Aboriginal and Torres Strait Islander Commission Amendment Bill (No. 3) 1993

Date Introduced: 28 October 1993
House: Senate
Portfolio: Aboriginal and Torres Strait Islander Affairs

Commencement Date: The Act commences on the date of Royal Assent, except Part 25 which commences the date after the day of Royal Assent and Part 18, Schedule 1, Part 28 (other than subdivision A of Division 2) and Schedules 2 and 3, which commence on 1 July 1994.

Purpose

The major amendments proposed by this Bill will:

* establish the Torres Strait Regional Authority to replace the existing Regional Councils in the Torres Strait;
* simplify the financial provisions, and devolve some financial functions to the Regional Councils;
* strengthen the role of the Office of Evaluation and Audit;
* establish the Electoral Review Panel.

Background

This is the third of a package of amendments to the Aboriginal and Torres Strait Islander Commission Act 1989, (the Act) following the review of the operation of the Act undertaken by the Aboriginal and Torres Strait Islander Commission (the Commission), contained in a report to the Minister in February 1993 (the Report). The Backgrounds contained in Digests of the two previous amending Acts should be referred to in conjunction with this Digest.

In a Press Release accompanying the introduction of the second set of amendments, the Minister for Aboriginal and Torres Strait Islander Affairs, Mr Tickner, (the Minister) foreshadowed this third Bill, and noted that it was important that the reforms proposed by the Bills be dealt with as a package.

The Second Reading Speech identifies the principle functions of the Bill as providing for:

* strengthening the role of the Office of Evaluation and Audit;
* streamlining the financial provisions of the Act, one of the effects of which will be to facilitate the further devolution of authority to Regional Councils;
* major changes to arrangements for the Torres Strait, including the establishment of a Torres Strait Regional Authority (TSRA); and
* establishing an independent Electoral Review Panel.

Office of Evaluation and Audit

The Report made two main recommendations in relation to the Office of Evaluation and Audit. First, that the Minister's involvement be removed as his control was contrary to the principles of self-determination set out in the Act, and secondly that the functions of the office be expanded to include Regional Councils, portfolio related agencies and ATSIC funded organisations.
The proposed amendment will give effect to the second recommendation only.

Financial Provisions

The Report notes the Commission's view that there is a need to repeal the financial provisions of the Act, which it describes as restrictive accountability mechanisms. The Commission expresses the view that ATSIC has clearly demonstrated a commitment and an ability to manage its affairs equitably and in accordance with the tightest accountability mechanisms.

The proposed amendments closely parallel the Report's recommendations for the old provisions to be replaced by a much simpler, general enabling provision. The amendments also allow delegation of any or all of the Commission's funding powers to the Regional Councils. The Commission is required to formulate written principles about the making of grants etc under the new funding powers, and act in accordance with these principles.

The Minister emphasises in the second reading speech to the Bill that the proposed amendments simplify the funding arrangements and do not reduce the accountability requirements of the ATSIC to the Parliament or the Aboriginal and Torres Strait Islander people.

Proposed amendments require that draft budgets of both the Commission and Regional Councils provide additional information about the allocation of funds.

Torres Strait Regional Authority

The setting up of a separate body to represent the Torres Strait was a recommendation of the Report. The Commission believed that consideration should be given to advancing the autonomy of the Torres Strait area.

In the Report the Commission speaks of the need to recognise Torres Strait Islanders as a different and separate group of indigenous Australians who continue to assert their cultural integrity. The Report further noted the Commission's belief that there is a case for a movement towards further autonomy for the Torres Strait, associated with political steps being taken to secure a form of self-government for the Torres Strait.

Calls for increased autonomy for the Torres Strait have come from a number of sources. Recent media reports that the majority of Torres Strait Islanders supported a declaration of sovereignty made by a group of Torres Strait Islanders in Cairns, appear however to have been unfounded.

Electoral Review Panel

The second reading speech notes that the boundary review process proposed in the amendments is modelled on the redistribution committees established by the Australian Electoral Act. The process is designed to ensure panel decisions are, and are seen to be, independent and objective.

The proposed amendments also require the review panel to review matters relating to the electoral system.

