THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Aboriginal and Torres Strait Islander Affairs,
Senator the Hon John Herron)
ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 2000

OUTLINE

The Aboriginal and Torres Strait Islander Commission Amendment Bill 2000 amends the Aboriginal and Torres Strait Islander Commission Act 1989.

The amendments include:

- Changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

- Expressly allowing the Aboriginal and Torres Strait Islander Commission to outsource its commercial functions, including decision making in relation to the application of its funds to Indigenous Business Australia; and

- Provide the option of appointing a full-time Chairperson to Indigenous Business Australia.

FINANCIAL IMPACT

There will be no financial impact arising from the amendments to the Aboriginal and Torres Strait Islander Commission Act 1989.
NOTES ON ITEMS

Clause 1: Short Title

This clause provides that the short title of the Act may be cited as the *Aboriginal and Torres Strait Islander Commission Amendment Act 2000*.

Clause 2: Schedule(s)

This clause provides that each Act specified in a Schedule to the Bill is amended or repealed as set out in the items in the Schedule concerned, and any other item in a Schedule to the Bill has effect according to its terms.

Schedule 1 – Amendments

The following items amend the *Aboriginal and Torres Strait Islander Commission Act 1989* (the ATSIC Act).

Item 1: Title

This item amends the long title to the ATSIC Act by replacing the reference to ‘an Aboriginal and Torres Strait Islander Commercial Development Corporation’ with a reference to ‘a corporation to be known as Indigenous Business Australia’.

Items 2-6: Subsection 4(1) (definitions)

These items repeal the definitions of ‘Commercial Development Corporation’, ‘Commercial Development Corporation Board’, ‘Commercial Development Corporation Chairperson’, ‘Commercial Development Corporation Director’ and ‘Commercial Development Corporation General Manager’. They are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia. [Refer Items 7-11].

Items 7-11: Subsection 4(1)

These items provide for definitions of:

- ‘Indigenous Business Australia’ meaning the body that is referred to in section 145 of the ATSIC Act [Refer Item 28];
- ‘Indigenous Business Australia Board’ meaning the Board of Directors of Indigenous Business Australia referred to in section 155 of the ATSIC Act [Refer Item 50];
- ‘Indigenous Business Australia Chairperson’ meaning the Chairperson of the Indigenous Business Australia Board referred to in section 155 of the ATSIC Act;
- ‘Indigenous Business Australia Director’ meaning a member of the Indigenous Business Australia Board; and,
- ‘Indigenous Business Australia General Manager’ meaning the General Manager of Indigenous Business Australia referred to in section 168 of the ATSIC Act.
Item 12: Subsection 4(2)

This item is consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

Item 13: After subsection 7(1)

This item provides that a function referred to in paragraph 7(1)(a) need not be performed by the Aboriginal and Torres Strait Islander Commission (the Commission) but may be performed by persons who are authorised by the Commission under a contract or agreement or to whom the Commission has delegated the function. This will enable the Commission to outsource the function of formulating and implementing programs for Aboriginal persons and Torres Strait Islanders.

Item 14: After paragraph 10(2)(a)

This item expressly provides the Commission with the power to enter into contracts and agreements and thereby removes any doubt as to the Commission’s powers in this respect. In certain circumstances this power is subject to the written approval of the Minister.

Item 15: Paragraphs 10(2)(b) and (c)

This item is consequential to enabling the Commission to enter into contracts and agreements. [Refer item 14].

Item 16: At the end of subsection 10(2)

This item provides the Commission with the power to appoint Indigenous Business Australia, or any other persons, to act on its behalf as an agent.

Item 17: At the end of section 10

This item provides that a person who is authorised to perform a function as an agent or delegate of the Commission may exercise any of the Commission’s powers in the performance of the function.

Item 18: At the end of Division 5 Part 2

This item provides that the Commission may delegate to Indigenous Business Australia any commercial functions falling within its broader function to formulate and implement programs for Aboriginal persons and Torres Strait Islanders (paragraph 7(1)(a)). A delegation may not be made without the consent of Indigenous Business Australia. A function delegated to Indigenous Business Australia may be sub-delegated to the General Manager by the Board. Provisions of the Acts Interpretation Act 1901 apply in relation to sub-delegation.

Items 19-27: Section 58, paragraphs 59(6)(c), 61(7)(c), 63(4)(c), 66(2)(c), 76(1)(d) and (m), subparagraphs 76(1)(a)(iii) and (b)(iii), Part 4 (heading) and Division 1 of Part 4 (heading).

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.
Item 28: Subsection 145(1)

This item replaces the former subsection 145(1) and provides that the body that was previously in force by the name Aboriginal and Torres Strait Islander Commercial Development Corporation is now to be known as Indigenous Business Australia.

