



Aboriginal and Torres Strait Islander Commission Amendment Act 1994

No. 100 of 1994

TABLE OF PROVISIONS

Section	
1.	Short title etc.
2.	Commencement
3.	Interpretation
4.	Repeal and substitution of new section: 132. Zone elections
5.	Zone elections—amendments for Torres Strait zone
6.	Timing of zone elections
7.	Insertion of new section: 142AA. Conferring functions on TSRA
8.	Powers of TSRA
9.	Insertion of new section: 142GA. TSRA may make grants and loans to Queensland government etc.
10.	Restriction on right to dispose of interest in land
11.	TSRA to formulate decision-making principles about grants, loans and guarantees

TABLE OF PROVISIONS—*continued*

Section	
12.	Constitution of TSRA
13.	Minister may determine manner of representation on TSRA
14.	Insertion of new section: 142TA. TSRA wards
15.	People entitled to vote at TSRA elections
16.	People qualified to be elected to the TSRA
17.	Term of office of members of TSRA
18.	Polling places
19.	Fixing of election days, and location of polling places, to be notified in <i>Gazette</i>
20.	Repeal and substitution of new section: 143A. Effect of nominations
21.	Repeal and substitution of new section: 143E. Counting of votes and election of candidates
22.	Rules for conduct of elections
23.	Authorised electoral officer
24.	Members taken to have resigned from TSRA in certain circumstances
25.	TSRA Housing Fund
26.	TSRA Land and Natural Resources Fund
27.	Review by Administrative Appeals Tribunal
28.	Schedule 2
29.	Schedule 2A
30.	Repeal of Schedule 2B
31.	Schedule 4
32.	Amendments of the <i>Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993</i>



Aboriginal and Torres Strait Islander Commission Amendment Act 1994

No. 100 of 1994

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

[Assented to 30 June 1994]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Aboriginal and Torres Strait Islander Commission Amendment Act 1994*.

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

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

Commencement

2.(1) Sections 1, 2, 4 and 32 commence on the day on which this Act receives the Royal Assent.

(2) The remainder of this Act commences immediately after the commencement of Division 1 of Part 28 of the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993*.

Note: Division 1 of Part 28 of the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993* commences on 1 July 1994.

Interpretation

3. Section 4 of the Principal Act is amended:

- (a)** by inserting in the definition of “TSRA election” in subsection (1) “a member or” after “for”;
- (b)** by omitting from subsection (1) the definitions of “designated number”, “eligible number” and “ward” and substituting the following definitions:

“**‘designated number’**:

- (a)** in relation to a Regional Council ward—has the meaning given by section 100A; and
- (b)** in relation to a TSRA ward—has the meaning given by section 142TA;

‘eligible number’, in relation to the TSRA, means:

- (a)** 20; or
- (b)** if a notice under subsection 142R(1A) is in force—the number fixed by the notice;

‘ward’:

- (a)** in relation to a Regional Council—means a ward referred to in section 100A; and
- (b)** in relation to the TSRA—means a ward referred to in section 142TA;”;

(c) by inserting in subsection (1) the following definitions:

“**‘TSRA ward’** means a ward referred to in section 142TA;

‘TSRA ward election’ means an election for one or more members for a TSRA ward;”.

Repeal and substitution of new section

4.(1) Section 132 of the Principal Act is repealed and the following section is substituted:

Zone elections

“132.(1) A zone election must be conducted in accordance with this Act.

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

“(2) A zone election must also be conducted in accordance with:

- (a) if the election is a supplementary election—the zone election rules in force immediately before the day on which the Minister fixes the day for the close of the poll for the supplementary election; or
- (b) if the election is not a supplementary election—the zone election rules in force at the end of the election period for the last round of Regional Council elections.

“(3) Subject to zone election rules made under section 138, a zone election must be conducted by the Australian Electoral Commission.

“(4) In this section:

‘supplementary election’ means:

- (a) a zone election held to fill a casual vacancy in the office of Commissioner representing the zone; or
- (b) a zone election held in place of a zone election in relation to which the Federal Court of Australia has made an order under Schedule 4.”.

(2) If the zone election referred to in subsection 104A(8) of the Principal Act has not been held before this section commences, the amendment made by subsection (1) of this section does not apply to that zone election.

