

1994

THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION
AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Aboriginal and Torres
Strait Islander Affairs, the Honourable Robert Tickner MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS
MADE BY THE SENATE TO THE BILL AS INTRODUCED



ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 1994

OUTLINE

This Bill follows the Aboriginal And Torres Strait Islander Commission Amendment Act 1993, the Aboriginal And Torres Strait Islander Commission Amendment Act (No. 2) 1993 and the Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993.

The Bill makes provision for the following amendments to the Aboriginal and Torres Strait Islander Commission Act 1989:

- to include a provision to enable the Prime Minister to confer departmental functions, and for the Minister to confer functions previously exercised by the Aboriginal and Torres Strait Islander Commission (ATSIC), on the Torres Strait Regional Authority (TSRA);
- to include a provision to enable the TSRA to negotiate, cooperate and enter into agreements for the making of a loan or grant with the State of Queensland (including Queensland Local Government bodies), and to make grants and loans to the State of Queensland (including an authority or local government body of the State of Queensland);
- to permit the Minister at his or her discretion to make rules for the conduct of elections in the Torres Strait area or in any part of the Torres Strait area by a system of wards with the power to prescribe the maximum number of members per ward;
- to expand Section 144W so that the purpose for which monies in the in the TSRA Land and Resources Fund may be used will include development and ongoing maintenance of property and marine resources;
- to allow the making of consequential amendments as may be necessary to give effect to the amendments;
- to require the Minister to consult with the TSRA rather than ATSIC before making rules prescribing the manner in which elections for the TSRA are to be conducted and the manner in which casual vacancies in the TSRA are to be filled; and
- to streamline provisions relating to the conduct of zone elections.
- to empower the Minister in effect to allow extra persons to be elected to the TSRA to represent particular communities in the Torres Strait Area but not so as to increase the number of members beyond 23 (the current maximum is 20). The exercise of this power is to be subject to Parliamentary disallowance.

FINANCIAL IMPACT STATEMENT

The financial impact of the Bill will be minimal.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 - Short Title

1. This clause provides for the Act to be cited as the Aboriginal and Torres Strait Islander Commission Amendment Act 1994 and that the Aboriginal and Torres Strait Islander Commission Act 1989 is referred in the Act as the 'Principal Act'.

Clause 2 - Commencement

2. This clause provides that sections 1, 2, 4 and 31 of the Act shall commence on Royal Assent and that the remainder of the Act shall come into operation immediately after the commencement of Division 1 of Part 28 of the Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993 (ie 1 July 1994).

Clause 3 - Interpretation

3. This clause amends the definition of "TSRA election" in subsection 4(1) of the Principal Act to mean an election for a member or members of the TSRA conducted under Division 5 of Part 3A.

4. This clause also amends the definitions of "designated number" and "ward" in subsection 4(1) of the Principal Act to mean, in the case of a Regional Council ward, the meaning given by section 100A; and, in the case of a TSRA ward, the meaning given by section 142TA.

4A. This clause also amends the definition of "eligible number" in subsection 4(1) of the Principal Act to mean 20, or such greater number as is provided in a notice in force under section 142R(1A) if such a notice is in fact in force.

Clause 4 - Zone elections

5. This clause repeals section 132 and inserts a new section 132.

6. Subclause 1 provides that a zone election must be conducted in accordance with the Act.

7. Subclause 2 provides that a zone election (other than one for the Torres Strait zone) must also be conducted in accordance with the following criteria: if the election is a supplementary election, under the zone election rules in force on the day before the Minister fixes the day for the close of the poll for the supplementary election; if it is not a supplementary election, under the zone election rules in force at the end of the election period for the last round of Regional Council elections.

8. Subclause 3 provides that subject to zone election rules made under section 138, a zone election must be conducted by the Australian Electoral Commission.

9. Subclause 4 defines "supplementary election" as meaning a zone election held to fill a casual vacancy or in place of a zone election in relation to which the Federal Court has made an order under Schedule 4.

