



# **Aboriginal and Torres Strait Islander Commission Amendment Act 1996**

**No. 35, 1996**

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

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# Aboriginal and Torres Strait Islander Commission Amendment Act 1996

No. 35, 1996

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## An Act relating to the Aboriginal and Torres Strait Islander Commission, and for related purposes

[Assented to 12 September 1996]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Aboriginal and Torres Strait Islander  
Commission Amendment Act 1996*.

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## **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) If this Act does not receive the Royal Assent on or before 12 September 1996, item 4 of Schedule 1 commences on a day to be fixed by Proclamation.
- (3) If item 4 of Schedule 1 does not commence under subsection (2) within 6 months after the day on which this Act receives the Royal Assent, that item commences on the first day after the end of that period.
- (4) Item 68 in Schedule 1 commences on the 28th day after the day on which this Act receives the Royal Assent.
- (5) Schedule 2 commences on the day, or the earliest day, on which the Minister appoints a person as a Commissioner after the person has been elected in the 1999 round of Regional Council elections.

## **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989

### 1 Subsection 4(1) (definition of *Commission Chairperson*)

Repeal the definition, substitute:

*Commission Chairperson* means the Chairperson of the Commission referred to in paragraph 27(1)(a).

### 2 Subsection 4(1)

Insert:

*elected Commissioner* means a member of the Commission referred to in paragraph 27(1)(b).

### 3 Subsection 4(1)

Insert:

*non-elected Commissioner* means the member of the Commission referred to in paragraph 27(1)(c).

### 4 Subsection 4(1) (table in definition of *prescribed number*)

Repeal the table, substitute:

<b>Estimated population of region</b>	<b>Prescribed number</b>
not more than 1,000	8
more than 1,000 but not more than 4,000	9
more than 4,000 but not more than 7,000	10
more than 7,000 but not more than 10,000	11
more than 10,000	12

### 5 Transitional

- (1) This item applies only if this Act receives the Royal Assent on or before 12 September 1996.

**Schedule 1 Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989**

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- (2) The amendment made by item 4 extends to the round of Regional Council elections for which the election period started on 12 July 1996 (the *current round of Regional Council elections*).
- (3) The Regional Council Election Rules are amended by repealing Schedule 1 and substituting the Schedule set out at the end of this item.
- (4) The amendment of the Regional Council Election Rules made by subitem (3) is taken to have been duly made by the Minister under section 113 of the *Aboriginal and Torres Strait Islander Commission Act 1989* and may be amended or repealed by further rules made by the Minister under that section.
- (5) Despite paragraph 100(b) of the *Aboriginal and Torres Strait Islander Commission Act 1989*, the current round of Regional Council elections is to be conducted by the Australian Electoral Commission in accordance with the Regional Council Election Rules referred to in that paragraph as amended by subitem (3).
- (6) If:
- (a) before the commencement of this Act, the authorised electoral officer, under subsection 107(1) of the *Aboriginal and Torres Strait Islander Commission Act 1989*, declared, in relation to the current round of Regional Council elections, a candidate or candidates who nominated for election as the member or members for a Regional Council ward to be duly elected; and
  - (b) the number of candidates nominated for election as the member or members for that Regional Council ward was greater than the number that, under that Act as amended by this Act, is the designated number in relation to the ward;

the declaration is taken not to have been made and a poll must be held.

Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989  
Schedule 1

SCHEDULE TO BE INSERTED IN REGIONAL COUNCIL ELECTION RULES  
SCHEDULE 1 Rule 2A

WARDS

Column 1	Column 2	Column 3	Column 4
Region that contains the following place	Ward	Designated number for ward	Map depicting boundaries of wards
PART 1 NEW SOUTH WALES			
Coffs Harbour	Gattang	7	ATSIC Coffs Harbour Region - ATSIC 96/1
	Northern Rivers	5	
Tamworth	Gomilaroi	5	ATSIC Tamworth Region - ATSIC 96/2
	Tingha	3	
	Quirindi	4	
Sydney	Sydney	12	ATSIC Sydney Region - ATSIC 96/3
Bourke	Wangkumara	7	ATSIC Bourke Region - ATSIC 96/4
	NSW Far West	3	
Wagga Wagga	Deniliquin	1	ATSIC Wagga Wagga Region - ATSIC 96/5
	Wirawongam	7	
	Murrumbidgee/ Lachlan	4	
Queanbeyan	Bogong	5	ATSIC Queanbeyan Region - ATSIC 96/6
	Umbara	6	

