



# **Aboriginal and Torres Strait Islander Act 2005**

**No. 150, 1989**

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## About this compilation

### This compilation

This is a compilation of the *Aboriginal and Torres Strait Islander Act 2005* that shows the text of the law as amended and in force on 1 February 2019 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to establish a Torres Strait Regional Authority, an Indigenous Land and Sea Corporation and a corporation to be known as Indigenous Business Australia, and for related purposes**

WHEREAS the people of Australia voted overwhelmingly to amend the Constitution so that the Parliament of Australia would be able to make special laws for peoples of the aboriginal race;

AND WHEREAS the people whose descendants are now known as Aboriginal persons and Torres Strait Islanders were the inhabitants of Australia before European settlement;

AND WHEREAS they have been progressively dispossessed of their lands and this dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal persons and Torres Strait Islanders concerning the use of their lands;

AND WHEREAS it is the intention of the people of Australia to make provision for rectification, by such measures as are agreed by the Parliament from time to time, including the measures referred to in this Act, of the consequences of past injustices and to ensure that Aboriginal persons and Torres Strait Islanders receive that full recognition within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire;

AND WHEREAS it is also the wish of the people of Australia that there be reached with Aboriginal persons and Torres Strait Islanders a real and lasting reconciliation of these matters;

AND WHEREAS it is the firm objective of the people of Australia that policies be maintained and developed by the Australian Government that will overcome disadvantages of Aboriginal persons and Torres Strait Islanders to facilitate the enjoyment of their culture;

AND WHEREAS it is appropriate to further the aforementioned objective in a manner that is consistent with the aims of self-management and self-sufficiency for Aboriginal persons and Torres Strait Islanders;

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AND WHEREAS it is also appropriate to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government;

AND WHEREAS the Parliament seeks to enable Aboriginal persons and Torres Strait Islanders to increase their economic status, promote their social well-being and improve the provision of community services;

AND WHEREAS the Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms through:

- (a) the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard-setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and
- (b) the acceptance of the Universal Declaration of Human Rights:



## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Aboriginal and Torres Strait Islander Act 2005*.

### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that first period.

### **3 Objects**

The objects of this Act are, in recognition of the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples and their present disadvantaged position in Australian society:

- (a) to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them;
- (b) to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;
- (c) to further the economic, social and cultural development of Aboriginal persons and Torres Strait Islanders; and
- (d) to ensure co-ordination in the formulation and implementation of policies affecting Aboriginal persons and Torres Strait Islanders by the Commonwealth, State, Territory and local governments, without detracting from the responsibilities of State, Territory and local governments to

## Section 4

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provide services to their Aboriginal and Torres Strait Islander residents.

### 4 Interpretation

(1) In this Act, unless the contrary intention appears:

***Aboriginal or Torres Strait Islander corporation*** means:

- (a) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- (b) a body corporate where either of the following conditions is satisfied:
  - (i) all the members of the body corporate are Aboriginal persons or Torres Strait Islanders, or both;
  - (ii) a controlling interest in the body corporate is held by Aboriginal persons or Torres Strait Islanders, or both.

***Aboriginal person*** means a person of the Aboriginal race of Australia.

***acquisition functions*** has the meaning given by subsection 191D(1).

***Ailan Kastom*** means 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.

***ATSIC abolition day*** means the day Schedules 1 and 2 to the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* commence.

***Commonwealth body*** includes a Department of State, or authority, of the Commonwealth.

***Commonwealth Electoral Roll*** means the Rolls kept under the *Commonwealth Electoral Act 1918*.

***designated number***:

- (b) in relation to a TSRA ward—has the meaning given by section 142TA.

***election period***, in relation to a TSRA election, means the period:

- (a) starting on the day when the Minister fixes a day or days for the polling in accordance with subsection 142Y(2); and
- (b) ending on the last day on which a poll is declared in relation to that TSRA election.

***eligible number***, in relation to the TSRA, means:

- (a) 20; or
- (b) if a notice under subsection 142R(1A) is in force—the number fixed by the notice.

***estimated population***, in relation to the Torres Strait area, means the number of persons living in that area set out in the most recent TSRA notice that includes such a number.

***Finance Minister*** means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

***holder***, in relation to indigenous-held land, means a person or body who holds an interest in the land, where the interest is relevant to determining the status of the land as indigenous-held land.

***housing loan*** means a loan for one or more of the following purposes:

- (a) the erection or purchase of dwellings or the purchase of land on which dwellings are to be erected or situated;
- (b) the extension or modification of, or the making of additions to, dwellings;
- (c) any purpose incidental to a purpose referred to in paragraph (a) or (b);
- (d) the purchase of household effects;
- (e) the repayment of existing debts incurred for any of the purposes referred to in paragraphs (a), (b), (c) and (d).

***Indigenous Business Australia*** means the body having that name that is referred to in section 145.

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## Section 4

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***Indigenous Business Australia Board*** means the Board of Directors of Indigenous Business Australia referred to in section 155.

***Indigenous Business Australia Chairperson*** means the Chairperson of the Indigenous Business Australia Board referred to in section 155.

***Indigenous Business Australia Chief Executive Officer*** means the Chief Executive Officer of Indigenous Business Australia referred to in section 168.

***Indigenous Business Australia Director*** means a member of the Indigenous Business Australia Board.

***indigenous-held land*** has the meaning given by section 4B.

***Indigenous Land and Sea Corporation*** means the corporation referred to in section 191A.

***Indigenous Land and Sea Corporation Board*** means the Board of Directors referred to in section 191V.

***Indigenous Land and Sea Corporation Chairperson*** means the Chairperson referred to in section 191V.

***Indigenous Land and Sea Corporation Chief Executive Officer*** means the Chief Executive Officer referred to in section 192K.

***Indigenous Land and Sea Corporation Director*** means a member of the Indigenous Land and Sea Corporation Board.

***indigenous waters*** means water, or waters, in relation to which water-related rights are held by:

- (a) an Aboriginal or Torres Strait Islander corporation; or
  - (b) an Aboriginal person or a Torres Strait Islander;
- (whether or not water-related rights in relation to the water or waters are held by any other person).

***interest***, in relation to land, includes:

- (a) a legal or equitable estate or interest in the land; or

(b) a right, power or privilege over, or in connection with, the land.

***internal waters of Australia*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

***management functions*** has the meaning given by subsection 191E(1).

***misbehaviour*** has a meaning affected by section 4A.

***national indigenous land and sea strategy*** means the strategy prepared under section 191N.

***New Housing Fund*** means the New Housing Fund established under section 181A.

***Regional Councils abolition day*** means the day on which Schedule 3 to the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* commences.

***regional indigenous land and sea strategy*** means a strategy prepared under section 191P.

***State body*** includes a Department of State, or authority, of a State.

***Territory body*** includes a Department of State, or authority, of a Territory.

***Torres Strait area*** means the area declared by the Minister, by instrument in writing made for the purposes of this definition, to be the Torres Strait area.

***Torres Strait area number***, in relation to the Torres Strait area, means the number of potential voters set out in the most recent TSRA notice that includes such a number.

***Torres Strait Islander*** means a descendant of an indigenous inhabitant of the Torres Strait Islands.

***TSRA*** means the Torres Strait Regional Authority established by section 142.

## Section 4

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**TSRA Administrator** means a TSRA Administrator appointed under:

- (a) section 142R; or
- (b) section 144ZQ;

to administer the affairs of the TSRA.

**TSRA Chief Executive Officer** means the Chief Executive Officer of the TSRA referred to in section 144G.

**TSRA election** means an election for a member or members of the TSRA conducted under Division 5 of Part 3A.

**TSRA election rules** means rules made by the Minister under section 143G.

**TSRA Finance Direction** means a direction given to the TSRA by the Minister under section 144ZD.

**TSRA Housing Fund** means the TSRA Housing Fund established by section 144V.

**TSRA Land and Natural Resources Fund** means the TSRA Land and Natural Resources Fund established by section 144W.

**TSRA notice**, in relation to a TSRA election, means a notice under subsection 143(2).

**TSRA ward** means a ward referred to in section 142TA.

**TSRA ward election** means an election for one or more members for a TSRA ward.

**ward**:

- (b) in relation to the TSRA—means a ward referred to in section 142TA.

**water-related right** has the meaning given by section 4C.

- (2) The question whether a company is a subsidiary of the Indigenous Land and Sea Corporation or of Indigenous Business Australia shall be determined in the same manner as the question whether a

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corporation is a subsidiary of another corporation is determined for the purposes of the *Corporations Act 2001*.

- (3) A declaration by the Minister for the purposes of the definition of ***Torres Strait area*** is not a legislative instrument.

**4A Minister may make determinations about what constitutes misbehaviour**

- (1) The Minister may, by legislative instrument, make a determination providing that specified behaviour is taken to be misbehaviour for the purposes of this Act.
- (2) The Minister may, by legislative instrument, make a determination providing that specified behaviour is taken not to be misbehaviour for the purposes of this Act.

**4B Indigenous-held land**

*Indigenous-held land*

- (1) For the purposes of this Act, land is ***indigenous-held land*** if, and only if:
- (a) an interest in the land is held by an Aboriginal or Torres Strait Islander corporation; or
  - (b) an interest in the land is held by an Aboriginal person or a Torres Strait Islander.