Clause 5 - Amendment for Torres Strait zone

10. This clause inserts a new subsection 132(2A) which provides that a zone election for the Torres Strait zone must also be conducted in accordance with the following criteria: if the election is a supplementary election, under the zone election rules in force on the day before the Minister fixes the day for the close of the poll for the supplementary election; if it is not a supplementary election, under the zone election rules in force at the end of the election period for the last TSRA election.

Clause 6 - Timing of zone elections

11. Formal, to take into account elections for wards.

Clause 7 - Conferring functions on the TSRA

12. This clause inserts a new section 142AA to provide that the Prime Minister may confer a departmental function on the TSRA, and the Minister may confer a function previously discharged by ATSIC, for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders or Aboriginal persons living in the Torres Strait area. Departmental function is defined to mean a function that has previously been performed by a Department but does not include a function of ATSIC.

Clause 8 - Powers of TSRA

13. This clause amends subsection 142C(2) to give the TSRA the following additional powers: to negotiate and co-operate with other Commonwealth, State, Territory and local government bodies; to enter into an agreement with the State of Queensland (and its local government bodies) for the making of a grant or loan under section 142GA; and to enter into an agreement (other than one last mentioned above) with a State or Territory.

Clause 9 - TSRA may make grants and loans to State and Territory governments etc.

14. This clause inserts a new section 142GA to enable the TSRA to make a grant or loan of money to the State of Queensland and an authority of the State of Queensland, 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 grant or loan is to be subject to such terms as the TSRA determines.

Clause 10 - Restriction on right to dispose of interest in land

15. Formal. Consequential upon new section 142GA.

Clause 11 - TSRA to formulate decision-making principles etc

16. Formal, to take into account the new section 142GA.

Clause 12 - Constitution of TSRA

17. Section 142R provides that the TSRA consists of the eligible number (20) of members. This clause amends s 142R by inserting subsections 1A, 1B, and 1C to empower the Minister to fix the eligible number for the TSRA by notice in the Gazette. The number so fixed must be at least 20 and no more than 23. The notice is a disallowable instrument under section 46A of the Acts Interpretation Act 1901.

Clause 12A - Minister may determine manner of representation on TSRA

17A. Section 142S empowers the Minister to issue a notice determining that the TSRA consists of persons elected to represent particular communities under Queensland legislation. This technical amendment amends s 142S by inserting a new subsection 3A to empower the Minister to amend an existing s 142S notice (where he or she has changed the eligible number under s 142R) so that the number of members equals the eligible number.

17B. A new subsection 3B provides that the subsection 3A does not fetter the Minister's power to revoke, amend or vary a notice.

Clause 13 - TSRA wards

18. This clause inserts a new section 142TA. Subsection (1) provides for the TSRA elections rules to make provision for the division of the Torres Strait area into specified wards, for the setting out of ward boundaries and the fixing of the designated members for each ward.

19. Subsection (2) provides an explanation of the significance of fixing the designated number of members for each ward, such that if the designated number is 1 there is to be a single member for the ward, and if it any other number, there are to be that number of members of the TSRA for the ward.

20. Subsection (3) restricts the total number of members of TSRA for all wards to equal the eligible number (as defined) less the number of members (if any) who hold office as members under a notice under section 142S.

21. Subsection (4) is a formal provision about the operation of the TSRA election rules for the purposes of section 142TA. Subsection (5) provides that if there are no such rules in force that divide the Torres Strait area into wards, the area is taken to be a single ward and the designated number equals the eligible number (as defined) less the number of members (if any) who hold office as members under a notice under section 142S.

Clause 14 - People entitled to vote at TSRA elections

22. Formal. Consequential upon the TSRA ward election provisions.

Clause 15 - People qualified to be elected to the TSRA

23. Formal. Consequential upon the TSRA ward election provisions.

Clause 16 - Term of office of members of TSRA

24. Formal. Consequential upon the TSRA ward election provisions. More substantively, it inserts a new sub-section (3) in section 142W to provide a definition of the phrase "by-election to fill a casual vacancy" to include an election of a member of the TSRA to fill a position created by an increase in the eligible number.