Main Provisions

Evaluation and Audit

Parts 2 and 3 of the Bill relate to the Office of Evaluation and Audit. A new section 76 is substituted and substantially expands the functions of the Office. It previously undertook auditing and evaluation of the Commission only.

The proposed new section 76 provides that the Office will undertake regular evaluation and audit of the operations of:

* the Commission
* Aboriginal Hostels Limited (AHL)
* the Aboriginal and Torres Strait Islander Commercial Development Corporation (the Corporation)
The Office will evaluate or audit particular aspects of the operations of:

* the Commission, at the request of the Minister or the Commission;
* AHL, at the request of the Minister, the Commission or AHL;
* a body that has received money from AHL, at the request of AHL, but only to the extent that the evaluation or audit concerns that money;
* the Corporation, at the request of the Minister, the Commission or the Corporation;
* a body that has received money from the Corporation, at the request of the Corporation, but only to the extent that the evaluation or audit concerns that money;

The Office will also evaluate or audit, but only to the extent that the evaluation or audit concerns a grant or loan or guarantee as the case may be, at the request of the Minister or the Commission:

* an individual who has received one or more grants or loans from the Commission;
* a body corporate that has received one or more grants or loans from the Commission;
* an unincorporated body that has received one or more grants or loans from the Commission;
* a borrower, whether an individual, a body corporate, or an unincorporated body, one or more of whose loans have been guaranteed by the Commission.

The functions of the Office are specified to be in addition to functions already conferred on the Auditor-General.

Part 26 expands the power of the Director of evaluation and audit to examine documents by inserting proposed new section 78A. The Director, or an authorised person with written authority from the Director, is entitled at all reasonable times to full and free access to relevant documents, and may require a person to answer such questions as she or he considers necessary. The section provides a penalty for refusing to comply or for knowingly providing false or misleading information. A person may not refuse to comply on the grounds of a tendency to incriminate the person, but the evidence given is not admissible as evidence in any criminal proceedings.

Part 17 allows the delegation by the Commission of the power to engage consultants, to the Director of Evaluation and Audit.

Appointments under the Act

Part 4 amends section 47 by removing a lower limit on the length of an appointment of a Chief Executive Officer.

Part 5 relates to advisory committees established under section 13 of the Act. Proposed amendments provide that the terms and conditions of appointment are to be determined by the Commission by notice in the Gazette. A new section 13A requires the disclosure of interests by members of advisory committees. Disclosure is required of direct or indirect pecuniary interests in a matter being considered or about to be considered by the Committee and provision is made for termination of appointment for non-disclosure without reasonable excuse (s.13B).

Part 6 inserts new sections 86A-C which deal with the Torres Strait Islander Advisory Board, and members duty to disclose a pecuniary interest. Provision is made for termination of appointment for non-disclosure and for resignation.

Part 7 relates to administrators of Regional Councils. Sections 115 and 123, which deal with the removal of members of Regional Councils and the appointment of an administrator, are amended to replace the Minister as the person with this responsibility, with the Commissioner. Proposed new sections 124A-H deal with an administrator's employment, including: entitlement to remuneration and allowances (s.124A); disclosure of interests (s.124C); and termination of employment (s.124F). Clause 16 specifies how the amendments apply to administrators according to when they were appointed.

Part 8 proposes amendments relating to the Aboriginal and Torres Strait Islander Commercial Development Corporation (the Corporation) which include requirements that: at least one of the Board Members must be an ATSIC Commissioner (s.157); the Corporation must be consulted by the Minister when considering appointees (s.158); and the Corporation may be consulted by the Minister when considering the termination of an appointment (s.165).
Part 20 proposes to amend sections 55 and 56 of the Act to prohibit staff of the Commission and consultants respectively, from standing for election as a member of a Regional Council. Section 56 is also amended to require the Commission to provide a written instrument, notified in the Government Gazette, which sets out the criteria for engagement of consultants and the standard terms and conditions for engagement.

Part 25 proposes to insert a new section 123A which allows the Commission or its delegate to remove a Regional Councillor if she or he contravenes certain statutory obligations, dealing with preparation of regional plans, draft budgets and annual reports. A decision made under this section may be reviewed by the Administrative Appeals Tribunal (s.196).