**Schedule 1 Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989**

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PART 2 - NORTHERN TERRITORY

<b>Katherine</b>	Ward 1	1	ATSIC Katherine
	Ward 2	2	Region - ATSIC
	Ward 3	3	96/7
	Ward 4	2	
	Ward 5	3	
<b>Jabiru</b>	Tiwi Islands	3	ATSIC Jabiru
	Jabiru	4	Region - ATSIC
	Coburg	1	96/8
	Wadeye	2	
	Daly River	1	
<b>Nhulunbuy</b>	West	5	ATSIC
	East	3	Nhulunbuy
	South	3	Region - ATSIC 96/9
<b>Darwin</b>	Ward 1	6	ATSIC Darwin
	Ward 2	3	Region - ATSIC
	Ward 3	1	96/10
	Ward 4	1	
<b>Alice Springs</b>	Alice Springs	10	ATSIC Alice Springs Region - ATSIC 96/11
<b>Tennant Creek</b>	Tennant Creek	9	ATSIC Tennant Creek Region - ATSIC 96/12
<b>Apatula</b>	Papunya	6	ATSIC Apatula
	Impiyara	1	Region - ATSIC
	Arltarlpilta	3	96/13

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**Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989  
Schedule 1**

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.....  
**PART 3 - QUEENSLAND**  
.....

<b>Cooktown</b>	<b>Cooktown</b>	<b>10</b>	<b>ATSIC Cooktown Region - ATSI 96/14</b>
.....			
<b>Mt Isa</b>	<b>Burke</b>	<b>2</b>	<b>ATSIC Mt Isa</b>
	<b>Mornington</b>	<b>1</b>	<b>Region - ATSI</b>
	<b>Mount Isa</b>	<b>4</b>	<b>96/15</b>
	<b>South East</b>	<b>2</b>	
	<b>Carpentaria</b>	<b>1</b>	
.....			
<b>Brisbane</b>	<b>Brisbane</b>	<b>6</b>	<b>ATSIC Brisbane</b>
	<b>Brisbane North</b>	<b>2</b>	<b>Region - ATSI</b>
	<b>Brisbane South</b>	<b>4</b>	<b>96/16</b>
.....			
<b>Cairns</b>	<b>Cairns</b>	<b>12</b>	<b>ATSIC Cairns Region - ATSI 96/17</b>
.....			
<b>Townsville</b>	<b>Townsville</b>	<b>4</b>	<b>ATSIC</b>
	<b>Palm Island</b>	<b>2</b>	<b>Townsville</b>
	<b>Mackay</b>	<b>4</b>	<b>Region - ATSI</b>
	<b>Ingham</b>	<b>1</b>	<b>96/18</b>
	<b>Charters Towers</b>	<b>1</b>	
.....			
<b>Roma</b>	<b>Roma</b>	<b>11</b>	<b>ATSIC Roma Region - ATSI 96/19</b>
.....			
<b>Rockhampton</b>	<b>Rockhampton</b>	<b>11</b>	<b>ATSIC Rockhampton Region - ATSI 96/20</b>
.....			

**Schedule 1 Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989**

<b>PART 4 - SOUTH AUSTRALIA</b>			
Adelaide	Kurna	8	ATSIC Adelaide Region - ATSIC 96/21
	Murrundi	4	
Port Augusta	Amata	2	ATSIC Port Augusta Region - ATSIC 96/22
	Indulkana	2	
	Cooper Pedy	1	
	Nulla Wanga	4	
	Tjuta South		
Ceduna	Nulla Wanga	1	ATSIC Ceduna Region - ATSIC 96/23
	Tjuta North		
	Wangka Pulka North	4	
Ceduna	Wangka Pulka South	3	ATSIC Ceduna Region - ATSIC 96/23
	Kakarrara	2	
	Wilurrara		
<b>PART 5 - TASMANIA</b>			
Hobart	Hobart	12	ATSIC Hobart Region - ATSIC 96/24
<b>PART 6 - VICTORIA</b>			
Wangaratta	Gippsland	3	ATSIC Wangaratta Region - ATSIC 96/26
	Goulburn Valley	3	
	East Melbourne	5	
Ballarat	Tumbukka	7	ATSIC Ballarat Region - ATSIC 96/27
	West Melbourne	5	

**Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989**  
**Schedule 1**

PART 7 - WESTERN AUSTRALIA			
Perth	Perth	12	ATSIC Perth Region - ATSI 96/28
Narrogin	Moora	1	ATSIC Narrogin Region - ATSI 96/29
	Northam	2	
	Bunbury	3	
	Narrogin	1	
	Albany	3	
Derby	Jayida Buru	5	ATSIC Derby Region - ATSI 96/30
	Bandaral Ngadu	5	
Kununurra	Wunan	5	ATSIC Kununurra Region - ATSI 96/31
	Yarleyel	3	
	Kutjungka	2	
Broome	Broome	5	ATSIC Broome Region - ATSI 96/32
	Outer Areas	4	
South Hedland	Port Hedland	4	ATSIC South Hedland Region - ATSI 96/33
	Roeboume	3	
	Ashburton	1	
	East Pilbara	2	
Geraldton	Geraldton	10	ATSIC Geraldton Region - ATSI 96/34
Kalgoorlie	Town	4	ATSIC Kalgoorlie Region - ATSI 96/35
	North	2	
	South	3	

**Schedule 1 Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989**

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Warburton	Western Desert	4	ATSIC
	Warburton	4	Warburton
	Cundeelee	1	Region - ATSIC 96/36

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**6 After section 21**

Insert:

**21A Commission's interest in land**

- (1) Any liability or obligation of an individual, a body corporate or an unincorporated body to the Commission arising:
  - (a) under the terms and conditions of a grant or loan referred to in subsection 14(2); or
  - (b) under section 20 or 21;is taken to be an interest of the Commission in the land to which it relates.
- (2) The land is charged with the payment of all costs and expenses incurred by the Commission in respect of its enforcement of the liability or obligation.
- (3) The land is taken, for the purposes of the *Aboriginal Land Rights (Northern Territory) Act 1976*, to be alienated Crown land in which all estates and interests not held by the Crown are held on behalf of Aboriginals.

**7 Section 27**

Repeal the section, substitute:

**27 Constitution of the Commission**

- (1) The Commission consists of 19 members, as follows:
  - (a) a Chairperson;
  - (b) 17 members, who are to be the persons elected under Division 7 of Part 3 to represent the several zones;
  - (c) 1 other member.
- (2) The members are to be appointed by the Minister.
- (3) The Chairperson may be, but is not required to be, a person elected under Division 7 of Part 3 to represent a zone.

- (4) The member referred to in paragraph (1)(c) must not be a person elected under Division 7 of Part 3 to represent a zone.
- (5) If the Minister appoints as the Chairperson a person elected under Division 7 of Part 3 to represent a zone, the person ceases to hold office as the member representing the zone and as a Regional Councillor.

## **8 Section 31A**

Repeal the section.

## **9 Subsection 33(1)**

Repeal the subsection, substitute:

- (1) The Commission Chairperson holds office as Commission Chairperson for such period, not exceeding 3 years, as is stated in, or worked out under, the instrument of appointment.

## **10 After subsection 33(1B)**

Insert:

- (1C) The non-elected Commissioner holds office for such period, not exceeding 3 years, as is stated in, or worked out under, the instrument of appointment.

## **11 Subsection 32(1)**

Omit "a zone election", substitute "each round of zone elections".

## **12 At the end of Division 3 of Part 2**

Add:

### **32A Alternate Deputy Chairperson**

If there is a vacancy in the office of alternate of the Deputy Chairperson of the Commission, the Commissioners may, at a meeting of the Commission, elect one of them to be the alternate of the Deputy Chairperson.

## **13 After subsection 33(1B)**

Insert:

(1BA) The alternate of the Deputy Chairperson of the Commission is to be elected for a period determined by the Commission and holds office until:

- (a) the end of that period; or
- (b) he or she is elected as Deputy Chairperson of the Commission; or
- (c) he or she ceases to be a Commissioner;

whichever happens first. However, if he or she ceases to hold office because of paragraph (a) and is still a Commissioner, he or she may be re-elected.