Zone elections—amendments for Torres Strait zone

5. Section 132 of the Principal Act is amended:

- (a) by inserting in subsection (2) “(other than a zone election for the Torres Strait zone)” after “A zone election”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) A zone election for the Torres Strait zone must also be conducted in accordance with:

- (a) if the election is a supplementary election—the zone election rules in force immediately before the day on which the Minister fixes the day for the close of the poll for the supplementary election; or
- (b) if the election is not a supplementary election—the zone election rules in force at the end of the election period for the last TSRA election.”.

Timing of zone elections

6. Section 133 of the Principal Act is amended by omitting from subsection (2) “election.” and substituting “election for all wards (other than a by-election to fill a casual vacancy).”.

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

Insertion of new section

7. After section 142A of the Principal Act the following section is inserted:

Conferring functions on TSRA

“142AA.(1) For the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area:

- (a) the Prime Minister may confer a departmental function on the TSRA;
- (b) the Minister may confer a function of the Commission on the TSRA.

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

“(3) In this section:

‘departmental function’ means a function that has previously been performed by a Department of State of the Commonwealth, but does not include a function of the Commission.”.

Powers of TSRA

8. Section 142C of the Principal Act is amended by adding at the end of subsection (2) the following paragraphs:

- “; (c) to negotiate and co-operate with other Commonwealth bodies and with State, Territory and local government bodies;
- (d) to enter into an agreement for making a grant or loan under section 142GA to the State of Queensland or an authority of that State (including a local government body);
 - (e) to enter into an agreement (other than an agreement referred to in paragraph (d)) with a State or a Territory.”.

Insertion of new section

9. After section 142G of the Principal Act the following section is inserted:

TSRA may make grants and loans to Queensland government etc.

“142GA.(1) The TSRA may make a grant of money to:

- (a) the State of Queensland; or
- (b) an authority of the State of Queensland (including a local government 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.

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

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

- (a) the State of Queensland; or
- (b) an authority of the State of Queensland (including a local government 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.

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

Restriction on right to dispose of interest in land

10. Section 142J of the Principal Act is amended by inserting in subparagraph (1)(b)(i) “or subsection 142GA(1)” after “142F(1)(a)”.

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

11. Section 142K of the Principal Act is amended:

- (a) by inserting in paragraph (1)(a) “or 142GA” after “142F”;
- (b) by omitting from subsection (2) “and 142G” and substituting “, 142G and 142GA”.

Constitution of TSRA

12. Section 142R of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsections:
 - “(1A) The Minister may fix the eligible number for the TSRA by notice in the *Gazette*.
 - “(1B) The number fixed must be at least 20 and not more than 23.
 - “(1C) The notice is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”;
- (b) by omitting from subsection (2) “TSRA because:” and substituting “TSRA.”;
- (c) by omitting paragraphs (2)(a) and (b).

Minister may determine manner of representation on TSRA

13. Section 142S of the Principal Act is amended:

- (a) by inserting in paragraph (2)(c) “and timing” after “method”;
- (b) by inserting after subsection (3) the following subsections:
 - “(3A) If the eligible number has changed, the Minister may amend a notice to change the membership of the TSRA so that the number of members equals the eligible number.

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

“(3B) Subsection (3A) does not limit the Minister’s power to revoke, amend or vary a notice.”.

Insertion of new section

14. After section 142T of the Principal Act the following section is inserted:

TSRA wards

Rules may divide Torres Strait area into wards

“142TA.(1) The TSRA election rules may:

- (a) provide for the division of the Torres Strait area into specified wards; and
- (b) set out the boundaries of each ward; and
- (c) fix the designated number for each ward.

Significance of fixing designated number for a ward

“(2) The following is an explanation of the significance of fixing the designated number for a ward:

- (a) if the designated number is 1—subject to section 143A (which deals with nominations), there is to be a single member of the TSRA for the ward;
- (b) if the designated number is any other number—subject to section 143A (which deals with nominations), there is to be that number of members of the TSRA for the ward.

Total of designated numbers for wards

“(3) The total of the designated numbers for TSRA wards must equal the eligible number for the TSRA less the number of members (if any) who hold office as members under a notice under section 142S.

