Aboriginal and Torres Strait Islander Commission Amendment Bill 1994
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Further Assistance:

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Aboriginal and Torres Strait Islander Commission Amendment Bill 1994

Date Introduced: 24 March 1994
House: Senate
Portfolio: Aboriginal and Torres Strait Islander Mfairs
Commencement: Formal provisions and clause 4, which deals with zone elections, will commence on Royal Assent. The remaining provisions dealt with in this Digest will commence on 1 July 1994.

Purpose

The principal amendments proposed by this Bill to the Aboriginal and Torres Strait Islander Commission Act 1989 (the Principal Act) will:

- allow the Prime Minister to confer a departmental function on the Torres Strait Regional Authority (the Authority), and the Minister to confer a departmental function of the Aboriginal and Torres Strait Islander Commission (the Commission) on the Authority;
- allow the Authority to make a grant or loan to Queensland, and an authority of that State, for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders or Aboriginal persons living in the Torres Strait area;
- enable the Authority election rules to divide the Torres Strait area into specified wards, set out the boundaries of each ward, and fix the number of members for each ward; and
- allow the Minister to make rules for the determination of the ward in relation to which a person may vote.

Background

The establishment of the Authority formed part of the Government's response to the 1993 report of the Commission titled Review of the Operation of the Aboriginal and Torres Strait Islander Commission Act 1989. The Commission believed that consideration should be given to advancing the autonomy of the Torres Strait area.

In the Report, the Commission spoke 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.

The Authority is a body corporate (section 142 of the Principal Act), whose functions include:

- to recognise and maintain the special and unique Ailan Kastom of Torres Strait Islanders living in the Torres Strait area;
- to formulate and implement programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area; and
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* to develop policy proposals to meet national, State and regional needs and priorities of Torres Strait Islanders and Aboriginal persons living in the Torres Strait area (section 142A).

The functions of the Authority substantially parallel those of the Commission with the addition of the requirement to recognise and maintain the special and unique Ailan Kastom of Torres Strait Islanders.

Sections 142F-142Q of the Principal Act deal with the general funding powers of the Authority. These provisions substantially parallel the powers of the Commission, including provisions for review of the Principal Act, appointment of advisory committees, and disclosure of pecuniary interests by committee members.

Sections 142R-142S of the Principal Act deal with the constitution of the Authority and provide that there are to be twenty elected members. If there are fewer than seven members at any time the Minister may remove the remaining members and appoint an administrator. 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 (Qld) make up all or part of the Authority.

Sections 143J-143H of the Principal Act set out the procedures for Authority elections. Elections are required 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 sections specify who is entitled to vote and to be elected, and contains procedural matters including the rules for conduct of elections.

Sections 144U-144ZD of the Principal Act deal with matters relating to the finances of the Authority. They specify how Authority money may be applied (section 144U), use of an overdraft (section 144X) and the ability to raise money (section 144Y). The Authority is exempt from taxation (section 144Z).

Sections 144V and 144W set up the Authority Housing Fund and the Authority Land and Natural Resources Fund. The Authority must provide the Minister with estimates of expenditure, and annual reports and financial statements (sections 144ZA and 144ZB). Financial statements must be given to the Auditor-General before going to the Minister, and the Audit Act 1901 applies to the Authority (section 144ZC). The Minister is required to give the Authority written directions about the administration of its finances (section 144ZD).

Under section 144ZE of the Principal Act, the Authority is required to provide information sought by the Minister or the Commission about Authority activities.

Main Provisions

Functions of the Authority: A new section 142AA, which will be inserted into the Principal Act by clause 7, will allow the Prime Minister to confer a departmental function on the Authority, and the Minister to confer a departmental function of the Commission on the Authority. The term 'departmental function' is defined as a function that has previously been performed by a Commonwealth department, but not a function of the Commission.

The rationale for the proposed amendment, as stated by the Minister in the Second Reading Speech to this Bill, is that it is 'necessary as the Authority will from 1 July this year exercise ATSIC (the Commission) powers and functions in the Torres Strait and as ATSIC will no longer operate in the Torres Strait area.'