**14 Subsection 35(3)**

Omit "(1)", substitute "(1A)".

**15 Paragraph 36(1)(a)**

Omit "a person has previously been elected as Commission Chairperson", substitute "an appointment has previously been made to the office".

**16 After subsection 36(1)**

Insert:

(1A) If:

- (a) either of the following circumstances exists:
  - (i) there is a vacancy in the office of Commission Chairperson, whether or not an appointment has previously been made to the office;
  - (ii) the Commission Chairperson is absent from duty or from Australia or is, for any reason unable to perform the duties of the office; and
- (b) either of the following circumstances exists:
  - (i) there is a vacancy in the office of Deputy Chairperson of the Commission, whether or not a person has previously been elected as Deputy Chairperson;
  - (ii) the Deputy Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of Deputy Chairperson;

the alternate of the Deputy Chairperson is to act as the Commission Chairperson.

- (1B) If the alternate of the Deputy Chairperson of the Commission is not acting as the Commission Chairperson under subsection (1A) and either of the following circumstances exists:
- (a) there is a vacancy in the office of Deputy Chairperson;
  - (b) the Deputy Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of Deputy Chairperson;
- the alternate of the Deputy Chairperson is to act as the Deputy Chairperson.
- (1C) Anything done by or in relation to a person purporting to act under subsection (1), (1A) or (1B) is not invalid merely because the occasion to act had not arisen or had ceased.

### **17 After subsection 36(2)**

Insert:

- (2A) A person appointed to act as the Deputy Chairperson of the Commission may not act if there is an alternate of the Deputy Chairperson.

### **18 After subsection 36(3)**

Insert:

- (4) The Minister may appoint a person to act in the office of non-elected Commissioner:
- (a) during a vacancy in that office whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the non-elected Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (5) A person appointed to act during a vacancy in the office of non-elected Commissioner under section (4):
- (a) must not continue so to act for more than 6 months; and
  - (b) must not be re-appointed to act during the vacancy for a period that would be continuous with the period of 6 months from the day when the person first started acting during that vacancy.

### **19 Subsection 36(6)**

Repeal the subsection, substitute:

- (6) The Minister may, after consulting the Commission Chairperson, appoint a person to act in the office of an elected Commissioner:
- (a) during a vacancy in the office, whether or not a person has previously been appointed to the office; or
  - (b) during any period, or during all periods, when the elected Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

**20 Section 38**

Repeal the section, substitute:

**38 Disclosure of interests**

A Commissioner or acting Commissioner who is not a Regional Councillor must comply with section 119A as if he or she were a Regional Councillor.

**21 After subsection 39(1B)**

Insert:

- (1C) The alternate of the Deputy Chairperson of the Commission may resign the office of alternate of the Deputy Chairperson by writing signed by him or her and sent to the Commission Chairperson.

**22 Subsection 39(2)**

Omit "A Commissioner is", substitute "An elected Commissioner is".

**23 Subsection 40(2)**

Repeal the subsection, substitute:

- (2) The Minister must not suspend a Commissioner from office unless the Minister has, by written notice served on the Commissioner, given the Commissioner 7 days within which to show cause why the Commissioner should not be suspended.

**24 Subsection 40(6)**

Omit "appointment of a Commissioner", substitute "appointment of an elected Commissioner".

**25 After subsection 40(6)**

Insert:



(6A) If a person who is an elected Commissioner is, because of a decision or order of the Federal Court of Australia, taken not to have been duly elected as a member of a Regional Council, the person ceases, as a result of the decision or order, to be an elected Commissioner.

**26 Subsection 44(3)**

Omit "7", substitute "8".

**27 Subsection 44(4)**

Omit "11", substitute "12".

**28 Paragraph 44(5)(c)**

Omit "7", substitute "8".

**29 Subsection 68(4)**

Repeal the subsection.

**30 After paragraph 76(1)(da)**

Insert:

(db) when requested to do so by the TSRA, to evaluate or audit particular aspects of the operations of the TSRA;

**31 Paragraph 78A(1)(a)**

After "(ba)", insert "(c), (d), (da), (db),".

**32 Paragraph 81(1)(a)**

Omit "by the TSRA, by other Commonwealth bodies", substitute "by other Commonwealth bodies (except the TSRA)".