When rules about wards take effect

“(4) TSRA election rules made for the purposes of this section:

- (a) have effect for the purposes of TSRA elections held after the commencement of the rules; and
- (b) take effect, for all other purposes, at the end of the election period for the first TSRA election held after the date on which the rules commence.

If no rules in force then Torres Strait area taken to be a single ward

“(5) For the purposes of this Act, if there are no TSRA election rules in force that divide the Torres Strait area into wards:

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

- (a) the area is taken to be a single ward; and
- (b) the designated number for the ward is equal to the eligible number for the TSRA less the number of members (if any) who hold office as members under a notice under section 142S.”.

People entitled to vote at TSRA elections

15. Section 142U of the Principal Act is amended:

- (a) by omitting “an election for members of the TSRA” and substituting “a TSRA ward election”;
- (b) by omitting from subparagraph (b)(i) “Torres Strait area” and substituting “ward concerned”.

People qualified to be elected to the TSRA

16. Section 142V of the Principal Act is amended:

- (a) by inserting in subsection (1) “for a ward” after “member of the TSRA”;
- (b) by omitting from paragraph (1)(a) “election” and substituting “ward election concerned”.

Term of office of members of TSRA

17. Section 142W of the Principal Act is amended:

- (a) by inserting in subsection (1) “for a TSRA ward” after “members of the TSRA”;
- (b) by omitting from paragraph (1)(b) “next election period.” and substituting “election period for the next TSRA election (other than a by-election or an election held for another ward in place of an election in relation to which the Federal Court of Australia has made an order under Schedule 4).”;
- (c) by inserting in subsection (2) “for a TSRA ward” after “member of the TSRA”;
- (d) by omitting from paragraph (2)(b) “election.” and substituting “election (other than a by-election to fill a casual vacancy or an election held for another ward in place of an election in relation to which the Federal Court of Australia has made an order under Schedule 4).”;
- (e) by adding at the end the following subsection:
 - “(3) In this section:
‘**by-election to fill a casual vacancy**’ includes an election of a member of the TSRA to fill a position created by an increase in the eligible number.”.

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

Polling places

18. Section 142Z of the Principal Act is amended by omitting from subsection (1) “the Torres Strait area” and substituting “each TSRA ward”.

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

19. Section 143 of the Principal Act is amended by adding at the end of subsection (2) the following word and paragraph:

“; and (c) if the Torres Strait area is divided into wards—a notice setting out an estimate by the Minister, in relation to each ward, of:

- (i) the number of persons who will be entitled to vote at the forthcoming election for that ward; and
- (ii) the number of persons living in that ward who are Torres Strait Islanders or Aboriginal persons.”.

Repeal and substitution of new section

20. Section 143A of the Principal Act is repealed and the following section is substituted:

Effect of nominations

“143A.(1) If the number of candidates nominated for election as the member or members for a TSRA ward is equal to or less than the designated number for the ward, an authorised electoral officer must declare the candidate or candidates, as the case requires, to be duly elected. Subsection (3) may require deferral of the declaration.

“(2) If the number of candidates nominated for election as the member or members for a TSRA ward is more than the designated number for the ward, a poll must be held.

“(3) If subsection (1) applies to some, but not all, of the TSRA wards, all declarations (whether made under this section or otherwise) must be made on the same day for all the wards for which elections are being held.”.

Repeal and substitution of new section

21. Section 143E of the Principal Act is repealed and the following section is substituted:

Counting of votes and election of candidates

“143E. Votes cast at a TSRA election must be counted, and the candidate or candidates are to be elected, as provided in:

- (a) whichever of Schedule 2 or 2A applies; and
- (b) the TSRA election rules.”.

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

Rules for conduct of elections

22. Section 143G of the Principal Act is amended:

- (a) by omitting from subsection (1) “Aboriginal and Torres Strait Islander Commission” and substituting “TSRA”;
- (b) by adding at the end of subsection (1) the following word and paragraph:
“; and (c) the manner of changing the membership of the TSRA to conform with changes in the eligible number (including, but not limited to, the holding of by-elections).”;
- (c) by inserting after paragraph (3)(a) the following paragraph:
“(aa) the determination of the ward in relation to which a person described in paragraph (a) may vote (if he or she is entitled to vote);”.