*Exception—minority interest in tenancy in common*

- (2) For the purposes of subsection (1), an interest in land is to be ignored if:
- (a) the interest consists of a share in a tenancy in common; and
  - (b) the proportion of the shares in the tenancy in common held by:
    - (i) Aboriginal persons; and
    - (ii) Torres Strait Islanders; and
    - (iii) Aboriginal or Torres Strait Islander corporations;

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is less than 50%.

*Exception—minority interest in partnership property*

- (3) For the purposes of subsection (1), an interest in land is to be ignored if:
- (a) the interest consists of a share in partnership property; and
  - (b) the proportion of the shares in the partnership property held by:
    - (i) Aboriginal persons; and
    - (ii) Torres Strait Islanders; and
    - (iii) Aboriginal or Torres Strait Islander corporations;
- is less than 50%.

*Exception—interest of a mortgagee*

- (4) For the purposes of subsection (1), an interest in land is to be ignored if the interest is held in the capacity of mortgagee (whether legal or equitable).

### 4C Water-related rights

- (1) A ***water-related right*** means any legal or equitable right or interest in, or in relation to, water or waters (including the internal waters of Australia) within the outer limits of the exclusive economic zone of Australia.
- (2) A right to do any of the following is an example of a ***water-related right***:
- (a) take or receive water;
  - (b) retain or use water taken;
  - (c) take resources from waters;
  - (d) undertake an activity in or on waters.
- (3) A reference in this section to water includes surface water and ground water.



**5 Act binds the Crown**

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Australian Capital Territory or of the Northern Territory liable to be prosecuted for an offence.

**5A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part 2.5 of the *Criminal Code* (which deals with corporate criminal responsibility) is excluded from applying to offences against this Act by subsection 199(10).

## **Part 3A—Torres Strait Regional Authority**

### **Division 1—Torres Strait Regional Authority**

#### **142 Torres Strait Regional Authority**

- (1) A Torres Strait Regional Authority is established.
  - (2) The TSRA:
    - (a) is a body corporate, with perpetual succession; and
    - (b) is to have a common seal; and
    - (c) may acquire, hold and dispose of real and personal property; and
    - (d) may sue and be sued in its corporate name.
- Note: The *Public Governance, Performance and Accountability Act 2013* applies to the TSRA. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.
- (3) The common seal of the TSRA is to be kept in such custody as the TSRA directs and must not be used except as authorised by the TSRA.
  - (4) All courts, judges and persons acting judicially must:
    - (a) take judicial notice of the imprint of the common seal of the TSRA appearing on a document; and
    - (b) presume that the imprint was duly affixed.

## **Division 2—Functions of TSRA**

### **142A Functions of TSRA**

#### *Functions*

- (1) The TSRA has the following functions:
- (a) to recognise and maintain the special and unique Ailan Kastom of Torres Strait Islanders living in the Torres Strait area;
  - (b) to formulate and implement programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
  - (c) to monitor the effectiveness of programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area, including programs conducted by other bodies;
  - (d) 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;
  - (e) to assist, advise and co-operate with Torres Strait Islander and Aboriginal communities, organisations and individuals at national, State, Territory and regional levels;
  - (f) to advise the Minister on:
    - (i) matters relating to Torres Strait Islander affairs, and Aboriginal affairs, in the Torres Strait area, including the administration of legislation;
    - (ii) the co-ordination of the activities of other Commonwealth bodies that affect Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area;
  - (g) when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister;

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- (h) to take such reasonable action as it considers necessary to protect Torres Strait Islander and Aboriginal cultural material and information relating to the Torres Strait area if the material or information is considered sacred or otherwise significant by Torres Strait Islanders or Aboriginal persons;
- (i) at the request of, or with the agreement of, the Australian Bureau of Statistics but not otherwise, to collect and publish statistical information relating to Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
- (j) such other functions as are conferred on the TSRA by this Act or any other Act;
- (k) such other functions as are expressly conferred on the TSRA by a law of a State or of an internal Territory and in respect of which there is in force written approval by the Minister under section 142B;
- (l) to undertake such research as is necessary to enable the TSRA to perform any of its other functions;
- (m) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

*TSRA not to disregard Aboriginal tradition and custom*

- (2) The express mention in paragraph (1)(a) of the Ailan Kastom of Torres Strait Islanders living in the Torres Strait area does not imply that the TSRA may disregard Aboriginal tradition and custom.

*Minister may require information about expenditure*

- (3) The information that may be required by the Minister under paragraph (1)(g) includes, but is not limited to, information about the TSRA's expenditure.

*Minister must not specify content of information*

- (4) When requesting information under paragraph (1)(g), the Minister must not specify the content of the information that is to be provided.

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*TSRA must not disclose certain material or information*

- (5) In performing its function under paragraph (1)(h), the TSRA must ensure that the material or information covered by that paragraph is not disclosed by the TSRA if that disclosure would be inconsistent with the views or sensitivities of relevant Torres Strait Islanders or Aboriginal persons.

*TSRA must ensure that privacy is not infringed*

- (6) In performing its function under paragraph (1)(i), the TSRA must ensure that the collection and publication of statistical information covered by that paragraph does not infringe the privacy of any individual.

*Limitations on TSRA's function to acquire land*

- (7) This Act does not confer on the TSRA a function of acquiring land except:
- (a) for its administrative purposes; or
  - (b) for the purpose of the performance of functions expressly conferred on it by this Act.

**142AA Conferring functions on TSRA**

- (1) For the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area, the Prime Minister may confer a departmental function on the TSRA.
- (1A) An instrument conferring a function under subsection (1) is not a legislative instrument.
- (2) The power under subsection (1) must be exercised by notice in the *Gazette*.
- (3) In this section:

***departmental function*** means a function that has previously been performed by a Department of State of the Commonwealth.

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**142B Minister may approve performance of functions under State or Territory laws**

The Minister may, in writing, approve the performance by the TSRA of a function expressly conferred on the TSRA by a law of a State or an internal Territory.

**142C Powers of TSRA**

- (1) The TSRA has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the TSRA include, but are not limited to, the following powers:
  - (a) to accept gifts, grants, bequests and devises made to it;
  - (b) to act as trustee of money and other property vested in it on trust;
  - (c) to negotiate and co-operate with other Commonwealth bodies and with State, Territory and local government bodies;
  - (d) to enter into an agreement for making a grant or loan under section 142GA to the State of Queensland or an authority of that State (including a local government body);
  - (e) to enter into an agreement (other than an agreement referred to in paragraph (d)) with a State or a Territory.
- (3) Despite anything in this Act, any money or other property held by the TSRA on trust must be dealt with in accordance with the powers and duties of the TSRA as trustee.
- (4) The powers of the TSRA may be exercised in or out of Australia.

**142D Torres Strait Development Plan**

- (1) The TSRA must formulate, and revise from time to time, a plan to be known as the Torres Strait Development Plan (the ***Plan***).

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- (2) The aim of the Plan is to improve the economic, social and cultural status of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area.
- (3) The Plan must outline the strategies and policies that the TSRA intends to adopt in order to implement the Plan, including, but not limited to, a marine strategy for the Torres Strait area.
- (4) Each Plan must relate to a period of at least 3 years and not more than 5 years.
- (5) The TSRA must review the Plan regularly.
- (6) The TSRA must perform its functions under this section in consultation with the Minister.
- (7) Without limiting the operation of the *Freedom of Information Act 1982*, the TSRA Chief Executive Officer must ensure that copies of the Plan as in force from time to time are available for inspection and purchase at each office of the TSRA.
- (8) The TSRA Chief Executive Officer must cause notice of the publication of the Plan to be published in the *Gazette*.

**142E Directions by Minister**

- (1) The TSRA must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.
- (2) The Minister must not give directions about the content of any advice, information or recommendation that may be given by the TSRA to a Minister, Department of State or authority of the Commonwealth.
- (3) The Minister must not give directions about the content of any advice, information or recommendation that may be given by the TSRA to:
  - (a) a Minister of a State or Territory; or
  - (b) a Department of State of a State or Territory; or

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- (c) an authority of a State or Territory;  
except for the purpose of protecting the confidentiality of  
information given to the TSRA by the Commonwealth or an  
authority of the Commonwealth.
- (4) Subject to subsection (5), the Minister must cause a copy of a  
direction to be laid before each House of the Parliament within 15  
sitting days of that House after that direction was given.
- (5) The rule in subsection (4) does not apply if the laying of a copy of  
a direction before each House of the Parliament would result in the  
disclosure of a matter in a manner that would be inconsistent with  
the views or sensitivities of Torres Strait Islanders or Aboriginal  
persons.



## **Division 3—General funding powers of TSRA**

### **142F TSRA may make grants and loans**

- (1) The TSRA may:
  - (a) make a grant of money; or
  - (b) grant an interest in land; or
  - (c) grant an interest in personal property; or
  - (d) make a loan of money (whether secured or unsecured);to:
  - (e) an individual; or
  - (f) a body corporate (other than a Regional Council); or
  - (g) an unincorporated body;for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area.
- (2) A grant or loan is subject to such terms and conditions as the TSRA determines.
- (3) The TSRA may acquire by agreement an interest in land, or personal property, for the purpose of making a grant under this section.

### **142G TSRA may give guarantees**

- (1) If the TSRA is satisfied that the purpose of a loan made or to be made to:
  - (a) an individual; or
  - (b) a body corporate; or
  - (c) an unincorporated body;is a purpose for which the TSRA could, in the performance of its functions, make a loan to that borrower, the TSRA may guarantee the due payment of all money (including interest) payable by the borrower in accordance with the terms and conditions of the loan.