**33 Paragraph 81(1)(b)**

Omit "by the TSRA, by Regional Councils and by other Commonwealth bodies,", substitute "by Regional Councils and by other Commonwealth bodies (except the TSRA),".

**34 Paragraph 81(1)(c)**

Omit ", the TSRA".

### **35 After subsection 90(2)**

Insert:

(2A) Despite subsection (2), a person to whom this section applies may:

- (a) divulge or communicate any information referred to in paragraph (2)(a) to anyone who is authorised in writing by the person to whose affairs the information relates to receive the information; and
- (b) produce a document referred to in paragraph (2)(b) to anyone who is authorised in writing by the person to whose affairs the document relates to receive the document.

### **36 Paragraph 91(7)(a)**

Repeal the paragraph, substitute:

- (a) has effect for the purposes of the first round of Regional Council elections held after the date of the determination; and

### **37 Application**

The amendment made by item 36 applies to determinations made after the commencement of that item.

### **38 Paragraph 100A(5)(a)**

Repeal the paragraph, substitute:

- (a) have effect for the purposes of the first round of Regional Council elections held after the commencement of the rules; and

### **39 Application**

The amendment made by item 38 applies to rules made after the commencement of that item.

### **40 At the end of subsection 102(1A)**

Add “or to the Chairperson of a Regional Council covered by a determination in force under subsection 121(1B)”.

### **41 After subsection 115(1)**

Insert:

- (1A) The performance of the functions or the exercise of the powers of a Regional Council is not affected merely because there are more than the prescribed number of members of the Regional Council provided that the number of members of the Regional Council is not more than the number that was the prescribed number of members at the beginning of the election period for the last round of Regional Council elections.

**42 At the end of subsection 115(1)**

Add "and such number (if any) of other members as are appointed under section 116".

**43 After section 115**

Add:

**116 Additional members of Regional Councils**

- (1) Subject to subsection (2), if the Minister is of the opinion that the number of members of a particular Regional Council is insufficient to enable the Council properly to perform its functions, the Minister may, after consulting the Commission, appoint an additional person or persons to be a member or members of the Regional Council.
- (2) The Minister may not appoint a person as a member of a Regional Council under subsection (1) unless the person is qualified for election as a member for a Regional Council ward for the Regional Council concerned.
- (3) A person appointed as a member of a Regional Council under this section holds office until the end of the next round of Regional Council elections following his or her appointment.
- (4) If a person appointed under this section as a member of a Regional Council ceases to hold the office to which he or she was appointed, the Minister may appoint another person as a member of the Regional Council in place of the first-mentioned person.

**44 After subsection 119(2)**

Insert:

- (2A) The Minister must cause a copy of each determination made under paragraph (2)(a) or (b) to be published in the *Gazette*.

## 45 After section 119

Insert:

### 119A Register of interests

- (1) Each member of a Regional Council must make to the Commission written disclosures of the member's direct or indirect pecuniary interests in accordance with a Ministerial determination under subsection (4).
- (2) The Commission must keep a register of the interests disclosed in accordance with a Ministerial determination under subsection (4).
- (3) The Commission must allow any person to inspect the register at any reasonable time without charge.
- (4) The Minister may make a written determination specifying:
  - (a) the kinds of interests to be disclosed; and
  - (b) the manner in which, and the times at which, disclosures are to be made; and
  - (c) the form in which the register is to be kept.
- (5) A determination under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## 46 Subsection 121(3)

Repeal the subsection, substitute:

- (3) If the Commission is satisfied that a member of a Regional Council:
  - (a) has become a member of the staff of the Commission or the TSRA; or
  - (b) has become a consultant to the Commission or the TSRA; or
  - (c) has become a director of, or has acquired a controlling interest in, a body corporate that is a consultant to the Commission or the TSRA; or
  - (d) is a director of, or has a controlling interest in, a body corporate that has become a consultant to the Commission or the TSRA;the Commission must declare, in writing, that it is so satisfied.