Clause 17 - Polling Places

25. Formal. Consequential upon the TSRA ward election provisions.

Clause 18 - Fixing of election days etc.

26. This clause amends section 143 by inserting a new paragraph 143(2)(c), which provides that if the Torres Strait area is divided into wards, the Minister must cause to be published together with the notice fixing the polling day, a notice setting out an estimate by the Minister in relation to each ward the number of eligible voters and the number of persons living in the ward who are Torres Strait Islanders or Aboriginal persons.

Clause 19 - Effect of nominations

27. This clause repeals section 143A and inserts a new section 143A. Subsection (1) provides that if the number of candidates nominated for a TSRA ward is equal to or less than the designated number for the ward then those candidates must be declared duly elected. Provision is also made for the deferral of the declaration where subsection (3) applies.

28. Subsection (2) provides that if the number of candidates nominated for ward elections is greater than the designated number then a poll must be held in relation to that ward.

29. Subsection (3) provides that where subsection (1) applies to some, but not all, of the TSRA wards, all declarations must be made in respect of all wards on the same day.

Clause 20 - Counting of votes and election of candidates

30. This clause repeals section 143E and inserts a new section 143E which provides that the votes cast at a TSRA election must be counted, and candidates elected, as provided in whichever of Schedules 2 and 2A applies and the TSRA election rules.

Clause 21 - Rules for conduct of elections

31. This clause amends section 143G to provide that the Minister may after consulting the Australian Electoral Commission and the TSRA makes rules for the conduct of TSRA elections. It also provides that among the matters in respect of which the Minister may make the rules (for the purposes of subsection 143G(3)) include the determination of the ward in which a person subject to sub-paragraph (3)(a) may vote, and the manner of changing the membership of the TSRA to conform with changes in the eligible number including the holding of by-elections.

Clause 22 - Authorised electoral officer

32. Formal. Consequential upon the repeal of Schedule 2B.

Clause 23 - Members taken to have resigned etc

33. This clause amends section 143R by inserting a new subsection (1A) that provides that if the TSRA is satisfied that a member of the TSRA for a TSRA ward does not live in the ward and has not lived in the ward at all during the previous 6 months, the TSRA may declare in writing that it is so satisfied. In such a case, the member concerned is taken to have resigned on the date of the declaration (subject to the Administrative Appeals Tribunal Act 1975).

Clause 24 - TSRA Housing Fund

34. This clause is a formal amendment to include the new section 142GA in the operation of section 144V.

Clause 25 - TSRA Land and Natural Resources Fund

35. This clause omits subsection 144W(3) and inserts a new subsection 144W(3) which provides that money in the Fund may be spent only in developing and implementing the marine strategy referred to in subsection 142D(3); or in developing or maintaining real estate; or in acquiring an interest in land; or in making a grant of money under section 142F or section 142GA on condition that the money be spent for a purpose described above or in acquiring an interest in land.

Clause 26 - Review by Administrative Appeals Tribunal

36. Formal. Consequential upon the TSRA ward election provisions.

Clause 27 - Schedule 2

37. Formal. This clause makes consequential changes to Schedule 2 to provide for a method of counting votes and determining the successful candidates at elections for 2 or more members for a TSRA ward.

Clause 28 - Schedule 2A

38. Formal. This clause makes consequential changes to Schedule 2A to provide for a method of determining the successful candidate at election for single member for a TSRA ward.

Clause 29 - Schedule 2B

39. Formal. This clause repeals Schedule 2B.

Clause 30 - Schedule 4

40. This clause inserts a new clause 3A to Schedule 4.

41. Subclause 3A(1) provides that any petition disputing an election held as part of a general election must be filed in a Registry of the

Federal Court within 40 days after the last day on which a poll is declared in relation to the general election.

42. Subclause 3A(2) provides that any petition disputing any other election must be filed in a Registry of the Federal Court within 40 days after the poll is declared in relation to the election.

43. Subclause 3A(3) provides that 'general election' means a round of Regional Council elections; or a round of zone elections; or a TSRA election for all wards.

Clause 31 - Amendments of Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993

44. Formal. Consequential upon the zone election provisions.