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- (2) The TSRA's power to give guarantees is subject to such limits as the Finance Minister determines as to the total amount of money (other than interest) the payment of which may at any time be the subject of guarantees.
- (3) A guarantee is subject to such terms and conditions as the TSRA determines.

**142GA TSRA may make grants and loans to Queensland government etc.**

- (1) The TSRA may make a grant of money to:
  - (a) the State of Queensland; or
  - (b) an authority of the State of Queensland (including a local government body);for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area.
- (2) The TSRA may make a loan of money to:
  - (a) the State of Queensland; or
  - (b) an authority of the State of Queensland (including a local government body);for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area.
- (3) A grant or loan is subject to such terms and conditions as the TSRA determines.

**142H Grants and loans to be repayable if conditions breached etc.**

- (1) The TSRA may give written notice to an individual or body to whom a grant has been made under this Part, stating that the TSRA is satisfied that the individual or body has failed to fulfil a term or condition of the grant.

- (2) An individual or body who is given notice under subsection (1) is liable to pay to the TSRA an amount equal to:
  - (a) the amount of the grant; or
  - (b) so much of the grant as the TSRA specifies in the notice.
- (3) The TSRA may give written notice to an individual or body to whom a loan has been made under this Part, stating that the TSRA is satisfied that the individual or body has failed to fulfil a term or condition of the loan.
- (4) An individual or body who is given notice under subsection (3) is liable to pay to the TSRA, immediately, an amount equal to the sum of:
  - (a) so much of the amount of the loan as has not yet been repaid; and
  - (b) any accrued interest that has not been paid;or so much of that amount as the TSRA specifies in the notice.

#### **142J Restriction on right to dispose of interest in land**

- (1) This section applies if:
  - (a) an individual or body has acquired an interest in land; and
  - (b) any of the following applies:
    - (i) the interest was acquired using money granted to the individual or body by the TSRA under paragraph 142F(1)(a) or subsection 142GA(1);
    - (ii) the interest was acquired from the TSRA under paragraph 142F(1)(b);
    - (iii) the acquisition of the interest was financed by a loan that was guaranteed by the TSRA under section 142G.
- (2) The individual or body must not dispose of the interest without the TSRA's written consent.
- (3) If the individual or body purports to dispose of the interest without the TSRA's written consent, the purported disposition is of no effect.

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**142JA TSRA's interest in land**

- (1) Any liability or obligation of an individual, a body corporate or an unincorporated body to the TSRA arising:
  - (a) under the terms and conditions of a grant or loan referred to in subsection 142F(2); or
  - (b) under section 142H or 142J;is taken to be an interest of the TSRA in the land to which it relates.
- (2) The land is charged with the payment of all costs and expenses incurred by the TSRA in respect of its enforcement of the liability or obligation.

**142K TSRA to formulate decision-making principles about grants, loans and guarantees**

- (1) The TSRA must formulate principles (the *decision-making principles*), not inconsistent with the objects of this Act, about:
  - (a) the making of grants and loans under section 142F or 142GA; and
  - (b) the giving of guarantees under section 142G.
- (2) Subject to section 144ZD, the TSRA must perform its functions and exercise its powers under sections 142F, 142G and 142GA in accordance with applicable provisions of the decision-making principles in force from time to time.
- (3) Without limiting the operation of the *Freedom of Information Act 1982*, the TSRA Chief Executive Officer must ensure that copies of the decision-making principles as in force from time to time are available for inspection and purchase at each of the TSRA's offices.
- (4) The TSRA Chief Executive Officer must cause notice of the making of decision-making principles to be published in the *Gazette*.

**142L Review of operation of Part etc.**

- (1) The TSRA may, from time to time:
  - (a) review such aspects of the operation of:
    - (i) this Part; and
    - (ii) the remaining provisions of this Act, in so far as they relate to the TSRA;  
as the TSRA determines in writing; and
  - (b) report to the Minister accordingly.
- (2) The TSRA must not review a matter mentioned in section 141.
- (3) The report to the Minister may include suggestions for amendments of this Act to solve problems identified in the report.
- (4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

**142M Advisory committees**

- (1) The TSRA may establish one or more advisory committees to advise the TSRA in relation to the performance of the TSRA's functions.
- (2) An advisory committee may include members of the TSRA.
- (3) A member of an advisory committee is entitled to remuneration and allowances in accordance with section 194.
- (4) A member of an advisory committee holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the TSRA by notice in the *Gazette*.

**142N Advisory committee—disclosure of interests at meetings**

- (1) A member of an advisory committee established under section 142M who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the

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committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the committee.

**142P Advisory committee—member's appointment to be terminated for non-disclosure of interests**

- (1) This section applies to an advisory committee established under section 142M.
- (2) The TSRA must terminate the appointment of a member of a committee if the member fails, without reasonable excuse, to comply with section 142N.
- (3) Subsection (2) does not, by implication, limit the TSRA's power to terminate the appointment of a member of a committee.

**142Q Advisory committee—resignation**

A member of an advisory committee established under section 142M may resign from the committee by writing signed by the member and sent to the TSRA.

## **Division 4—Constitution of TSRA**

### **142R Constitution of TSRA**

- (1) Subject to any instrument in force under section 142S, the TSRA consists of the eligible number of members elected in accordance with Division 5 of this Part.
- (1A) The Minister may fix the eligible number for the TSRA by notice in the *Gazette*.
- (1B) The number fixed must be at least 20 and not more than 23.
- (1C) The notice is a legislative instrument.
- (2) The performance of the functions or the exercise of the powers of the TSRA is not affected by reason only that there are fewer than the eligible number of members of the TSRA.
- (3) If there are fewer than 7 members of the TSRA, the Minister may, subject to subsection (4), by notice in the *Gazette*:
  - (a) remove the remaining members (if any) of the TSRA from office; and
  - (b) appoint a TSRA Administrator to administer the affairs of the TSRA.
- (4) Subsection (3) does not apply if:
  - (a) there are casual vacancies in the membership of the TSRA; and
  - (b) some or all of those vacancies will be able to be filled in accordance with the TSRA election rules; and
  - (c) when those casual vacancies are filled, the TSRA will have at least 7 members.

### **142S Minister may determine manner of representation on TSRA**

- (1) The Minister may, by legislative instrument, make provision for and in relation to how the TSRA is to be constituted.

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- (2) Without limiting subsection (1), an instrument under that subsection may:
  - (a) provide for some or all of the members of the TSRA to be elected under this Act to be representatives of a specified kind; and
  - (b) provide for the method and timing of election of those members; and
  - (c) provide for the term of office of those members.
- (3) An instrument under subsection (1) may also make provision in relation to the operation of the TSRA.
- (4) If the eligible number has changed, the Minister may amend an instrument under subsection (1) in connection with the change.
- (5) Subsection (4) does not limit the Minister's power to revoke, amend or vary an instrument under subsection (1).
- (6) An instrument under subsection (1) has effect according to its terms.



## **Division 5—TSRA elections**

### **142T TSRA elections**

The Australian Electoral Commission is to conduct TSRA elections in accordance with:

- (a) this Act; and
- (b) the TSRA election rules in force at the beginning of the election period.

### **142TA TSRA wards**

*Rules may divide Torres Strait area into wards*

- (1) The TSRA election rules may:
  - (a) provide for the division of the Torres Strait area into specified wards; and
  - (b) set out the boundaries of each ward; and
  - (c) fix the designated number for each ward.

*Significance of fixing designated number for a ward*

- (2) The following is an explanation of the significance of fixing the designated number for a ward:
  - (a) if the designated number is 1—subject to section 143A (which deals with nominations), there is to be a single member of the TSRA for the ward;
  - (b) if the designated number is any other number—subject to section 143A (which deals with nominations), there is to be that number of members of the TSRA for the ward.

*Total of designated numbers for wards*

- (3) The total of the designated numbers for TSRA wards must equal the eligible number for the TSRA less the number of members (if any) who hold office as members under an instrument under section 142S.

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*When rules about wards take effect*

- (4) TSRA election rules made for the purposes of this section:
- (a) have effect for the purposes of TSRA elections held after the commencement of the rules; and
  - (b) take effect, for all other purposes, at the end of the election period for the first TSRA election held after the date on which the rules commence.

*If no rules in force then Torres Strait area taken to be a single ward*

- (5) For the purposes of this Act, if there are no TSRA election rules in force that divide the Torres Strait area into wards:
- (a) the area is taken to be a single ward; and
  - (b) the designated number for the ward is equal to the eligible number for the TSRA less the number of members (if any) who hold office as members under an instrument under section 142S.

**142U People entitled to vote at TSRA elections**

A person is entitled to vote at a TSRA ward election if and only if:

- (a) the person is a Torres Strait Islander or an Aboriginal person; and
- (b) either:
  - (i) the person's name is on the Commonwealth Electoral Roll and the person's place of living as shown on that Roll is within the ward concerned; or
  - (ii) the person is entitled to vote at the election under rules made under subsection 143G(3).