## 47 Paragraphs 122(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) has been convicted of an offence against a Commonwealth, State or Territory law and sentenced in respect of the offence to imprisonment for one year or longer; or
- (aa) has been convicted of 2 or more offences against a Commonwealth, State or Territory law and sentenced in respect of all the offences to a single penalty of imprisonment for one year or longer; or
- (b) has been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced in respect of the offence to imprisonment for 3 months or longer; or
- (ba) has been convicted of 2 or more offences against a Commonwealth, State or Territory law involving dishonesty and sentenced in respect of all the offences to a single penalty of imprisonment for 3 months or longer; or

**48 Paragraph 122(1)(c)**

Repeal the paragraph, substitute:

- (c) has failed, without reasonable excuse, to comply with section 119 or 119A; or

**49 At the end of paragraphs 122(1)(d), (e) and (f)**

Add "or".

**50 After subsection 127C(6)**

Insert:

- (6A) If the person who is the Chairperson of a Regional Council is, because of a decision or order of the Federal Court of Australia, taken not to have been duly elected as a member of the Regional Council, the person ceases, as a result of the decision or order, to be the Chairperson of the Regional Council.

**51 Subsection 127E(2)**

After "Commissioner", insert "or the Chairperson of the Regional Council".

**52 After subsection 127G(6)**

Insert:

- (6A) If a person who is the Deputy Chairperson of a Regional Council is, because of a decision or order of the Federal Court of Australia, taken not to have been duly elected as a member of the Regional Council, the person ceases, as a result of the decision or order, to be the Deputy Chairperson of the Regional Council.

**53 Subsection 127J(4)**

After "Commissioner," insert "the Chairperson of the Regional Council or the Deputy Chairperson of the Regional Council".

**54 After subsection 128(4)**

Insert:

- (4A) When appropriate action has been taken under this section to convene a meeting of a Regional Council, the Chairperson of the Regional Council or, if the Regional Council does not have a Chairperson, the Commission Chairperson must cause notice of the proposed date, time and place of the meeting to be publicly notified, at least 7 days before the proposed date of the meeting, in any manner that the Chairperson concerned thinks appropriate.
- (4B) A Regional Council must make available, at a meeting of the Council, for inspection by any person:
- (a) copies of the agenda for the meeting; and
  - (b) copies of any other business papers prepared for the meeting except papers that, in the opinion of the Chairperson of the Council, are likely to be considered by the Council at the meeting at a time when it is closed to the public.
- (4C) A Regional Council must make available at reasonable times during, and at the end of, a meeting of the Council and on the first business day following the day of the meeting, for inspection by any person, any documents presented to the meeting other than documents presented at a time when the meeting was closed to the public.

**55 After section 128**

Insert:

**128A Meeting of Regional Council to be open to the public except in certain circumstances**

- (1) Except as provided by this section, anyone is entitled to be present at a meeting of a Regional Council.

- (2) A person (other than a member of the Regional Council concerned) is not entitled to be present at a meeting of a Regional Council if:
  - (a) the Council has passed a resolution stating that the person is to be excluded from the meeting; or
  - (b) the Council has passed a resolution authorising the member presiding at the meeting to direct that a person or persons be excluded from the meeting and the member presiding has given such a direction in relation to the first-mentioned person.
- (3) A person (other than a member of the Regional Council concerned) is not entitled to be present at a meeting of a Regional Council if:
  - (a) the Council is considering an excludable matter; and
  - (b) the Council has resolved that the meeting be closed to the public while that matter is being considered.
- (4) A resolution referred to in paragraph (3)(b) must identify the matter concerned and the resolution must be recorded in the minutes of the meeting.

### **128B Right of public to inspect documents without charge**

A Regional Council must allow any person to inspect, at any reasonable time, without charge, any documents described in the following paragraphs that are in its possession:

- (a) a document setting out a code of conduct to be observed by the Council or its members;
- (b) rules for the conduct of proceedings at meetings of the Council;
- (c) a regional or other plan formulated by the Council;
- (d) a determination of, or any other document relating to, remuneration or allowances for members;
- (e) a document identifying any of the facilities that are provided for members;
- (f) the minutes of proceedings at meetings of the Council other than any part of the minutes that relates to an excludable matter;
- (g) a determination made under subsection 119(2);
- (h) any other document to which the person is entitled to have access under the *Freedom of Information Act 1982*.

