

1996

The Parliament of the
Commonwealth of Australia

THE SENATE

As read a third time

**Aboriginal and Torres Strait Islander
Commission Amendment Bill 1996**

No. , 1996

**A Bill for an Act relating to the Aboriginal and
Torres Strait Islander Commission, and for related
purposes**

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1 THIS bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*
7 The Senate
8 26 June 1996

9 **A Bill for an Act relating to the Aboriginal and**
10 **Torres Strait Islander Commission, and for related**
11 **purposes**

12 The Parliament of Australia enacts:

13 **1 Short title**

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

16 **2 Commencement**

- 17 (1) Subject to subsection (2), this Act commences on the day on which
18 it receives the Royal Assent.
- 19 (2) Item 52 in Schedule 1 commences on the 28th day after the day on
20 which this Act receives the Royal Assent.

Schedule 1

1 **3 Schedule(s)**

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3 Act is amended or repealed as set out in the applicable items in the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

1
2 **Schedule 1—Amendment of the Aboriginal**
3 **and Torres Strait Islander Commission**
4 **Act 1989**

5 **1 After section 21**

6 Insert:

7 **21A Commission’s interest in land**

8 (1) Any liability or obligation of an individual, a body corporate or an
9 unincorporated body to the Commission arising:

10 (a) under the terms and conditions of a grant or loan referred to
11 in subsection 14(2); or

12 (b) under section 20 or 21;

13 is taken to be an interest of the Commission in the land to which it
14 relates.

15 (2) The land is charged with the payment of all costs and expenses
16 incurred by the Commission in respect of its enforcement of the
17 liability or obligation.

18 **2 Subsections 31(2) and (3)**

19 Repeal the subsections, substitute:

20 (2) Subject to subsection (3), a person is not qualified to be appointed
21 as a Commissioner if he or she has been convicted and is under
22 sentence, or subject to be sentenced, for any offence punishable
23 under the law of the Commonwealth or of a State or Territory by
24 imprisonment for one year or longer.

25 (3) Subsection (2) does not disqualify a person from being appointed
26 as a Commissioner if the Federal Court of Australia, on application
27 by the person, declares that in spite of the person’s conviction, he
28 or she ought not to be disqualified from being appointed as a
29 Commissioner.

30 **3 Subsection 32(1)**

31 Omit “a zone election”, substitute “each round of zone elections”.

1 **4 At the end of Division 3 of Part 2**

2 Add:

3 **32A Alternate Deputy Chairperson**

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

8 **5 After subsection 33(1B)**

9 Insert:

10 (1BA) The alternate of the Deputy Chairperson of the Commission is to
11 be elected for a period determined by the Commission and holds
12 office until:

- 13 (a) the end of that period; or
14 (b) he or she is elected as Deputy Chairperson of the
15 Commission; or
16 (c) he or she ceases to be a Commissioner;
17 whichever happens first. However, if he or she ceases to hold
18 office because of paragraph (a) and is still a Commissioner, he or
19 she may be re-elected.

20 **6 Subsection 35(3)**

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

22 **7 After subsection 36(1)**

23 Insert:

24 (1A) If:

- 25 (a) either of the following circumstances exists:
26 (i) there is a vacancy in the office of Commission
27 Chairperson, whether or not an appointment has
28 previously been made to the office;
29 (ii) the Commission Chairperson is absent from duty or
30 from Australia or is, for any reason unable to perform
31 the duties of the office; and
-