**142V People qualified to be elected to the TSRA**

- (1) A person is not qualified to stand for election, or to be elected, as a member of the TSRA for a ward if:

- (a) the person is not entitled to vote at the TSRA ward election concerned; or
  - (b) the person is a member of the staff of, or a consultant to, the TSRA; or
  - (c) the person is bankrupt; or
  - (d) there is in operation a personal insolvency agreement with the person's creditors under the law relating to bankruptcy; or
  - (e) subject to subsection (2), the person has been convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
  - (f) subject to subsection (2), the person has been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer.
- (2) Despite subsection (1), a person covered by paragraph (1)(e) or (f) is not disqualified by that paragraph from standing for election, or being elected, as a member of the TSRA if:
- (a) if the person was never actually imprisoned for the offence—at least 2 years have passed since the person was convicted; or
  - (b) if the person served a term of imprisonment for the offence—at least 2 years have passed since the person was released from prison; or
  - (c) in any case—the Federal Court of Australia, on application by the person, declares that despite the person's conviction, he or she ought not to be disqualified from standing for election, or being elected, as a member of the TSRA.
- (3) The Federal Court of Australia has jurisdiction with respect to matters arising under subsection (2).

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**142W Term of office of members of TSRA**

- (1) Persons elected, or declared to have been elected, as members of the TSRA for a TSRA ward otherwise than at a by-election to fill a casual vacancy:
  - (a) take office as members at the end of the election period concerned; and
  - (b) hold office, subject to this Part, until the end of the election period for the next TSRA election (other than a by-election or an election held for another ward in place of an election in relation to which the Federal Court of Australia has made an order under Schedule 4).
- (2) A person elected, or declared to have been elected, as a member of the TSRA for a TSRA ward at a by-election to fill a casual vacancy:
  - (a) takes office as member immediately after the day on which the poll is declared in relation to that by-election; and
  - (b) holds office, subject to this Part, until immediately before the last day on which a poll is declared in relation to the next TSRA election (other than a by-election to fill a casual vacancy or an election held for another ward in place of an election in relation to which the Federal Court of Australia has made an order under Schedule 4).
- (3) In this section:

*by-election to fill a casual vacancy* includes an election of a member of the TSRA to fill a position created by an increase in the eligible number.

**142X Errors in Commonwealth Electoral Roll not to affect entitlements**

- (1) For the purposes of the application of this Act to the TSRA, a person's name is taken to be on the Commonwealth Electoral Roll if the name on the Roll is, in the opinion of an authorised electoral officer, sufficient to identify the person, even if:

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- (a) a given name of the person has been omitted from the Roll;  
or
  - (b) a wrong given name has been entered on the Roll; or
  - (c) the person's surname has been misspelt on the Roll; or
  - (d) the Roll does not show the person's correct address.
- (2) For the purposes of the application of this Act to the TSRA, a person's name is taken to be on the Commonwealth Electoral Roll even if his or her name as shown on that Roll has been changed because of his or her marriage.

**142Y Timing of TSRA elections**

- (1) TSRA elections must be held every 4 years during periods determined under the TSRA election rules having regard to the day or days fixed for the polling in accordance with this section.
- (2) The Minister must, by written notice, fix a day or days for the polling in each TSRA election.

**142Z Polling places**

- (1) The Electoral Commissioner must, by written notice, appoint by name such polling places as he or she considers necessary for each TSRA ward.
- (2) The Electoral Commissioner must give a copy of the notice relating to elections for the TSRA to the Minister and the TSRA.
- (3) The TSRA must take reasonable steps to ensure that a copy of the most recent notice appointing polling places for an election is available for inspection at each office of the TSRA.

**143 Fixing of election days, and location of polling places, to be notified in *Gazette***

- (1) The Minister must cause a copy of the notice under subsection 142Y(2) fixing a polling day or polling days for a

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TSRA election to be published in the *Gazette* at least 90 days before the day, or the first of the days, so fixed.

- (2) The Minister must cause to be published, together with the copy referred to in subsection (1):
  - (a) a copy of the most recent notice appointing polling places under section 142Z; and
  - (b) a notice setting out an estimate by the Minister, in relation to the Torres Strait area, of:
    - (i) the number of persons who will be entitled to vote at the forthcoming TSRA election; and
    - (ii) the number of persons living in that area who are Torres Strait Islanders or Aboriginal persons; and
  - (c) if the Torres Strait area is divided into wards—a notice setting out an estimate by the Minister, in relation to each ward, of:
    - (i) the number of persons who will be entitled to vote at the forthcoming election for that ward; and
    - (ii) the number of persons living in that ward who are Torres Strait Islanders or Aboriginal persons.
- (3) A failure by the Minister to comply with this section does not invalidate the fixing of the day or days, or the appointing of the polling places, as the case requires.

### **143A Effect of nominations**

- (1) If the number of candidates nominated for election as the member or members for a TSRA ward is equal to or less than the designated number for the ward, an authorised electoral officer must declare the candidate or candidates, as the case requires, to be duly elected. Subsection (3) may require deferral of the declaration.
- (2) If the number of candidates nominated for election as the member or members for a TSRA ward is more than the designated number for the ward, a poll must be held.

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- (3) If subsection (1) applies to some, but not all, of the TSRA wards, all declarations (whether made under this section or otherwise) must be made on the same day for all the wards for which elections are being held.

**143B Voting not compulsory**

Voting at TSRA elections is not compulsory.

**143C Voting by secret ballot**

Voting at TSRA elections must be by secret ballot.

**143D Voting**

- (1) A voter must cast a vote at a TSRA election by marking the ballot paper to show the order of the voter's preference for the candidates.
- (2) A ballot paper is formal if, and only if:
- (a) an authorised electoral officer is satisfied that it is an authentic ballot paper; and
  - (b) it indicates the voter's first preference for one, and only one, candidate; and
  - (c) it does not have any identifying mark on it.
- (3) A ballot paper that is formal must be given effect according to the voter's intention so far as that intention is clear.
- (4) In this section:

***identifying mark*** means writing or another mark by which, in the opinion of an authorised electoral officer, the voter can be identified, but does not include writing or another mark placed on the ballot paper (whether or not in contravention of any law) by a person involved in conducting the election.

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**143E Counting of votes and election of candidates**

Votes cast at a TSRA election must be counted, and the candidate or candidates are to be elected, as provided in:

- (a) whichever of Schedule 2 or 2A applies; and
- (b) the TSRA election rules.

**143F General obligation to inform people about elections**

In addition to its specific obligations in relation to TSRA elections, the Australian Electoral Commission must take any steps that it considers reasonable to inform people who are, or may be, entitled to vote at TSRA elections about:

- (a) their eligibility to vote; and
- (b) the dates and times fixed for polling; and
- (c) the locations of polling places; and
- (d) any other matters about the conduct of TSRA elections that the Australian Electoral Commission considers significant.

**143G Rules for conduct of elections**

*Minister may make rules*

- (1) The Minister may, after consulting the TSRA and the Electoral Commissioner, make rules, not inconsistent with this Act, prescribing:
  - (a) the manner in which TSRA elections are to be conducted (including, but not limited to, elections conducted because previous elections have been declared to be void); and
  - (b) the manner in which casual vacancies in the TSRA are to be filled (including, but not limited to, the holding of by-elections); and
  - (c) the manner of changing the membership of the TSRA to conform with changes in the eligible number (including, but not limited to, the holding of by-elections).



*Matters that may be dealt with in rules*

- (2) The matters that may be dealt with in the rules include, but are not limited to, the following matters:
- (a) the use of an electoral roll or voter cards to establish an entitlement to vote or to make a record of the people who have cast votes;
  - (b) the functions of Torres Strait Islander and Aboriginal liaison officers in connection with the determination of a person's entitlement to vote;
  - (c) the nomination of candidates for election;
  - (d) ballot papers and forms;
  - (e) postal voting;
  - (f) mobile polling, including the appointment and duties of mobile polling teams and matters relating to polling by such teams;
  - (g) confidentiality of voting;
  - (h) the employment by the Australian Electoral Commission of staff, including polling staff, in connection with elections;
  - (i) the scrutiny and counting of votes;
  - (j) the declaration of the poll.

*Rules may deal with situations where persons would otherwise not be entitled to vote*

- (3) The rules may make provision entitling Torres Strait Islanders and Aboriginal persons to vote at TSRA elections even if they would not be entitled so to vote under subparagraph 142U(b)(i) and, without limiting the generality of the foregoing, may make provision about the following matters:
- (a) the determination of whether a person is entitled to vote if:
    - (i) the person's name is on the Commonwealth Electoral Roll; but
    - (ii) because of the *Commonwealth Electoral Act 1918*, the person's place of living or address is not shown on the Commonwealth Electoral Roll;

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- (aa) the determination of the ward in relation to which a person described in paragraph (a) may vote (if he or she is entitled to vote);
- (b) how a vote cast by a person is to be dealt with if:
  - (i) the person was entitled to have his or her name on the Commonwealth Electoral Roll; but
  - (ii) the person's name was not on that Roll because of a mistake by a person exercising powers or performing functions under the *Commonwealth Electoral Act 1918*;
- (c) the casting of a provisional vote by a person whose name does not, on the polling day, appear to be on the Commonwealth Electoral Roll;
- (d) the circumstances in which a provisional vote cast under rules made under paragraph (c) is to be accepted.

*Penalties for breach of rules*

- (4) The rules may provide penalties for breaches of the rules not exceeding 10 penalty units.