Financial Provisions

Part 18 relates to the Commission's general funding powers. The proposed amendments repeal sections 14-19 which granted powers on a purpose basis. The proposed new sections 14-17 instead give a general power to the Commission to:

* make a grant of money;
* grant an interest in land;
* grant an interest in personal property;
* make a loan of money (whether secured or unsecured);
* guarantee a loan;

as long as such a grant, loan or guarantee is for the purpose of furthering the social, economic or cultural development of Aboriginal or Torres Strait Islander persons. The grant, loan or guarantee may be made to:

* an individual;
* a body corporate; or
* an unincorporated body.

Proposed new section 45A allows the Commission to delegate any or all of the above powers to a Regional Council.

Definitions of an Aboriginal or Torres Strait Islander corporation have been repealed as the emphasis has been shifted away from identifying the individual or group who is to receive the grant etc., to compliance with the general purpose of furthering social, economic and cultural welfare.

The Commission may also make grants and loans to State and Territory governments (s.16) and acquire shares or stock in the capital of a body corporate (s.17).

The proposed new section 22 requires the Commission to formulate written principles about making grants and loans, giving guarantees and acquiring shares, and requires it to act in accordance with these principles.

Part 21 proposes to amend section 61 of the Act to change the headings under which funds are allocated in the Commission's draft budgets. It also proposes to expand the information provided about allocations to Regional Councils requiring a new subdivision into:

* amounts in respect of wages for participants in Community Development Employment Projects (CDEP);
* amounts in respect of other expenditure under CDEP;
* amounts that the commission requires the Regional Council to apply to specified purposes; and
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* other amounts not covered above.

Consequent amendments to section 97, which requires the Regional Councils to prepare draft budgets, are proposed to require the same information.

Part 15 amends the section 99 of the Act dealing with annual reports. The proposed amendment requires the inclusion in the report of specified information about grants covered by Regional Council estimates and any other matters that the Commission determines in writing.

Part 16 proposes amendments to section 97 of the Act that provide that draft budgets prepared by Regional Councils must have regard to the regional plan for the relevant region.

Torres Strait Regional Authority

Part 28 proposes to insert a major new part 3A to the Act which establishes the Torres Strait Regional Authority (TSRA). The TSRA is established as a body corporate (s.142) and its functions specified in Division 2 (ss.142A-E). The functions substantially parallel those of ATSIC with the addition of the requirement to recognise and maintain the special and unique Allan Kastom of Torres Strait Islanders living in the Torres strait area. "Allan Kastom" is defined in Schedule 2 of the Bill as:

"the body of customs, traditions, observances and beliefs of some or all of the Torres Strait Islanders living in the Torres Strait area, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships."

Proposed Division 3 (ss.142F-142Q) covers the general funding powers of the TSRA and again these substantially parallel the powers of ATSIC, including provisions for review of the Act, appointment of advisory committees and disclosure of pecuniary interests by committee members.

Proposed Division 4 (ss.142R-S) covers the constitution of the TSRA and provides that there will be 20 elected members. If there are fewer than 7 members at any time the Minister may remove the remaining members and appoint an administrator. The terms of appointment of such an administrator are covered by the proposed Division 11 (ss.142ZF-ZQ). The Minister may also declare by notice in the Gazette that persons elected to represent particular communities under the Community Services (Torres Strait) Act 1984 (Old) (the Queensland Act) make up all or part of the TSRA.

Proposed Division 5 (ss.142T-143H) sets out the procedures for TSRA elections. Elections are to be conducted by the Australian Electoral Commission with elections to be held every three years. Voting is by secret ballot and is not compulsory. The division specifies who is entitled to vote and to be elected, and contains procedural matters including the rules for conduct of elections.

Proposed Division 6 (ss.143J-144F) covers the conditions of appointment of the Chairperson (full-time) and other members (part-time) of the TSRA. These include entitlements to remuneration and allowances, disclosure of pecuniary interests, resignation, suspension and removal, limitations on personal liability, meeting requirements and delegation powers.