-
- 1 (b) either of the following circumstances exists:
2 (i) there is a vacancy in the office of Deputy Chairperson
3 of the Commission, whether or not a person has
4 previously been elected as Deputy Chairperson;
5 (ii) the Deputy Chairperson is absent from duty or from
6 Australia or is, for any reason, unable to perform the
7 duties of Deputy Chairperson;
8 the alternate of the Deputy Chairperson is to act as the Commission
9 Chairperson.
- 10 (1B) If the alternate of the Deputy Chairperson of the Commission is not
11 acting as the Commission Chairperson under subsection (1A) and
12 either of the following circumstances exists:
13 (a) there is a vacancy in the office of Deputy Chairperson;
14 (b) the Deputy Chairperson is absent from duty or from Australia
15 or is, for any reason, unable to perform the duties of Deputy
16 Chairperson;
17 the alternate of the Deputy Chairperson is to act as the Deputy
18 Chairperson.
- 19 (1C) Anything done by or in relation to a person purporting to act under
20 subsection (1), (1A) or (1B) is not invalid merely because the
21 occasion to act had not arisen or had ceased.

22 **8 After subsection 36(2)**

23 Insert:

- 24 (2A) A person appointed to act as the Deputy Chairperson of the
25 Commission may not act if there is an alternate of the Deputy
26 Chairperson.

27 **9 Subsection 36(6)**

28 Repeal the subsection, substitute:

- 29 (6) The Minister may, after consulting the Commission Chairperson,
30 appoint a person to act in the office of a Commissioner (other than
31 the Commission Chairperson):
32 (a) during a vacancy in the office, whether or not a person has
33 previously been appointed to the office; or
-

1 (b) during any period, or during all periods, when the
2 Commissioner is absent from duty or from Australia or is, for
3 any reason, unable to perform the duties of the office.

4 **10 Section 38**

5 Repeal the section, substitute:

6 **38 Disclosure of interests**

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

10 **11 After subsection 39(1B)**

11 Insert:

12 (1C) The alternate of the Deputy Chairperson of the Commission may
13 resign the office of alternate of the Deputy Chairperson by writing
14 signed by him or her and sent to the Commission Chairperson.

15 **12 After subsection 40(6)**

16 Insert:

17 (6A) If a person who is a Commissioner is, because of a decision or
18 order of the Federal Court of Australia, taken not to have been duly
19 elected as a member of a Regional Council, the person ceases, as a
20 result of the decision or order, to be a Commissioner.

21 **13 Paragraphs 40(7)(a) and (b)**

22 Repeal the paragraphs, substitute:

23 (a) has been convicted and is under sentence, or subject to be
24 sentenced, for any offence punishable under the law of the
25 Commonwealth or of a State or Territory by imprisonment
26 for one year or longer;

27 **14 Subsection 68(4)**

28 Repeal the subsection.

1 **15 After paragraph 76(1)(da)**

2 Insert:

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

5 **16 Paragraph 78A(1)(a)**

6 After “(ba)”, insert “(c), (d), (da), (db),”.

7 **17 Paragraph 81(1)(a)**

8 Omit “by the TSRA, by other Commonwealth bodies”, substitute “by
9 other Commonwealth bodies (except the TSRA)”.

10 **18 Paragraph 81(1)(b)**

11 Omit “by the TSRA, by Regional Councils and by other
12 Commonwealth bodies,”, substitute “by Regional Councils and by other
13 Commonwealth bodies (except the TSRA),”.

14 **19 Paragraph 81(1)(c)**

15 Omit “, the TSRA”.

16 **20 After subsection 90(2)**

17 Insert:

18 (2A) Despite subsection (2), a person to whom this section applies may:

19 (a) divulge or communicate any information referred to in
20 paragraph (2)(a) to anyone who is authorised in writing by
21 the person to whose affairs the information relates to receive
22 the information; and

23 (b) produce a document referred to in paragraph (2)(b) to anyone
24 who is authorised in writing by the person to whose affairs
25 the document relates to receive the document.