*Penalty under Commonwealth Electoral Act 1918 may be substituted for penalty under rules*

- (5) If:
  - (a) the rules create an offence in relation to TSRA elections (***TSRA election offence***) that corresponds to an offence under the *Commonwealth Electoral Act 1918* (***Commonwealth election offence***); and
  - (b) the maximum pecuniary penalty for the Commonwealth election offence is more than the penalty that, by subsection (4), could be imposed for a breach of the rules;the rules may provide a maximum penalty for the TSRA election offence not exceeding the maximum pecuniary penalty for the corresponding Commonwealth election offence. However, nothing in this subsection enables the rules to provide penalties of imprisonment.

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*Minister to have regard to desirability of TSRA elections being conducted in a manner similar to elections for the Parliament*

- (6) In making rules, the Minister must have regard to the desirability of providing for TSRA elections to be conducted in a manner similar to the manner in which elections for the Parliament are conducted, with the aim of increasing the understanding of, and participation in, elections for the Parliament by Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area.

*Rules may take account of special circumstances*

- (7) Subsection (6) does not prevent the Minister making rules:
- (a) that take account of the special circumstances of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; or
  - (b) that will enable significant reductions in the costs of conducting TSRA elections.

*Rules are a legislative instrument*

- (8) Rules made under this section are a legislative instrument.

#### **143H Authorised electoral officer**

A reference in this Division or Schedule 2 to an authorised electoral officer is, in relation to a particular TSRA election, a reference to a member of the staff of the Australian Electoral Commission designated by the Electoral Commissioner for the purposes of that provision and in relation to that election.

#### **143I Disputed elections**

Schedule 4 applies where there is a dispute in relation to a TSRA election.

## **Division 6—Administrative provisions**

### **143J Part-time basis of holding office**

A member of the TSRA (other than the Chairperson) holds office on a part-time basis.

### **143K Remuneration and allowances**

A member of the TSRA is entitled to remuneration and allowances in accordance with section 194.

### **143L Chairperson and Deputy Chairperson**

- (1) The TSRA must, at its first meeting after it is elected, elect from among its members by secret ballot:
  - (a) a Chairperson; and
  - (b) a Deputy Chairperson.
- (2) The first meeting of the TSRA after it is elected must be held as soon as practicable after it is elected.
- (4) At any other meeting of the TSRA, the TSRA must elect:
  - (a) a new Chairperson if there is a vacancy in the office of Chairperson of the TSRA; and
  - (b) a new Deputy Chairperson if there is a vacancy in the office of Deputy Chairperson of the TSRA.
- (5) Elections under this section must be conducted in accordance with the regulations.

### **143M Acting appointments**

- (1) The Minister may, after consulting the TSRA, appoint a person to act in the office of a member of the TSRA during any period, or during all periods, when the member is absent from duty or from

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Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Minister must not appoint a person to act in the office of a member of the TSRA unless, having regard to section 142V, the person is qualified to be elected as a member.
- (3) The appointment of a person to act in the office of a member of the TSRA who is also the Chairperson of the TSRA does not constitute an appointment of the person to act as the Chairperson.
- (4) The appointment of a person to act in the office of a member of the TSRA who is also the Deputy Chairperson of the TSRA does not constitute an appointment of the person to act as the Deputy Chairperson.

**143P Disclosure of interests**

- (1) Each member of the TSRA must make to the Minister a written disclosure of:
  - (a) the member's financial interests; and
  - (b) the financial interests of the member's immediate family; equivalent to the disclosure of financial interests required to be made by SES employees.
- (2) The member must make a disclosure under subsection (1) within one month after being elected as member.
- (3) The member must from time to time make such further disclosures as are necessary to ensure that the information available to the Minister about the financial interests of the member, and of the members of his or her immediate family, is up-to-date.
- (4) In this section:

***member*** includes an acting member.

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**143Q Resignation**

A member of the TSRA may resign by writing signed by him or her and sent to the Minister.

**143R Members taken to have resigned from TSRA in certain circumstances**

*Members taken to have resigned from TSRA in certain circumstances*

- (1) If the TSRA is satisfied that a member of the TSRA holding office under an instrument under section 142S:

- (a) does not live in the Torres Strait area; and
- (b) has not lived in the Torres Strait area at all during the immediately preceding period of 6 months;

the TSRA may, in writing, declare that it is so satisfied.

*Member living outside his or her ward in the Torres Strait area*

- (1A) If the TSRA is satisfied that a member of the TSRA for a TSRA ward:

- (a) does not live in the ward; and
- (b) has not lived in the ward at all during the immediately preceding 6 months;

the TSRA may declare in writing that it is so satisfied.

*Member taken to have resigned if TSRA makes a declaration*

- (2) Subject to the *Administrative Appeals Tribunal Act 1975*, if the TSRA makes a declaration under subsection (1) or (1A), the member concerned is, for all purposes, taken to have resigned on the date of the declaration.

*TSRA may declare that member has become employee etc. of TSRA*

- (3) The TSRA may, in writing, declare that a member of the TSRA has become an employee of, or a consultant to, the TSRA.

*Member taken to have resigned if TSRA makes a declaration*

- (4) If the TSRA makes a declaration under subsection (3), the member concerned must, for all purposes, be taken to have resigned on the date of the declaration.

### **143S Suspension and removal from office of members of the TSRA**

*Minister may suspend member of the TSRA*

- (1) Subject to subsection (2), the Minister may suspend a member of the TSRA from office because of misbehaviour or physical or mental incapacity.

*Minister must give member of the TSRA notice before suspension*

- (2) The Minister must not suspend the member from office unless the Minister has:
- (a) by written notice served on the member, given the member 7 days within which to show cause why the member should not be suspended; and
  - (b) consulted the TSRA.

*Statement to be laid before each House of the Parliament*

- (3) The Minister must cause a statement identifying the member and setting out the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

*Member of the TSRA must be restored to office if declaration made by both Houses of Parliament*

- (4) If such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member of the TSRA ought to be restored to office. If each House so passes such a resolution, the Minister must terminate the suspension.

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*Minister may remove member of the TSRA from office if no declaration made*

- (5) If, at the end of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Minister may remove the member of the TSRA from office.

*Minister must remove member from office*

- (6) If a member of the TSRA:
- (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
  - (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
  - (c) who is the Chairperson of the TSRA, is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
  - (d) who is a part-time member, has been absent from 3 consecutive meetings of the TSRA without leave of the Minister and without reasonable excuse; or
  - (e) fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
  - (f) becomes bankrupt; or
  - (g) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (h) compounds with his or her creditors; or
  - (i) makes an assignment of his or her remuneration for the benefit of his or her creditors;
- the Minister must remove the member from office.



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*Statement to be laid before Parliament if member of the TSRA removed from office*

- (7) If the Minister removes a member of the TSRA from office, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the removal, a statement:
- (a) identifying the member; and
  - (b) stating that he or she has been removed from office; and
  - (c) setting out the ground of the removal.

*Circumstances in which member of TSRA taken to be guilty of misbehaviour*

- (8) Without limiting the generality of this section, a member of the TSRA is taken to have been guilty of misbehaviour if he or she has knowingly voted in favour of, or knowingly participated in, a contravention of a lawful direction given by the Minister to the TSRA, whether under section 142E or 144ZD or any other provision of this Act.

**143T Recall of member of the TSRA**

- (1) If the Minister receives a valid petition calling for the removal of a member of the TSRA from office, the Minister must remove that member from office as soon as possible.
- (2) In this section:

***eligible person*** means a person who would be entitled to vote at an election for that member of the TSRA.

***sufficient number*** means a number that is more than 66% of the Torres Strait area number.

***valid petition*** means a petition:

- (a) that contains the signatures of a sufficient number of persons who were eligible persons when they signed the petition; and

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- (b) that sets out legibly:
  - (i) the name of each person who signed the petition; and
  - (ii) the date on which the person signed; and
  - (iii) an address for the person that is sufficient to identify the place where the person lives; and
- (c) all the signatures to which have been affixed within the period of 6 months immediately before the delivery of the petition to the Minister.

**143U Members of TSRA, and TSRA Administrators, not personally liable**

- (1) A member of the TSRA is not personally liable to an action or other proceeding for damages for or in relation to anything done or omitted to be done in good faith:
  - (a) by the TSRA; or
  - (b) by the member in the capacity of member.
- (2) A TSRA Administrator is not personally liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done:
  - (a) by the Torres Strait Regional Council before the TSRA Administrator was appointed; or
  - (b) by the TSRA before the TSRA Administrator was appointed; or
  - (c) in good faith by the TSRA Administrator in the capacity of TSRA Administrator.

**143V Other terms and conditions**

A member of the TSRA holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice in the *Gazette*.

**143W Provisions relating to Chairperson**

- (1) The Chairperson of the TSRA holds office on a full-time basis.

- (3) The Chairperson of the TSRA holds office for the period starting when he or she is elected and ending when a new Chairperson of the TSRA is elected.

#### **143X Resignation of Chairperson**

- (1) The Chairperson of the TSRA may resign by writing signed by him or her and sent to the Minister.
- (2) The Chairperson of the TSRA is taken to have resigned if:
- (a) he or she resigns from the TSRA; or
  - (b) under section 143R, he or she is taken to have resigned from the TSRA.

#### **143Y Suspension and removal from office of Chairperson**

##### *Minister may suspend Chairperson*

- (1) Subject to subsection (2), the Minister may suspend the Chairperson of the TSRA from office because of misbehaviour or physical or mental incapacity.

##### *Minister must give Chairperson notice before suspension*

- (2) The Minister must not suspend the Chairperson from office unless the Minister has:
- (a) by written notice served on the Chairperson, given the Chairperson 7 days within which to show cause why the Chairperson should not be suspended; and
  - (b) consulted the TSRA.