Items 29-34: Section 146, 147, subsections 145(2) and note, (3) and (4) and Division 2 of Part 4 (heading)

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

Item 35: Section 147

This item replaces the former section 147 and provides that Indigenous Business Australia has the following functions: to engage in commercial activities; to promote and encourage Aboriginal and Torres Strait Islander self-management and economic self-sufficiency; and such other functions as are conferred on it by the ATSIC Act. Commercial activities are defined to include the performance of functions referred to in new subsection 7(1A) [refer item 13] that the Commission has authorised or delegated to Indigenous Business Australia to perform.

Items 36-50: Section 151, 152, 154, subsections 148(1) and (2), 149(1), 150(1), (2) and (3), 153(1) and (3) and 155(3) and Division 3 of Part 4 (heading)

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

Item 51: Subsection 155(3)

This item repeals subsection 155(3).

Item 52: Section 156

This item is consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

Item 53: Section 157

This item replaces the former section 157 and provides that

- the Indigenous Business Australia Chairperson is to be appointed by the Minister on a full-time basis or a part-time basis;
- the other Indigenous Business Australia Directors are to be appointed by the Minister on a part-time basis;
- the Indigenous Business Australia Chairperson and at least 4 other Indigenous Business Australia Directors are to be Aboriginal persons or Torres Strait Islanders;
- at least one Indigenous Business Australia Director must be a Commissioner;
- each Indigenous Business Australia Director is to be a person who the Minister is satisfied has experience in: industry, commerce or finance; or Aboriginal or Torres Strait Islander community life or enterprises.

The new section 157 differs from the previous provision in that it allows for the appointment of a full time Chairperson as an alternative to a part-time Chairperson.

**Item 54-57: Section 158 and 160 and subsections 159(1) and (2)**

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

**Item 58: Section 161**

This item replaces the former section 161 and inserts new ‘leave of absence’ provisions. It makes clear that any full-time Chairperson has recreation leave entitlements as determined by the Remuneration Tribunal and that the Minister may, by writing, grant to the Chairperson leave of absence (other than recreation leave) on the terms and conditions that the Minister determines.

The Minister may, by writing, grant to a part-time Chairperson or any other Indigenous Business Australia Director leave of absence from a meeting of the Board. The Minister may delegate to the Indigenous Business Australia Chairperson the power to grant leave of absence to other Directors.

These changes are consequential to the introduction of the provision for the optional appointment of a full-time Chairperson [Refer item 53].

**Item 59-60: Subsection 162(1), (2) and (3).**

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

**Item 61: Saving of appointments of acting Deputy Chairperson and acting Director**

This item maintains in force appointments under subsection 162(2) and (3) that were in force immediately before the Act commenced.

**Item 62-73: Sections 164, 165, 166 and 168, subsections 167(1) to (11) and Divisions 5 and 6 of Part 4 (headings)**

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

**Item 74: Saving of existing appointment of General Manager**

This item maintains in force any appointment of a General Manager under subsection 168(1) that was in force immediately before the Act commenced.

**Item 75-76: Sections 169-178**

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.
Item 77: Saving of existing engagements of employees and consultants

This item maintains in force any engagement of an employee under section 175 or a consultant under section 178 that was in force immediately before the Act commenced.

Item 78: Section 179

This item replaces the former section 179 and expands the definition of the capital of Indigenous Business Australia to include income derived from investments. Capital is also constituted by amounts paid to the Aboriginal and Torres Strait Islander Commercial Development Corporation under section 208 (transferred from the Aboriginal Development Commission) and any amount appropriated by the Parliament as capital.

Item 79-87: Section 181-5, 187 and 188

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

Item 88: Section 190

This item replaces the former section 190 and provides for the delegation of functions and powers by Indigenous Business Australia to its General Manager or a member of staff. It further allows the Indigenous Business Australia General Manager, by writing, to sub-delegate the function or power to a member of staff. Provisions of the Acts Interpretation Act 1901 apply in relation to sub-delegation.

Item 89: Saving of existing delegations

This item maintains in force any delegations under section 190 that were in force immediately before the Act commenced.

Item 90-92: Subsection 192T(2) and paragraphs 191(1)(a), (b), (d) and (e)

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

Item 93: Subsection 196(4) (definition of decisions made by the Commission)

This item amends the definition of a ‘decision made by the Commission’ to include a decision made by a delegate of the Commission. This enables decisions by a delegate to be reviewed by the Administrative Appeals Tribunal in certain circumstances.

Item 94: Section 206

This item is consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.

Item 95: Section 208

This item repeals section 208 which is no longer operative.
Item 96-101: Section 210 and 222 paragraphs 211(2)(a), 215(1)(b) and 222(a) and subparagraph 222(b)(ii)

These items are consequential to changing the name of the Aboriginal and Torres Strait Islander Commercial Development Corporation to Indigenous Business Australia.