26 **21 Paragraph 91(7)(a)**

27 Repeal the paragraph, substitute:

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

1 **22 Application**

2 The amendment made by item 21 applies to determinations made after
3 the commencement of that item.

4 **23 Paragraph 100A(5)(a)**

5 Repeal the paragraph, substitute:

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

9 **24 Application**

10 The amendment made by item 23 applies to rules made after the
11 commencement of that item.

12 **25 Paragraph 102(1)(c)**

13 Repeal the paragraph, substitute:

- 14 (c) the person:
15 (i) is a member of the staff of the Commission or the
16 TSRA; or
17 (ii) is a consultant to the Commission or the TSRA; or
18 (iii) is a director of, or has a controlling interest in, a body
19 corporate that is a consultant to the Commission or the
20 TSRA;

21 **26 Paragraphs 102(1)(d) and (e)**

22 Repeal the paragraphs, substitute:

- 23 (d) the person has been convicted and is under sentence, or
24 subject to be sentenced, for any offence punishable under the
25 law of the Commonwealth or of a State or Territory by
26 imprisonment for one year or longer;

27 **27 At the end of subsection 102(1A)**

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

28 Subsection 102(2)

Repeal the subsection, substitute:

- (2) In spite of subsection (1), a person covered by paragraph (1)(d) is not disqualified by that paragraph from standing for election, or being elected, as a member of a Regional Council if the Federal Court of Australia, on application by the person, declares that in spite of the person's conviction, he or she ought not to be disqualified from standing for election, or being elected, as a member of a Regional Council.

29 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*.

30 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.

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

3 **31 Subsection 121(3)**

4 Repeal the subsection, substitute:

- 5 (3) If the Commission is satisfied that a member of a Regional
6 Council:
7 (a) has become a member of the staff of the Commission or the
8 TSRA; or
9 (b) has become a consultant to the Commission or the TSRA; or
10 (c) has become a director of, or has acquired a controlling
11 interest in, a body corporate that is a consultant to the
12 Commission or the TSRA; or
13 (d) is a director of, or has a controlling interest in, a body
14 corporate that has become a consultant to the Commission or
15 the TSRA;
16 the Commission must declare, in writing, that it is so satisfied.

17 **32 Paragraphs 122(1)(a) and (b)**

18 Repeal the paragraphs, substitute:

- 19 (a) has been convicted and is under sentence, or subject to be
20 sentenced, for any offence punishable under the law of the
21 Commonwealth or of a State or Territory by imprisonment
22 for one year or longer;

23 **33 Paragraph 122(1)(c)**

24 Repeal the paragraph, substitute:

- 25 (c) has failed, without reasonable excuse, to comply with section
26 119 or 119A; or

27 **34 At the end of paragraphs 122(1)(d), (e) and (f)**

28 Add “or”.

29 **35 After subsection 127C(6)**

30 Insert:

1 (6A) If the person who is the Chairperson of a Regional Council is,
2 because of a decision or order of the Federal Court of Australia,
3 taken not to have been duly elected as a member of the Regional
4 Council, the person ceases, as a result of the decision or order, to
5 be the Chairperson of the Regional Council.

6 **36 Subsection 127E(2)**

7 After “Commissioner”, insert “or the Chairperson of the Regional
8 Council”.

9 **37 After subsection 127G(6)**

10 Insert:

11 (6A) If a person who is the Deputy Chairperson of a Regional Council
12 is, because of a decision or order of the Federal Court of Australia,
13 taken not to have been duly elected as a member of the Regional
14 Council, the person ceases, as a result of the decision or order, to
15 be the Deputy Chairperson of the Regional Council.

16 **38 Subsection 127J(4)**

17 After “Commissioner,”, insert “the Chairperson of the Regional Council
18 or the Deputy Chairperson of the Regional Council”.

19 **39 After subsection 128(4)**

20 Insert:

21 (4A) When appropriate action has been taken under this section to
22 convene a meeting of a Regional Council, the Chairperson of the
23 Regional Council or, if the Regional Council does not have a
24 Chairperson, the Commission Chairperson must cause notice of the
25 proposed date, time and place of the meeting to be publicly
26 notified, at least 7 days before the proposed date of the meeting, in
27 any manner that the Chairperson concerned thinks appropriate.