##### *Statement to be laid before each House of the Parliament*

- (3) The Minister must cause a statement identifying the Chairperson and setting out the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

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*Chairperson must be restored to office if declaration made by both Houses of Parliament*

- (4) If such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Chairperson ought to be restored to office. If each House so passes such a resolution, the Minister must terminate the suspension.

*Minister may remove Chairperson from office if no declaration made*

- (5) If, at the end of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Minister may remove the Chairperson from office.

*Minister must remove Chairperson from office if he or she ceases to be a member of the TSRA*

- (6) If the Chairperson of the TSRA ceases to be a member of the TSRA otherwise than by resigning from the TSRA, the Minister must remove the Chairperson from office.

*Statement to be laid before Parliament if Chairperson removed from office*

- (7) If the Minister removes a person from the office of Chairperson of the TSRA, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the removal, a statement:
- (a) identifying the Chairperson; and
  - (b) stating that he or she has been removed from office; and
  - (c) setting out the ground of the removal from office.

### **143Z Leave of absence for Chairpersons**

- (1) The Chairperson of the TSRA has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Chairperson of the TSRA leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister determines in writing.
- (3) The Minister must not grant to the Chairperson of the TSRA leave of absence for a continuous period of more than 6 months unless the grant of that leave is required or expressly permitted by any other law of the Commonwealth.

### **144 Provisions relating to Deputy Chairpersons**

- (1) The Deputy Chairperson of the TSRA holds office on a part-time basis.
- (3) The Deputy Chairperson of the TSRA holds office for the period starting when he or she is elected and ending when a new Deputy Chairperson of the TSRA is elected.

### **144A Resignation of Deputy Chairpersons**

- (1) The Deputy Chairperson of the TSRA may resign by writing signed by him or her and sent to the Minister.
- (2) The Deputy Chairperson of the TSRA is taken to have resigned if:
  - (a) he or she resigns from the TSRA; or
  - (b) under section 143R, he or she is taken to have resigned from the TSRA.

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**144B Suspension and removal from office of Deputy Chairperson**

*Minister may suspend Deputy Chairperson*

- (1) Subject to subsection (2), the Minister may suspend the Deputy Chairperson of the TSRA from office because of misbehaviour or physical or mental incapacity.

*Minister must give Deputy Chairperson notice before suspension*

- (2) The Minister must not suspend the Deputy Chairperson from office unless the Minister has:
- (a) by written notice served on the Deputy Chairperson, given the Deputy Chairperson 7 days within which to show cause why the Deputy Chairperson should not be suspended; and
  - (b) consulted the TSRA.

*Statement to be laid before each House of the Parliament*

- (3) The Minister must cause a statement identifying the Deputy Chairperson and setting out the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

*Deputy Chairperson must be restored to office if declaration made by both Houses of Parliament*

- (4) If such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Deputy Chairperson ought to be restored to office. If each House so passes such a resolution, the Minister must terminate the suspension.

*Minister may remove Deputy Chairperson from office if no declaration made*

- (5) If, at the end of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House,

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that House has not passed such a resolution, the Minister may remove the Deputy Chairperson from office.

*Minister must remove Deputy Chairperson from office if he or she ceases to be a member of the TSRA*

- (6) If the Deputy Chairperson of the TSRA ceases to be a member of the TSRA otherwise than by resigning from the TSRA, the Minister must remove the Deputy Chairperson from office.

*Statement to be laid before Parliament if Deputy Chairperson removed from office*

- (7) If the Minister removes a person from the office of Deputy Chairperson of the TSRA, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the removal, a statement:
- (a) identifying the Deputy Chairperson; and
  - (b) stating that he or she has been removed from office; and
  - (c) setting out the ground of the removal from office.

### **144C Deputy Chairperson to act as Chairperson**

The Deputy Chairperson of the TSRA is to act as the Chairperson of the TSRA:

- (a) during a vacancy in the office of Chairperson of the TSRA, whether or not an election has previously been conducted for the office; or
- (b) during any period, or during all periods, when the Chairperson of the TSRA is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to persons acting as the Chairperson of the TSRA, see section 33A of the *Acts Interpretation Act 1901*.

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**144D Alternate Deputy Chairperson**

*Election of alternate*

- (1) The TSRA may elect a member of the TSRA to be the alternate of the Deputy Chairperson.

*Term of office*

- (3) The alternate of the Deputy Chairperson holds office for such period as is determined by the TSRA. However, the alternate of the Deputy Chairperson may be re-elected under subsection (1).

*Alternate to act as Deputy Chairperson*

- (5) The alternate of the Deputy Chairperson is to act as the Deputy Chairperson:
- (a) during a vacancy in the office of Deputy Chairperson, whether or not an election has previously been conducted for the office; or
  - (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to persons acting as the Deputy Chairperson, see section 33A of the *Acts Interpretation Act 1901*.

*Alternate to act as Chairperson*

- (6) The alternate of the Deputy Chairperson is to act as the Chairperson:
- (a) during a vacancy in the offices of both the Chairperson and the Deputy Chairperson, whether or not elections have previously been conducted for the offices; or
  - (b) during any period, or during all periods, when both of the following subparagraphs apply:
    - (i) the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Chairperson;



- (ii) the Deputy Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Deputy Chairperson; or
- (c) during any period, or during all periods, when both of the following subparagraphs apply:
  - (i) the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Chairperson;
  - (ii) there is a vacancy in the office of Deputy Chairperson, whether or not an election has previously been conducted for the office; or
- (d) during any period, or during all periods, when both of the following subparagraphs apply:
  - (i) there is a vacancy in the office of Chairperson, whether or not an election has previously been conducted for the office;
  - (ii) the Deputy Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Deputy Chairperson.

Note: For rules that apply to persons acting as the Chairperson, see section 33A of the *Acts Interpretation Act 1901*.

*Removal of alternate from office*

- (8) The TSRA may remove the alternate of the Deputy Chairperson from office.

*Resignation of alternate*

- (9) The alternate of the Deputy Chairperson may resign the office of alternate Deputy Chairperson by writing signed by the alternate and given to the TSRA.

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**144E Meetings of TSRA**

*Meetings to be convened at least 4 times a year*

- (1) The Chairperson of the TSRA:
- (a) must convene at least 4 meetings of the TSRA in each financial year; and
  - (b) may convene other meetings of the TSRA if, in the Chairperson's opinion, the meetings are necessary for the efficient performance of the TSRA's functions.

*Minister may convene meeting at any time*

- (2) The Minister may, at any time, convene a meeting of the TSRA.

*Chairperson must convene meeting if 8 members of the TSRA request it*

- (3) The Chairperson of the TSRA must convene a meeting of the TSRA upon receipt of a written request for a meeting signed by at least 8 members of the TSRA.

*Quorum*

- (4) At a meeting of the TSRA, a quorum is constituted by 12 members of the TSRA.

*Reduced quorum—disclosure of interest requirement*

- (5) If:
- (a) a member of the TSRA is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the TSRA with respect to a particular matter; and
  - (b) when the member leaves the meeting concerned there is no longer a quorum present; and

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(c) there are at least 8 members remaining at the meeting;  
those remaining members constitute a quorum for the purpose of  
any deliberation or decision at that meeting with respect to that  
matter.

*Chairperson of the TSRA to preside at meetings*

- (6) The Chairperson of the TSRA must preside at all meetings of the  
TSRA at which he or she is present.

*Deputy Chairperson to preside if Chairperson not present etc.*

- (7) If the Chairperson of the TSRA is not present at a meeting of the  
TSRA:
- (a) if the Deputy Chairperson of the TSRA is present, the  
Deputy Chairperson of the TSRA is to preside at the meeting;  
and
  - (b) if:
    - (i) the Deputy Chairperson of the TSRA is not present; and
    - (ii) the alternate of the Deputy Chairperson of the TSRA is  
present;  
the alternate of the Deputy Chairperson is to preside at the  
meeting; and
  - (c) in any other case—the members of the TSRA present must  
elect one of their number to preside at the meeting.

*Questions determined by majority*

- (8) Questions arising at a meeting of the TSRA must be determined by  
a majority of the votes of the members of the TSRA present and  
voting.

*Person presiding may vote*

- (9) The person presiding at a meeting of the TSRA has a deliberative  
vote and, if the votes are equal, also has a casting vote.

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*TSRA may regulate conduct of proceedings*

- (10) The TSRA may regulate the conduct of proceedings at its meetings as it thinks fit and, in particular, may conduct its meetings in accordance with Torres Strait Islander or Aboriginal tradition and custom.

*TSRA must keep minutes*

- (11) The TSRA must cause minutes of the proceedings at its meetings to be kept.

*TSRA may meet by telephone etc.*

- (12) If the TSRA so determines in writing (the **meeting determination**), a member of the TSRA may participate in, and form part of a quorum at, a meeting of the TSRA by means of any of the following methods of communication:
- (a) telephone;
  - (b) closed-circuit television;
  - (c) another method of communication determined by the TSRA in writing.

*Determination may be made for a particular meeting or for all meetings*

- (13) The TSRA may make a meeting determination:
- (a) for a particular meeting of the TSRA; or
  - (b) for all meetings of the TSRA.

*Member who participates in telephone meeting taken to be present at the meeting*

- (14) A member of the TSRA who participates in a meeting as provided by subsection (12) is taken for the purposes of this section and rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) to be present at the meeting.