### **128C Excludable matters**

The following are excludable matters for the purposes of sections 128A and 128B:

- (a) a matter relating to a member of the staff of the Regional Council or to any other person assisting the Council in the performance of its functions;
- (b) a matter involving personal hardship suffered by a person;
- (c) any of the following:
  - (i) a trade secret;
  - (ii) other information having a commercial value the disclosure of which would, or could reasonably be expected to, affect a person adversely in respect of the person's lawful business, professional, commercial or financial affairs;
  - (iii) information (other than a trade secret or information to which subparagraph (ii) applies) that would, or could reasonably be expected to, confer a financial advantage on a competitor of the Regional Council;
- (d) a proposal for the making of a grant or loan, or the giving of a guarantee, by the Regional Council;
- (e) any matter the divulging of which is prohibited by section 90;
- (f) information the disclosure of which would found an action for breach of confidence;
- (g) information of such a nature that it would be privileged from being disclosed in legal proceedings on the ground of legal professional privilege;
- (h) information the disclosure of which would, or could reasonably be expected to, prejudice the enforcement or proper administration of the law;
- (i) a matter affecting the security of the Regional Council, its members, its staff or its property;
- (j) a motion to close the meeting to the public.

### **56 Paragraph 138(1)(b)**

Before "Commissioners", insert "elected".

### **57 At the end of Division 7 of Part 3**

Insert:



### 139A Injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act in its application to an election held under this Act, a prescribed court may, on the application of the Australian Electoral Commission, grant an injunction restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to do something.
- (2) If:
  - (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do something; and
  - (b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act in its application to an election held under this Act;a prescribed court may, on the application of the Australian Electoral Commission, grant an injunction requiring the person to do the thing.
- (3) If an application is made to a prescribed court for an injunction under subsection (1), the court may, if in its opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.
- (4) A prescribed court may discharge or vary an injunction granted under subsection (1), (2) or (3).
- (5) If an application is made to a prescribed court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the court to grant the injunction may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to anyone if the person engages in conduct of that kind.

- (6) If an application is made to a prescribed court for the grant of an injunction requiring a person to do something, the power of the court to grant the injunction may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do the thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do the thing—whether or not the person has previously refused or failed to do the thing and whether or not there is an imminent danger of substantial damage to anyone if the person refuses or fails to do the thing.
- (7) If the Australian Electoral Commission applies to a prescribed court for the grant of an injunction under this section, the court must not require the applicant or anyone else, as a condition of the granting of an interim injunction, to give any undertakings as to damages.
- (8) The Supreme Court of each State is invested with federal jurisdiction, and, to the extent that the Constitution permits, jurisdiction is conferred on the Supreme Court of each Territory, with respect to all matters arising under this section.
- (9) An appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this section.
- (10) The powers conferred on a prescribed court under this section are in addition to, and not in derogation of, any other powers of the court, whether conferred by this Act or otherwise.
- (11) In this section:  
*prescribed court* means the Supreme Court of a State or Territory.

## **58 At the end of section 141**

Add:

- (6) A report to the Minister under subsection (3) in respect of the first Regional Council elections conducted after 1 July 1996 must include an examination of ways in which the representation of distinct community groups on Regional Councils could be accommodated.

## **59 After section 142J**

Insert:

### **142JA TSRA's interest in land**

- (1) Any liability or obligation of an individual, a body corporate or an unincorporated body to the TSRA arising:
  - (a) under the terms and conditions of a grant or loan referred to in subsection 142F(2); or
  - (b) under section 142H or 142J;is taken to be an interest of the TSRA in the land to which it relates.
- (2) The land is charged with the payment of all costs and expenses incurred by the TSRA in respect of its enforcement of the liability or obligation.

## **60 After section 172**

Insert:

### **172A Disclosure of interests**

- (1) The Commercial Development Corporation General Manager must give written notice to the Minister and the Chairperson of the Commercial Development Corporation Board of all direct or indirect pecuniary interests that the General Manager has or acquires in any business or in any body corporate that carries on a business.
- (2) If the Commercial Development Corporation General Manager has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commercial Development Corporation Board, the General Manager must, as soon as possible after becoming aware of the relevant facts, disclose the nature of the interest to the Chairperson of the Board in writing.

## **61 Subsection 191(2) (penalty)**

Repeal the penalty, substitute:

Penalty: 50 penalty units.