28 (4B) A Regional Council must make available, at a meeting of the
29 Council, for inspection by any person:

- 30 (a) copies of the agenda for the meeting; and
31 (b) copies of any other business papers prepared for the meeting
32 except papers that, in the opinion of the Chairperson of the

1 Council, are likely to be considered by the Council at the
2 meeting at a time when it is closed to the public.

3 (4C) A Regional Council must make available at reasonable times
4 during, and at the end of, a meeting of the Council and on the first
5 business day following the day of the meeting, for inspection by
6 any person, any documents presented to the meeting other than
7 documents presented at a time when the meeting was closed to the
8 public.

9 **40 After section 128**

10 Insert:

11 **128A Meeting of Regional Council to be open to the public except in**
12 **certain circumstances**

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

15 (2) A person (other than a member of the Regional Council concerned)
16 is not entitled to be present at a meeting of a Regional Council if:

17 (a) the Council has passed a resolution stating that the person is
18 to be excluded from the meeting; or

19 (b) the Council has passed a resolution authorising the member
20 presiding at the meeting to direct that a person or persons be
21 excluded from the meeting and the member presiding has
22 given such a direction in relation to the first-mentioned
23 person.

24 (3) A person (other than a member of the Regional Council concerned)
25 is not entitled to be present at a meeting of a Regional Council if:

26 (a) the Council is considering an excludable matter; and

27 (b) the Council has resolved that the meeting be closed to the
28 public while that matter is being considered.

29 (4) A resolution referred to in paragraph (3)(b) must identify the
30 matter concerned and the resolution must be recorded in the
31 minutes of the meeting.

1 **128B Right of public to inspect documents without charge**

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

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

20 **128C Excludable matters**

21 The following are excludable matters for the purposes of sections
22 128A and 128B:

- 23 (a) a matter relating to a member of the staff of the Regional
24 Council or to any other person assisting the Council in the
25 performance of its functions;
26 (b) a matter involving personal hardship suffered by a person;
27 (c) any of the following:
28 (i) a trade secret;
29 (ii) other information having a commercial value the
30 disclosure of which would, or could reasonably be
31 expected to, affect a person adversely in respect of the
32 person's lawful business, professional, commercial or
33 financial affairs;
34 (iii) information (other than a trade secret or information to
35 which subparagraph (ii) applies) that would, or could
-

- 1 reasonably be expected to, confer a financial advantage
2 on a competitor of the Regional Council;
- 3 (d) a proposal for the making of a grant or loan, or the giving of
4 a guarantee, by the Regional Council;
- 5 (e) any matter the divulging of which is prohibited by section 90;
- 6 (f) information the disclosure of which would found an action
7 for breach of confidence;
- 8 (g) information of such a nature that it would be privileged from
9 being disclosed in legal proceedings on the ground of legal
10 professional privilege;
- 11 (h) information the disclosure of which would, or could
12 reasonably be expected to, prejudice the enforcement or
13 proper administration of the law;
- 14 (i) a matter affecting the security of the Regional Council, its
15 members, its staff or its property;
- 16 (j) a motion to close the meeting to the public.

17 **41 At the end of Division 7 of Part 3**

18 Insert:

19 **139A Injunctions**

- 20 (1) If a person has engaged, is engaging or is proposing to engage in
21 any conduct that constituted, constitutes or would constitute a
22 contravention of, or an offence against, this Act in its application to
23 an election held under this Act, a prescribed court may, on the
24 application of the Australian Electoral Commission, grant an
25 injunction restraining the person from engaging in the conduct and,
26 if in the court's opinion it is desirable to do so, requiring the person
27 to do something.
- 28 (2) If:
- 29 (a) a person has refused or failed, is refusing or failing, or is
30 proposing to refuse or fail, to do something; and
- 31 (b) the refusal or failure was, is, or would be, a failure to comply
32 with, or an offence against, this Act in its application to an
33 election held under this Act;