Authorised electoral officer

23. Section 143H of the Principal Act is amended by omitting “2B” and substituting “2”.

Members taken to have resigned from TSRA in certain circumstances

24. Section 143R of the Principal Act is amended:

- (a) by inserting in subsection (1) “holding office under a notice under paragraph 142S(2)(a) or (b)” after “member of the TSRA”;
- (b) by inserting after subsection (1) the following subsection:

Member living outside his or her ward in the Torres Strait area

“(1A) If the TSRA is satisfied that a member of the TSRA for a TSRA ward:

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

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

- (c) by inserting in subsection (2) “or (1A)” after “(1)”.

TSRA Housing Fund

25. Section 144V of the Principal Act is amended by inserting in paragraph (2)(a) “or 142GA” after “142F”.

TSRA Land and Natural Resources Fund

26. Section 144W of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

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

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

- (a) in developing and implementing the marine strategy referred to in subsection 142D(3); or
- (b) in developing or maintaining real estate; or
- (c) in acquiring an interest in land under subsection 142F(3); or
- (d) in making a grant of money under section 142F or 142GA on condition that the money be spent for a purpose described in paragraph (a) or (b) or in acquiring an interest in land.”.

Review by Administrative Appeals Tribunal

27. Section 196A of the Principal Act is amended by inserting in paragraph (1)(d) “or (1A)” after “143R(1)”.

Schedule 2

28. Schedule 2 to the Principal Act is amended:

- (a) by omitting the heading and substituting the following heading:

“SCHEDULE 2 Sections 111 and 143E

METHOD OF COUNTING VOTES AND DETERMINING
SUCCESSFUL CANDIDATES AT ELECTIONS FOR 2 OR
MORE MEMBERS FOR A REGIONAL COUNCIL WARD OR
TSRA WARD”;

- (b) by inserting in clause 1 “or TSRA ward election” after “election”;
- (c) by inserting in the definition of “leading shortfall” in clause 24 “or TSRA ward election” after “election”;
- (d) by inserting in the definition of “shortfall” in clause 24 “or TSRA ward election” after “election”;
- (e) by inserting in the definition of “vacancy shortfall” in clause 24 “or TSRA ward election” after “election”.

Schedule 2A

29. Schedule 2A to the Principal Act is amended:

- (a) by omitting the heading and substituting the following heading:

“SCHEDULE 2A Sections 111 and 143E

METHOD OF DETERMINING THE SUCCESSFUL
CANDIDATE AT AN ELECTION FOR A SINGLE MEMBER
FOR A REGIONAL COUNCIL WARD OR TSRA WARD”;

- (b) by omitting from subclause 3(4) “, the rules made by the Minister under that section” and substituting “or 143G, the rules made by the Minister under either of those sections”.

*Aboriginal and Torres Strait Islander Commission
Amendment No. 100, 1994*

Repeal of Schedule 2B

30. Schedule 2B to the Principal Act is repealed.

Schedule 4

31. Schedule 4 to the Principal Act is amended:

- (a) by omitting from paragraph 3(d) “stated; and” and substituting “stated.”;
- (b) by omitting paragraph 3(e);
- (c) by inserting after clause 3 the following clause:

Deadline for filing a petition

“3A.(1) Any petition disputing an election held as part of a general election must be filed in a Registry of the Court within 40 days after the last day on which a poll is declared in relation to the general election.

“(2) Any petition disputing any other election must be filed in a Registry of the Court within 40 days after the poll is declared in relation to the election.

“(3) In this clause:

‘general election’ means:

- (a) a round of Regional Council elections; or
 - (b) a round of zone elections; or
 - (c) a TSRA election for all wards.”;
- (d) by inserting in clause 6 “, 3A” after “3”.

Amendments of the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993*

32. Schedule 2 to the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993*² is amended by omitting clauses 55 and 56.

NOTES

- 1. No. 150, 1989, as amended. For previous amendments, see No. 122, 1991; Nos. 26 and 37, 1993; and No. 1, 1994.
- 2. No. 1, 1994.

[*Minister’s second reading speech made in—
Senate on 24 March 1994
House of Representatives on 27 June 1994*]