**144F Delegation to TSRA Chief Executive Officer or staff member of TSRA**

*Delegation of certain functions and powers*

- (1) The TSRA may, by writing under its seal, delegate any or all of its functions and powers, other than:
  - (a) its power to give consent to the disposal of interests in land for the purposes of section 142J; and
  - (b) its power to make declarations under section 143R; and
  - (c) its power to reconsider matters under section 195A;to the TSRA Chief Executive Officer or to a member of the staff of the TSRA.

*TSRA Chief Executive Officer may sub-delegate function or power*

- (2) If the TSRA delegates a function or power to the TSRA Chief Executive Officer, he or she may, by writing, sub-delegate the function or power to a member of the staff of the TSRA.

*Delegation may prohibit sub-delegation*

- (3) The TSRA Chief Executive Officer must not sub-delegate a function or power if the instrument of delegation prohibits the sub-delegation of that function or power.

*Application of certain provisions of the Acts Interpretation Act 1901*

- (4) Section 34AA and paragraphs 34AB(1)(a), (b) and (d) of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.

*Application of certain provisions of the Acts Interpretation Act 1901*

- (5) Section 34A and paragraphs 34AB(1)(c) and (d) of the *Acts Interpretation Act 1901* apply to a sub-delegation as if it were a delegation.

## **Division 7—TSRA Chief Executive Officer**

### **144G TSRA Chief Executive Officer**

- (1) There is to be a Chief Executive Officer of the TSRA.
- (2) The TSRA Chief Executive Officer is to be appointed by the Minister.
- (3) The Minister must not appoint a person as the TSRA Chief Executive Officer unless the TSRA agrees to the appointment.
- (4) Subject to subsection (5), the TSRA Chief Executive Officer must manage the day-to-day administration of the TSRA.
- (5) In managing the day-to-day administration of the TSRA and in exercising any powers conferred on the TSRA Chief Executive Officer by this Act, the TSRA Chief Executive Officer must act in accordance with any policies determined, and any directions given to him or her, by the TSRA in writing.

### **144H Period of appointment**

- (1) The TSRA Chief Executive Officer holds office for such period as is specified in the instrument of appointment.
- (2) The period must not be longer than 5 years.

### **144J Remuneration and allowances**

The TSRA Chief Executive Officer is entitled to remuneration and allowances in accordance with section 194.

### **144K Leave of absence**

- (1) The TSRA Chief Executive Officer is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.

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- (2) The Minister may, with the TSRA's agreement, grant the TSRA Chief Executive Officer leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister, with the TSRA's agreement, determines in writing.

**144L Acting TSRA Chief Executive Officer**

The Minister may, after consulting the TSRA, appoint a person to act as the TSRA Chief Executive Officer:

- (a) during a vacancy in the office of TSRA Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the TSRA Chief Executive Officer is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

**144M Disclosure of interests**

- (1) The TSRA Chief Executive Officer must give written notice to the Minister and the TSRA of all direct or indirect pecuniary interests that the TSRA Chief Executive Officer has or acquires in any business or in any body corporate that carries on a business.
- (2) If the TSRA Chief Executive Officer has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the TSRA, the TSRA Chief Executive Officer must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Chairperson of the TSRA in writing.

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- (3) Subsections (1) and (2) apply in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

**144N Resignation**

The TSRA Chief Executive Officer may resign by writing signed by him or her and sent to the Minister and the TSRA.

**144P Termination of appointment**

- (1) The Minister may, with the TSRA's agreement, terminate the appointment of the TSRA Chief Executive Officer because of incompetence, misbehaviour or physical or mental incapacity.
- (2) If the TSRA Chief Executive Officer:
- (a) is absent from duty, except on leave granted under section 144K for 14 consecutive days or for 28 days in any period of 12 months; or
  - (b) becomes bankrupt; or
  - (c) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (d) compounds with his or her creditors; or
  - (e) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (f) fails, without reasonable excuse, to comply with:
    - (i) subsection 144M(1) or (2); or
    - (ii) section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
  - (g) engages in paid employment outside the duties of the office of TSRA Chief Executive Officer without the written consent of the Minister given after consulting the TSRA;
- the Minister must terminate the appointment of the TSRA Chief Executive Officer.



**144Q Other terms and conditions**

The TSRA Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister, with the TSRA's agreement, by notice in the *Gazette*.

## **Division 8—Staff**

### **144R Staff**

- (1) Subject to section 144T, the staff required to assist the TSRA in the performance of its functions are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the TSRA Chief Executive Officer and the APS employees assisting the TSRA Chief Executive Officer together constitute a Statutory Agency; and
  - (b) the TSRA Chief Executive Officer is the Head of that Statutory Agency.

Note 1: A member of the staff of the TSRA is not qualified to stand for election, or to be elected, as a member of the TSRA (see paragraph 142V(1)(b)).

Note 2: The TSRA may declare that a member of the TSRA has become an employee of the TSRA. The member is taken to have resigned from the TSRA on the date of the declaration (see subsections 143R(3) and (4)).

### **144T Consultants**

- (1) The TSRA may engage consultants to the TSRA. A consultant must have suitable qualifications and experience.
- (2) The terms and conditions on which consultants are engaged are to be determined by the TSRA in writing.
- (3) The TSRA must, by written instrument:
  - (a) set out criteria for the engagement of consultants by the TSRA; and
  - (b) set out standard terms and conditions for the engagement of consultants by the TSRA.

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- (4) The TSRA must notify the making of an instrument under subsection (3) in the *Gazette*.

Note 1: A consultant to the TSRA is not qualified to stand for election, or to be elected, as a member of the TSRA (see paragraph 142V(1)(b)).

Note 2: The TSRA may declare that a member of the TSRA has become a consultant to the TSRA. The member is taken to have resigned from the TSRA on the date of the declaration (see subsections 143R(3) and (4)).

## **Division 9—Finances**

### **144TA Money payable to TSRA**

- (1) There is payable to the TSRA such money as the Parliament appropriates from time to time for the TSRA.
- (2) The Finance Minister may give directions as to the amounts in which, and the times at which, money so appropriated is to be paid to the TSRA.

### **144U Application of money of the TSRA**

- (1) Money of the TSRA must be applied only:
  - (a) in payment or discharge of the costs, expenses and other obligations incurred by the TSRA in the performance of its functions or the exercise of its powers under this Act or any other law; and
  - (b) in payment of any remuneration and allowances payable to any person under this Act or any other law; and
  - (c) in making any other payments which the TSRA is authorised or required to make under this Act or any other law.
- (2) In this section:

*money of the TSRA* does not include:

  - (a) money held in trust by the TSRA; or
  - (b) money in the TSRA Housing Fund or the TSRA Land and Natural Resources Fund.

### **144V TSRA Housing Fund**

- (1) There is established by this subsection a fund to be known as the TSRA Housing Fund.
- (2) The following amounts are to be paid into the TSRA Housing Fund:

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- (a) such amounts as are paid to the TSRA as repayment of, or otherwise in respect of, housing loans made by the TSRA under section 142F or 142GA;
  - (b) such amounts as are paid to the TSRA by any other person for the purposes of the TSRA Housing Fund;
  - (c) such amounts of the TSRA's money as the TSRA determines in writing.
- (3) Money in the TSRA Housing Fund may only be applied:
  - (a) in making housing loans to individuals or bodies; or
  - (b) in making loans to individuals or bodies to enable the individuals or bodies to provide housing for Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; or
  - (c) in making grants of money for the purposes of enabling Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area to obtain housing loans from lenders operating on a commercial basis.
- (3A) Subsection (3) does not prevent the investment of money under section 59 of the *Public Governance, Performance and Accountability Act 2013*.
- (4) The TSRA must prepare estimates of the receipts of, and expenditure from, the TSRA Housing Fund for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the TSRA must submit estimates so prepared to the Minister not later than such date as the Minister directs.
- (5) Money in the TSRA Housing Fund must not be spent otherwise than in accordance with estimates of expenditure approved by the Minister.

**144W TSRA Land and Natural Resources Fund**

- (1) There is established by this subsection a fund to be known as the TSRA Land and Natural Resources Fund.

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- (2) There is to be paid into the TSRA Land and Natural Resources Fund such amounts of the TSRA's money as the TSRA determines in writing.
- (3) Money in the TSRA Land and Natural Resources Fund may be spent only:
  - (a) in developing and implementing the marine strategy referred to in subsection 142D(3); or
  - (b) in developing or maintaining real estate; or
  - (c) in acquiring an interest in land under subsection 142F(3); or
  - (d) in making a grant of money under section 142F or 142GA on condition that the money be spent for a purpose described in paragraph (a) or (b) or in acquiring an interest in land.
- (4) Subsection (3) does not prevent the investment of money under section 59 of the *Public Governance, Performance and Accountability Act 2013*.

**144X Borrowing on overdraft to meet temporary deficit**

- (1) The TSRA may borrow money on overdraft from a bank for the sole purpose of meeting a temporary deficit in the money of the TSRA.
- (2) This section is subject to such limits as the Finance Minister determines as to:
  - (a) the total amount of money (other than interest) that may be owed by the TSRA at any time as a result of borrowings under this section; and
  - (b) the periods for which money may be borrowed under this section.
- (3) In this section:  
  

**bank** has the same meaning as it has in the *Public Governance, Performance and Accountability Act 2013*.

**144Y Limits on TSRA's powers to raise money**

- (1) The TSRA must not borrow money except in accordance with section 144X.
- (2) The TSRA must not raise money except by borrowing.

