Aboriginal and Torres Strait Islander Commission Amendment Bill (No. 2) 1993

Date Introduced: 18 August 1993
House: House of Representatives
Portfolio: Aboriginal and Torres Strait Islander Affairs

Purpose

To amend the Aboriginal and Torres Strait Islander Commission Act 1989 (the Principal Act) as part of the Government's response to the 1993 report of the Aboriginal and Torres Strait Islander Commission (ATSIC) titled Review of the Operation of the Aboriginal and Torres Strait Islander Commission Act 1989.

The major amendments proposed by this Bill will:

* entitle members of Regional Council advisory committees to receive remuneration and allowances for their services;

* provide for the division of Regional Council regions into a maximum of five wards per region;

* enhance provisions relating to the declaration of pecuniary interests by Regional Council members; and

* provide for the suspension from office of Regional Councillors and Deputy Chairpersons of Regional Councils.

Background

The measures proposed by this Bill flow from a February 1993 report by ATSIC titled Review of the Operation of the Aboriginal and Torres Strait Islander Commission Act 1989. In relation to Regional Councils, which is the primary focus of this Bill, the findings of the ATSIC report included:

* the way in which Regional Councils are chosen is determined by the Regional Council Election Rules which do not provide for differences between regions;

* the failure of the Principal Act to exclude bankrupt persons from standing for election to a Regional Council and their failure to provide for the removal of a member who becomes bankrupt; and

* the rules in relation to the declaration and possible conflict of interest of Regional Council members.

Consequential to the above findings were a number of recommendations, including:

* the Minister be allowed, on receipt of a petition from a specified proportion of eligible voters in a region and after consultation with ATSIC and the Australian Electoral Commission, to make separate rules for the conduct of elections in that Region; and

* undischarged bankrupts be ineligible to stand for election as a member of a Regional Council, and a Regional Councillor who becomes bankrupt be liable to removal from office;
provisions relating to the disclosure of interests for Regional Councillors be amended when Regional Councils are granted the power to approve expenditure. The Bill forms the second of a three part legislative package of reforms to the Principal Act. The first package of legislative reforms were contained in the Aboriginal and Torres Strait Islander Commission Amendment Act 1993. The more important legislative reforms made by that Act included a reduction in the number of ATSIC Commissioners from 20 to 17; and a reduction in the number of Regional Council from 60 to 36. The Minister, in the Second Reading Speech to this Bill, stated that a third package of legislative reforms will be introduced later in these Sittings to deal with arrangements for Torres Strait Islanders, including the establishment of a Torres Strait Regional Authority; streamlining of the financial provisions of the Principal Act; and granting the Office of Evaluation and Audit powers to evaluate and audit Regional Councils, Aboriginal Hostels, the Aboriginal and Torres Strait Islander Commercial Development Corporation and related ATSIC funded organisations.

Main Provisions

Advisory Committees: Section 96 of the Principal Act provides that a Regional Council may establish an advisory committee/s to advise it in relation to the performance of its functions. Such an advisory committee may include members of the Regional Council. The effect of new subsections 96(3) and 96(4), that will be inserted into the Principal Act by clause 4, will be to entitle members of advisory committees to receive remuneration and allowances for their services and provide that such members will hold office on terms and conditions determined by ATSIC to the extent they are not.

The principal effects of clauses 5 and 6 will be to impose a requirement on members of advisory committees that they disclose any direct or indirect pecuniary interests they have in a matter being considered or about to be considered by the committee, and require Regional Councils to terminate the appointment of members of advisory committees who fail without reasonable excuse to disclose such pecuniary interests.

Regional Council Wards: Clauses 7-20 deal with amendments relating to a ward system for Regional Council elections. The principal effects of proposed section 100A, that will be inserted into the Principal Act by clause 8, will be to:

- allow Regional Council election rules to provide for the division of a region into wards, for the setting of boundaries of wards and the fixing of the number of members for each ward; and
- limit the number of wards in each region to a maximum of five.

Clauses 11-19 are consequential amendments relating to the proposed establishment of a ward system for Regional Council elections. The amendments deal with electoral matters and, basically, provide that elections are to be conducted under the same rules as currently apply for elections to Regional Councils.

Regional Councils: The effect of clause 22 will be to add to the list of circumstances set out in section 102 of the Principal Act that make a person ineligible to stand for election, or to be elected, as a member of a Regional Council. The additional circumstances proposed by clause 22 are if the person is bankrupt, or there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under bankruptcy law.