-
- 1 a prescribed court may, on the application of the Australian
2 Electoral Commission, grant an injunction requiring the person to
3 do the thing.
- 4 (3) If an application is made to a prescribed court for an injunction
5 under subsection (1), the court may, if in its opinion it is desirable
6 to do so, before considering the application, grant an interim
7 injunction restraining a person from engaging in conduct of the
8 kind referred to in that subsection pending the determination of the
9 application.
- 10 (4) A prescribed court may discharge or vary an injunction granted
11 under subsection (1), (2) or (3).
- 12 (5) If an application is made to a prescribed court for the grant of an
13 injunction restraining a person from engaging in conduct of a
14 particular kind, the power of the court to grant the injunction may
15 be exercised:
- 16 (a) if the court is satisfied that the person has engaged in conduct
17 of that kind—whether or not it appears to the court that the
18 person intends to engage again, or to continue to engage, in
19 conduct of that kind; or
- 20 (b) if it appears to the court that, if an injunction is not granted, it
21 is likely that the person will engage in conduct of that kind—
22 whether or not the person has previously engaged in conduct
23 of that kind and whether or not there is an imminent danger
24 of substantial damage to anyone if the person engages in
25 conduct of that kind.
- 26 (6) If an application is made to a prescribed court for the grant of an
27 injunction requiring a person to do something, the power of the
28 court to grant the injunction may be exercised:
- 29 (a) if the court is satisfied that the person has refused or failed to
30 do the thing—whether or not it appears to the court that the
31 person intends to refuse or fail again, or to continue to refuse
32 or fail, to do the thing; or
- 33 (b) if it appears to the court that, if an injunction is not granted, it
34 is likely that the person will refuse or fail to do the thing—
35 whether or not the person has previously refused or failed to
36 do the thing and whether or not there is an imminent danger
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1 of substantial damage to anyone if the person refuses or fails
2 to do the thing.

3 (7) If the Australian Electoral Commission applies to a prescribed
4 court for the grant of an injunction under this section, the court
5 must not require the applicant or anyone else, as a condition of the
6 granting of an interim injunction, to give any undertakings as to
7 damages.

8 (8) The Supreme Court of each State is invested with federal
9 jurisdiction, and, to the extent that the Constitution permits,
10 jurisdiction is conferred on the Supreme Court of each Territory,
11 with respect to all matters arising under this section.

12 (9) An appeal lies to the Federal Court of Australia from a judgment or
13 order of a prescribed court exercising jurisdiction under this
14 section.

15 (10) The powers conferred on a prescribed court under this section are
16 in addition to, and not in derogation of, any other powers of the
17 court, whether conferred by this Act or otherwise.

18 (11) In this section:

19 *prescribed court* means the Supreme Court of a State or Territory.

20 **42 At the end of section 141**

21 Add:

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

27 **43 After section 142J**

28 Insert:

1 **142JA TSRA's interest in land**

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

12 **44 After section 172**

13 Insert:

14 **172A Disclosure of interests**

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

27 **45 Subsection 191(2) (penalty)**

28 Repeal the penalty, substitute:

29 Penalty: 50 penalty units.

30 **46 After section 191S**

31 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.

47 Subsection 197(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 5 years or 100 penalty units.

48 Subsection 197(2) (penalty)

Repeal the penalty.

1 **49 At the end of section 197**

2 Add:

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

6 **50 Subsections 198(1) and (2)**

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

8 **51 Subsection 198(3)**

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

10 **52 After subsection 198(3)**

11 Insert:

12 (3A) A person must not make a statement to another person, either
13 orally or in writing, as to the other person's right to vote in an
14 election under this Act if the person making the statement knows
15 that the statement is false or misleading in a material particular.

16 Penalty: 25 penalty units.

17 (3B) A person must not encourage another person to vote in an election
18 under this Act if the first-mentioned person knows that the other
19 person is not entitled to vote in the election.

20 Penalty: 25 penalty units.

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

(31/96)