torres Strait area (within the meaning of that Act); and”.

**7. Paragraph 6(2)(b):**

Omit “and Torres Strait Islanders”, substitute “, and Torres Strait Islanders, living outside the Torres Strait area (within the meaning of that Act)”.

**SCHEDULE 3—continued**

**8. After paragraph 6(2)(b):**

Insert:

“(ba) make use of the Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Commission Act 1989* as the principal means of facilitating consultation with Torres Strait Islanders, and Aborigines, living in the Torres Strait area (within the meaning of that Act); and”.

***Public Service Act 1922***

**9. Paragraph 47C(1A)(a):**

After “Commission” (first occurring) insert “or the Torres Strait Regional Authority”.

**10. Subparagraph 47C(1A)(a)(i):**

Add at the end “or as a member of the Torres Strait Regional Authority established under Part 3A of that Act”.

**11. Paragraph 82B(1A)(a):**

After “Commission” (first occurring) insert “or the Torres Strait Regional Authority”.

**12. Subparagraph 82B(1A)(a)(i):**

Add at the end “or as a member of the Torres Strait Regional Authority established under Part 3A of that Act”.

**13. Subsection 82B(1A):**

After “Commission” (last occurring) insert “or the Torres Strait Regional Authority, as the case requires,”.

***Remuneration Tribunal Act 1973***

**14. After paragraph 7(9)(ac):**

Insert:

“(acaa) in the case of remuneration or allowances payable to a person who holds an office or appointment under Part 3A of the *Aboriginal and Torres Strait Islander Commission Act 1989*—be paid in accordance with the determination out of money of the Torres Strait Regional Authority that is lawfully available to pay the remuneration or allowances;”.

*Aboriginal and Torres Strait Islander Commission  
Amendment (No. 3) No. 1, 1994*

**SCHEDULE 3**—continued

*Sales Tax (Exemptions and Classifications) Act 1992*

**15. Schedule 1 (Item 130):**

After paragraph (a) insert:

“(aa) the Torres Strait Regional Authority;”.

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**SCHEDULE 4**

Section 114

**AMENDMENTS RELATING TO THE REDUCTION IN THE  
NUMBER OF COMMISSIONERS**

**1. Subsection 4(1) (definition of “Commission Chairperson”):**

Omit “appointed under section 27”, substitute “elected under section 31A”.

**2. Subsection 4(1) (definitions of “elected Commissioner” and  
“non-elected Commissioner”):**

Omit the definitions.

**3. After section 31:**

Insert:

**Commission Chairperson**

“31A.(1) At the first meeting of the Commission after a zone election (other than an election for the Torres Strait zone), the Commissioners must elect one of their number to be the Commission Chairperson.

“(2) At any other meeting of the Commission, the Commissioners must elect one of their number to be the Commission Chairperson if there is a vacancy in that office.”.

**4. Subsections 33(1) and (1A):**

Omit the subsections, substitute:

“(1) The Commission Chairperson holds office as Commission Chairperson until:

(a) he or she ceases to be a Commissioner; or

(b) another person is elected as the Chairperson under section 31A;

whichever happens first.”.

**5. Subsection 33(1C):**

Omit the subsection.

**6. Paragraph 36(1)(a):**

Omit “an appointment has previously been made to the office”, substitute “a person has previously been elected as Commission Chairperson”.

**7. Subsections 36(4) and (5):**

Omit the subsections.

**SCHEDULE 4—continued**

**8. Subsection 36(6):**

- (a) Omit “an elected”, substitute “a”.
- (b) Omit “the elected”, substitute “the”.

**9. Subsection 39(2):**

Omit “An elected”, substitute “A”.

**10. Subsection 40(6):**

Omit “an elected”, substitute “a”.

**11. Subsection 44(3):**

Omit “8”, substitute “7”.

**12. Subsection 44(4):**

Omit “12”, substitute “11”.

**13. Paragraph 44(5)(c):**

Omit “8”, substitute “7”.

**14. Paragraph 138(1)(b):**

Omit “elected”.

**NOTE**

1. No. 150, 1989, as amended. For previous amendments, see No. 122, 1991; and Nos. 26 and 37, 1993.

**NOTES ABOUT SECTION HEADINGS**

1. On the day on which Part 28 of this Act commences, the heading to section 41 of the Principal Act is altered by adding at the end “(other than **Commissioner representing the Torres Strait zone**)”.
2. On the day on which Part 28 of this Act commences, the heading to section 42 of the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* is altered by omitting “**and Commission**” and substituting “, **Commission and TSRA**”.
3. On the day on which Part 28 of this Act commences, the heading to section 43 of the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* is altered by omitting “**or Commission**” and substituting “, **Commission or TSRA**”.

**NOTES—continued**

**NOTE ABOUT SUBSECTION HEADING**

1. On the day on which this Act receives the Royal Assent, the following heading to subsection 45(1) of the Principal Act is inserted:  
*“Delegation of certain functions and powers”.*

**NOTE ABOUT SCHEDULE CLAUSE HEADING**

1. On the day on which Part 28 of this Act commences, the heading to clause 22 of Schedule 4 to the Principal Act is altered by inserting “, **TSRA**” after “**Commission**”.

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*[Minister’s second reading speech made in—  
Senate on 28 October 1993  
House of Representatives on 25 November 1993]*