Section 119 of the Principal Act deals with the disclosure by Regional Council members of pecuniary interests in a matter being considered or about to be considered by a Regional Council. Subsection 119(2) of the Principal Act provides that the disclosure of a pecuniary interest has to be recorded in the minutes of the meeting of the Regional Council. A new subsection 119(2), to be substituted into the Principal Act by clause 23, provides that the disclosure of a pecuniary interest has to be recorded in the minutes of the meeting and that the member making the disclosure is not:

- unless the Minister determines otherwise, to be present at Regional Council; or
- take part in any decision of the Regional Council which relates to the pecuniary interest.
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New subsections 119(4)-(6), that will be inserted into the Principal Act by clause 23, provide:

* that the Minister may determine the interests that are and are not to be taken to be direct or indirect pecuniary interests; and

* that such determinations will be subject to disallowance by Parliament.

Section 122 sets out the circumstances in which a person ceases to be a member of a Regional Council. Clause 25 adds a number of new circumstances in which a person ceases to be a member of a Regional Council, including absence from three consecutive meetings of a Regional Council without leave of the Council and reasonable excuse; bankruptcy; or an assignment of their remuneration for the benefit of their creditors.

New section 122A, that deals with the suspension and removal of Regional Councillors, will be inserted into the Principal Act by clause 26. Key effects of this provision include:

* ATSIC may suspend a Regional Councillor for misbehaviour or physical or mental incapacity (ATSIC may only do this where it has notified the Regional Councillor and given them 30 days within which to show why they should not be suspended);

* a statement identifying the Regional Councillor and grounds for the suspension will have to be laid before Parliament;

* Parliament may pass a resolution that a suspended Regional Councillor be restored to office (where this occurs, ATSIC has to terminate the suspension);

* where Parliament does not pass a resolution for the restoration to office of a suspended Regional Councillor, ATSIC may remove the Regional Councillor from office; and

* where a Regional Councillor is removed from office, a statement identifying the Regional Councillor, why they were removed and the grounds for removal, must be laid before Parliament which has the power to disallow the suspension made.

New sections 127E-127J, dealing with the position of Deputy Chairperson of a Regional Council, will be inserted into the Principal Act by clause 29. It is proposed that there be standard administrative provisions relating to the position of a Deputy Chairperson. Of interest is proposed section 127G which provides for the suspension and removal from office, by the Minister, of a Deputy Chairperson. Conditions substantially the same in effect as are proposed in relation to the suspension and removal of a Regional Councillor by ATSIC will apply.

A new section 104A, allows for the deferral of the 1993 elections for the Torres Strait Regional Council until 1994 (clause 33). The purpose of proposed section 104A is to bring the elections for the Torres Strait Regional Council into line with elections due under the Community Services (Torres Strait) Act 1984 (Qld). Proposed subsection 104A(1) will exempt the Torres Strait Regional Council from the 1993 round of Regional Council elections. Proposed subsection 104A(2) provides that unless Parliament otherwise provides, the Torres Strait Regional Council election that would otherwise have been held in 1993 has to be held in 1994. Proposed 104A(3) provides that unless Parliament otherwise provides, the polling day/s for the 1994 Torres Strait Regional Council election is not to be held later than the day in 1994 on which the triennial election is held for an Island Council under the Community Services (Torres Strait) Act 1984 (Qld).

Remuneration and Allowances Payable to Certain Office Holders: A new section 194A, that deals with remuneration and allowance payable to certain office holders, will be inserted into the Principal Act by clause 34. The object of proposed section 194A is to allow ATSIC to set a global limit on the remuneration and allowances payable to certain office holders in order to assist ATSIC manage its finances effectively [proposed subsection 194A(1)]. A remuneration and allowance limit may be imposed on ATSIC advisory committees, the Torres Strait Islander Advisory Board, Regional Council advisory committees and a Regional Council [proposed subsection 194A(2)]. Proposed sub-section 194A(8) provides that once the amount paid in remuneration equals the limit, no further remuneration will be payable during the period to which the limit applies.
Meaning of Misbehaviour: Subject to disallowance by Parliament, the Minister may make determinations as to what behaviour constitutes, or does not constitute, misbehaviour for the purposes of the Principal Act (clause 36).

Transitional Provisions Relating to Reduction in Number of Regional Councils: Subject to disallowance by Parliament, the Minister may make such determinations as thought necessary relating to the transition from 59 Regional Councils to 35 Regional Councils (clause 42). (Note: Section 14 of the Aboriginal and Torres Strait Islander Commission Amendment Act 1993 reduced the number of Regional Councils from 60 to 36. The reason for the reference in clause 42 to 59 Regional Councils and 35 Regional Councils rather than 60 and 36 is because Part 10 of this Bill (clauses 39-42) does not apply to the Torres Strait Regional Council.

Endnotes
2. Ibid., at p. 33.
3. Ibid., at p. 34.
4. Ibid., at p. 32.
5. Ibid., at p. 35.
6. Ibid.

Bills Digest Service
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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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