## **62 After section 191S**

Insert:

**191SA Indigenous Land Corporation's interest in land**

- (1) Any liability or obligation of a body corporate to the Indigenous Land Corporation arising:
  - (a) under the terms and conditions of a grant, loan or guarantee referred to in subsection 191D(2) or (2A) or 191E(2), (2A) or (2B); or
  - (b) under section 191S;is taken to be an interest of the Corporation in the land to which the liability or obligation relates.
- (2) The land is charged with the payment of all costs and expenses incurred by the Corporation in respect of its enforcement of the liability or obligation.

**191SB Interest in land of subsidiary of Indigenous Land Corporation**

- (1) Any liability or obligation of a body corporate to a subsidiary of the Indigenous Land Corporation arising:
  - (a) under the terms and conditions of a grant, loan or guarantee made or given by the subsidiary under an arrangement referred to in subsection 191G(1); or
  - (b) under section 191S;is taken to be an interest of the subsidiary in the land to which the liability or obligation relates.
- (2) The land is charged with the payment of all costs and expenses incurred by the subsidiary in respect of its enforcement of the liability or obligation.

**63 Subsection 197(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 5 years or 100 penalty units.

**64 Subsection 197(2) (penalty)**

Repeal the penalty.

**65 At the end of section 197**

Add:

- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months or 10 penalty units.

**66 Subsections 198(1) and (2)**

Omit "\$5,000", substitute "50 penalty units".

**67 Subsection 198(3)**

Omit "\$1,000", substitute "10 penalty units".

**68 After subsection 198(3)**

Insert:

- (3A) A person must not make a statement to another person, either orally or in writing, as to the other person's right to vote in an election under this Act if the person making the statement knows that the statement is false or misleading in a material particular.

Penalty: 25 penalty units.

- (3B) A person must not encourage another person to vote in an election under this Act if the first-mentioned person knows that the other person is not entitled to vote in the election.

Penalty: 25 penalty units.

**69 Application**

- (1) In this item:

*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 that started on 12 July 1996.

*deferred items* means items 1, 2, 3, 7, 8, 9, 10, 15, 18, 19, 22, 24, 25, 26, 27, 28 and 56.

**Schedule 1 Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989**

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- (2) The amendments made by the deferred items do not apply until the appointment day.
- (3) The person who held office as the Commission Chairperson immediately before the appointment day ceases to hold that office on that day.

## **Schedule 2—Amendment of the Aboriginal and Torres Strait Islander Commission Act 1989**

### **1 Subsection 4(1) (definition of *Commission Chairperson*)**

Repeal the definition, substitute:

*Commission Chairperson* means the Chairperson of the Commission elected under section 31A.

### **2 Subsection 4(1) (definition of *elected Commissioner*)**

Repeal the definition.

### **3 Subsection 4(1) (definition of *non-elected Commissioner*)**

Repeal the definition.

### **4 Section 27**

Repeal the section, substitute:

### **27 Constitution of the Commission**

- (1) The Commission consists of 17 members appointed by the Minister.
- (2) The members are to be the persons elected under Division 7 of Part 3 to represent the several zones.

### **5 After section 30**

Insert:

#### **31A Commission Chairperson**

- (1) At the first meeting of the Commission after each round of zone elections (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.

**6 Subsection 33(1)**

Repeal the subsection, 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.

**7 Subsection 33(1C)**

Repeal the subsection.

**8 Paragraph 36(1)(a)**

Omit "an appointment has previously been made to the office", substitute "a person has previously been elected as Commission Chairperson".

**9 Subsections 36(4) and (5)**

Repeal the subsections.

**10 Subsection 39(2)**

Omit "An elected Commissioner is", substitute "A Commissioner is".

**11 Subsection 40(6)**

Omit "appointment of an elected Commissioner", substitute "appointment of a Commissioner".

**12 Subsection 40(6A)**

Omit "an elected Commissioner" (wherever occurring), substitute "a Commissioner".

**13 Subsection 44(3)**

Omit "8", substitute "7".

**14 Subsection 44(4)**

Omit "12", substitute "11".



**15 Paragraph 44(5)(c)**

Omit "8", substitute "7".

**16 Paragraph 138(1)(b)**

Omit "elected".

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*[Minister's second reading speech made in—  
House of Representatives on 27 June 1996  
Senate on 21 August 1996]*