Powers of the Authority: New paragraphs 142C(2)(c)-142C(2)(e), which will be inserted into the Principal Act by clause 8, will confer on the Authority the following new powers:

* to negotiate and co-operate with other Commonwealth, State, Territory and local government bodies;

* to enter into grant or loan agreements under section 142GA (which allows the Authority to act as guarantor of certain loans) with the State of Queensland or an authority of that State; and

* to enter into an agreement, other than an agreement referred to above, with a State or Territory.
The rationale for the proposed amendment, as stated by the Minister in the Second Reading Speech to this Bill, is that it is "essential for the Authority to be able to operate independently from ATSIC in the Torres Strait particularly as the Island Council which will be major beneficiaries of TSRA (the Authority) funding are local authorities."

**Authority may make grants/loans to Queensland government etc:** A new section 142GA, which will be inserted into the Principal Act by clause 9, will allow the Authority to make a grant or loan of money to the State of Queensland or an authority of that State, for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders or Aboriginal persons living in the Torres Strait area. Grants or loans will be subject to such terms and conditions as are determined by the Authority.

The stated rationale for the proposed amendment is as for clause 8.

**Authority Land and Natural Resources Fund:** A new subsection 144W(3), which will be substituted into the Principal Act by clause 25, provides that money in the Authority Land and Natural Resources Fund may only be spent:

* in developing and implementing the marine strategy for the Torres Strait area;
* in developing or maintaining real estate;
* in acquiring an interest in land under subsection 142F(3); or
* in making a grant of money under section 142F or proposed section 142GA (see clause 9) on condition that the money be spent for a purpose described above.

Subsection 144W(3) of the Principal Act currently provides that money in the Authority Land and Natural Resources Fund may only be spent:

* in making a grant of money under section 142F on condition that the money be spent in acquiring an interest in land; or
* in acquiring an interest in land under subsection 142F(3).

The rationale for the proposed amendment, as stated by the Minister in the Second Reading Speech to this Bill, is "because the Torres Strait is essentially a marine environment, the purposes for which monies in the Fund may be spent should be broadened to include development and on going maintenance of real property, including improvements to such property and the development of marine resources in accordance with the marine strategy to be contained in the Torres Strait Development Plan."

**Zone and other elections:** This Bill proposes a number of amendments, of a largely administrative nature, relating to zone and other elections. The principal amendments will:

- require zone elections, other than for the Torres Strait zone, to be conducted:
  - if the election is a supplementary election, under zone election rules operating on the day before the Minister fixes the day for the close of the poll (Note: The term 'supplementary election' is defined as 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 of the Principal Act); or
  - if the election is not a supplementary election, under zone election rules operating at the end of the election period for the last round of Regional Council elections (clause 4);

- require zone elections for the Torres Strait zone to be conducted:
  - if the election is a supplementary election, under zone election rules operating on the day before the Minister fixes the day for the close of the poll; or
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- if the election is not a supplementary election, under zone election rules operating at the end of the election period for the last Authority election (clause 5);

* enable the Authority election rules to divide the Torres Strait area into specified wards, set out the boundaries of each ward, and fix the number of members for each ward (clause 13);

* allow the Minister, after consulting with the Authority and the Australian Electoral Commission, to make rules for the determination of the ward in which a person may vote (clause 21); and

* require that any petition disputing an election be filed in a Registry of the Federal Court within 40 days of the last day on which a poll is declared (clause 30).

Endnotes

1. The Authority will commence operating on 1 July 1994 [Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993 - subsection 2(3)].

2. Aboriginal and Torres Strait Islander Commission, Review of the Aboriginal and Torres Strait Islander Commission Act 1989, p. 37.

3. Ibid., p. 36.


5. 'Allan Kastom' is defined by section 4 of the Principal Act 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.

6. Subsection 142F(3) of the Principal Act provides that the Authority may acquire an interest in land, or personal property, for the purpose of making a grant which furthers the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area.

7. The principal effect of section 142F of the Principal Act is to allow the Authority to make grants and loans (of money, land and personal property) to individuals, corporations (other than a Regional Council) or unincorporated bodies for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal person, living in the Torres Strait area.

8. See Endnote 7 supra.

9. See Endnote 6 supra.

10. The term 'zone election' is defined by section 4 of the Principal Act as an election of a person appointed as a Commissioner to represent a zone.

11. Schedule 4 of the Principal Act deals with disputes about electoral matters. Under Schedule 4, the Federal Court of Australia has jurisdiction to try election petitions.

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31 April 1994

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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Published by the Department of the Parliamentary Library, 1994.