Proposed Division 7 (ss.144G-144Q) requires the Minister, with agreement from the TSRA, to appoint a General Manager. The first General Manager will be appointed for 2 years and there after appointments are for 5 years. The conditions of appointment are covered including a requirement to disclose any pecuniary interests.

Proposed Division 8 (ss.144R-T) requires that TSRA staff are to employed under the Public Service Act 1922. The TSRA may make arrangements for Commission staff to perform some functions for them and may engage suitably qualified consultants.

Proposed Division 9 (ss.144U-ZD) covers matters relating to the finances of the TSRA. It specifies how TSRA money may be applied (s.144U), use of an overdraft (s.144X) and the ability to raise money (s.144Y). The TSRA is exempted from taxation (s.144Z). Proposed Sections 144V and 144W set up the TSRA Housing fund and the TSRA Land and Natural Resources Fund. The TSRA must provide the Minister with estimates of expenditure, and annual reports and financial statements (ss144ZA-ZB). Financial statements must be given to the Auditor-General before going to the Minister, and the Audit Act 1901 applies to the TSRA (s.144ZC). The Minister is required to give the TSRA written directions about the administration of its finances (s.144ZD).
Proposed Division 10 (s.144ZE) requires the TSRA to provide information sought by the Minister or the Commission.

**Electoral Review Panel**

**Part 30** proposes a repeal of Division 9 of the Act titled 'Review of Boundaries' and the substitution of a new Division 9 entitled "Review Panels".

The proposed new Division requires the Minister to convene a Review Panel within 90 days after the last declaration of the poll in a round of zone elections (s.141). The Review Panel must review specified matters relating to boundaries and the electoral system generally, and other matters as it determines necessary in writing. The panel must then report to the Minister accordingly including suggestions for amendments. Regional councils and recognised Aboriginal and Torres Strait Islander organisations must be given an opportunity to express their views about the matters under review.

The composition of the Panel shall be (s.141A):

* Commission Chairperson (Chairperson of review panel)
* Electoral Commissioner or representative
* two Aboriginal or Torres Strait Islander persons, appointed by the Minister who are not Commissioners or Regional Councillors
* General Manager of the Australian Surveying and Land Information Group or representative.

The review procedure includes requirements that:

* the review panel invite submissions and consider them within a specified period (s.141C);
* where a draft boundary recommendation is made, notice of the recommendation must be given and objections received (ss.141G-H);
* final boundary recommendations must be given to the Minister and a copy laid before each House of Parliament within 15 sitting days after its receipt by the Minister (s141J-K);
* certain matters be considered before draft boundary recommendations are made, including the community or communities of interest concerned (s.141M).

Where objections against draft boundary recommendations are received, the Minister is required to convene an augmented (by the addition of two more persons appointed by the Minister, one of whom must be an Aboriginal or Torres Strait Islander person) Review Panel to consider these (s.141N-M). When a decision is made, notice must be published in the Gazette and two newspapers (s.141V), and the decision given to the Minister (s.141X). The Minister must give effect to a final boundary recommendation within 90 days (s.141ZE).

**Miscellaneous Provisions**

**Part 9** proposes to amend section 71 of the Act to exempt the Commission from the requirement to pay excise duty.

**Part 11** amends section 26 of the Act which provides for the review of the operation of the Act by the Commission. The amendments provide for the review of the Act at the Commission's discretion excluding matters mentioned in section 141 (relating to the review of zone and region boundaries).

**Part 12** relates to AHL and proposes to amend section 200 of the Act to bring AHL within the operation of sections of the Audit Act 1901 and the Administrative Decisions (Judicial Review) Act 1977. It also allows the Commonwealth to enter into agreements with AHL.

**Part 14** amends the secrecy provisions of the Act (s.90) to expand those covered by the provisions.
Endnotes

2. Second Reading Speech, Aboriginal and Torres Strait Islander Commission Amendment Bill (No.3) 1993, p.2.
3. Aboriginal and Torres Strait Islander Commission, Review of the Aboriginal and Torres Strait Islander Commission Act 1989, p.19.
6. Ibid. p.37.
7. Ibid. p.36.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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