**144Z Exemption from taxation**

- (1) The TSRA is not subject to taxation under any law of the Commonwealth or of a State or Territory.
- (2) Excise duty is not payable by the TSRA, or by any other person, on goods that are for use by the TSRA.

**144ZA Estimates**

- (1) The TSRA must:
  - (a) prepare estimates, in such form as the Minister directs, of the expenditure of the TSRA for each financial year and, if the Minister so directs, for any other period specified by the Minister; and
  - (b) give those estimates to the Minister not later than such date as the Minister directs.
- (2) Money paid to the TSRA under section 144TA must not be expended by the TSRA otherwise than in accordance with estimates of expenditure approved by the Minister.
- (3) Despite subsection (2), the amount spent by the TSRA in relation to a matter covered by a particular item in approved estimates may differ from the amount allocated to that item in those estimates by not more than 10% of the amount so allocated.
- (4) Subsection (3) does not empower the TSRA to spend or pay amounts that exceed in total the total amount covered by approved estimates.

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- (5) Section 36 of the *Public Governance, Performance and Accountability Act 2013* (which deals with budget estimates) does not apply to the TSRA.

**144ZB Annual report**

*TSRA must prepare report*

- (1) In this section, **annual report** means the annual report prepared by the members of the TSRA and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period.

*Certain matters must be included in report*

- (2) The TSRA must include in each annual report details of:
- (a) any directions given by the Minister under section 142E; and
  - (b) any consultants engaged under section 144T;
- during the period to which the report relates.

*Report must include details of grants*

- (3) If a grant was made by the TSRA during a period to an individual or body, then, in addition to the matters referred to in subsections (1) and (2), the annual report for the period must set out:
- (a) the name of the individual or body; and
  - (b) the amount and purpose of the grant.

*Report must not disclose sacred matters*

- (4) The TSRA must not disclose in any annual report any matters known to the TSRA to be held sacred by Torres Strait Islanders or Aboriginal persons.



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*Report must include certain details about consultants*

- (5) If an annual report gives details of a consultant engaged under section 144T, the report must set out any significant differences between the terms and conditions on which that consultant was engaged and the standard terms and conditions for the engagement of consultants by the TSRA as set out in the instrument referred to in subsection 144T(3).

**144ZD TSRA Finance Directions**

*Minister must give directions to TSRA*

- (1) The Minister must give to the TSRA written directions (***TSRA Finance Directions***) about the administration of the TSRA's finances.

*Directions must not be inconsistent with this Act etc.*

- (1A) Directions under subsection (1) must not be inconsistent with:
- (a) this Act or the regulations under this Act; or
  - (b) the *Public Governance, Performance and Accountability Act 2013* or any legislative instruments made under that Act.

*TSRA must comply with directions*

- (2) The TSRA must comply with a TSRA Finance Direction that is in force even if it is inconsistent with:
- (a) the Torres Strait Development Plan; or
  - (b) decision-making principles in force under section 142K.

*TSRA must make directions available*

- (4) Without limiting the operation of the *Freedom of Information Act 1982*, the Minister must ensure that copies of the TSRA Finance Directions as in force from time to time are:
- (a) given to the TSRA; and
  - (b) available for inspection and purchase at each office of the TSRA.

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*Notice of giving of directions to be published in the Gazette*

- (5) The TSRA Chief Executive Officer must cause notice of the giving of TSRA Finance Directions to be published in the *Gazette*.

## **Division 11—TSRA Administrators**

### **144ZF Powers of TSRA Administrator**

- (1) A TSRA Administrator appointed to administer the affairs of the TSRA:
  - (a) must do so until the new members of the TSRA take office; and
  - (b) has all the functions and powers of the TSRA; and
  - (c) has all powers necessary to rectify any problems in the affairs of the TSRA.
- (2) If a TSRA Administrator is appointed to administer the affairs of the TSRA, the TSRA Administrator is the accountable authority of the TSRA for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

### **144ZG Remuneration and allowances**

A TSRA Administrator is entitled to remuneration and allowances in accordance with section 194.

### **144ZH TSRA Administrator holds office on a full-time basis**

A TSRA Administrator holds office on a full-time basis.

### **144ZJ Resignation of TSRA Administrator**

A TSRA Administrator may resign by writing signed by him or her and sent to the Minister.

### **144ZK Leave of absence**

- (1) A TSRA Administrator is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.

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- (2) The Minister may grant a TSRA Administrator leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister determines in writing.

**144ZL Other terms and conditions**

A TSRA Administrator holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice in the *Gazette*.

**144ZM Disclosure of interests**

- (1) A TSRA Administrator must make to the Minister a written disclosure of:
- (a) the TSRA Administrator's financial interests; and
  - (b) the financial interests of the TSRA Administrator's immediate family;
- equivalent to the disclosure of financial interests required to be made by SES employees.
- (2) A TSRA Administrator must make a disclosure under subsection (1) within one month after being appointed as a TSRA Administrator.
- (3) A TSRA Administrator must from time to time make such further disclosures as are necessary to ensure that the information available to the Minister about the financial interests of the TSRA Administrator, and of the members of the TSRA Administrator's immediate family, is up-to-date.
- (3A) Subsections (1), (2) and (3) apply in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).
- (4) In this section:

***TSRA Administrator*** includes an acting TSRA Administrator.

## **144ZN Termination of appointment**

### *Minister may terminate TSRA Administrator's appointment*

- (1) The Minister may terminate the appointment of a TSRA Administrator because of misbehaviour or physical or mental incapacity.

### *Minister must terminate TSRA Administrator's appointment*

- (2) If a TSRA Administrator:
- (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
  - (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
  - (c) is absent from duty, except on leave of absence granted under section 144ZK, for 14 consecutive days or for 28 days in any period of 12 months; or
  - (d) fails, without reasonable excuse, to comply with subsection 144ZM(1), (2) or (3); or
  - (e) becomes bankrupt; or
  - (f) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (g) compounds with his or her creditors; or
  - (h) makes an assignment of his or her remuneration for the benefit of his or her creditors;

the Minister must terminate the TSRA Administrator's appointment.

Note: The appointment of a TSRA Administrator may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

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**144ZP Acting TSRA Administrator**

The Minister may appoint a person to act as a TSRA Administrator:

- (a) during a vacancy in an office of TSRA Administrator; or
- (b) during any period, or during all periods, when a TSRA Administrator is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

**144ZQ Minister may appoint replacement TSRA Administrator if there is a vacancy in an office of TSRA Administrator**

If there is a vacancy in an office of TSRA Administrator caused by the death, resignation or termination of appointment of the TSRA Administrator, the Minister may, by notice in the *Gazette*, appoint a replacement TSRA Administrator to administer the affairs of the TSRA.

## **Part 4—Indigenous Business Australia**

### **Division 1—Indigenous Business Australia**

#### **145 Indigenous Business Australia**

- (1) The body that was established under this subsection as previously in force by the name Aboriginal and Torres Strait Islander Commercial Development Corporation is now to be known as Indigenous Business Australia.

Note: Subsection 25B(1) of the *Acts Interpretation Act 1901* provides that a body whose name is altered by an Act continues in existence under the new name so that its identity is not affected.

- (2) Indigenous Business Australia:
- (a) is a body corporate;
  - (b) shall have a seal;
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to Indigenous Business Australia. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (3) The seal of Indigenous Business Australia is to be kept in such custody as the Indigenous Business Australia Board directs and must not be used except as authorised by the Board.
- (4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of Indigenous Business Australia appearing on a document and shall presume that it was duly affixed.

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**146 Purposes of Indigenous Business Australia**

Indigenous Business Australia is established:

- (a) to assist and enhance Aboriginal and Torres Strait Islander self-management and economic self-sufficiency; and
- (b) to advance the commercial and economic interests of Aboriginal persons and Torres Strait Islanders by accumulating and using a substantial capital asset for the benefit of the Aboriginal and Torres Strait Islander peoples.



## **Division 2—Functions of Indigenous Business Australia**

### **147 Functions of Indigenous Business Australia**

- (1) Indigenous Business Australia has the following functions:
  - (a) to engage in commercial activities;
  - (b) to promote and encourage Aboriginal and Torres Strait Islander self-management and economic self-sufficiency;
  - (c) such other functions as are conferred on it by this Act.
- (2) Without limiting by implication the meaning of commercial activities in paragraph (1)(a), those activities include the performance of functions that:
  - (a) the Minister has authorised Indigenous Business Australia to perform as an agent of the Commonwealth; or
  - (b) the Minister has delegated to Indigenous Business Australia.

### **148 Performance of functions**

- (1) In performing its functions, Indigenous Business Australia shall act in accordance with sound business principles.
- (2) For the purpose of the performance of Indigenous Business Australia's functions, the Indigenous Business Australia Board must have regard to the desirability of:
  - (a) encouraging and facilitating Aboriginal and Torres Strait Islander participation in commercial projects and enterprises;
  - (b) securing, as far as practicable, Aboriginal and Torres Strait Islander participation in the ownership and control of companies engaged in activities that are likely to have a significant impact on Aboriginal or Torres Strait Islander interests;
  - (c) promoting the development of industries and other commercial and economic activities that are likely to have a beneficial impact on Aboriginal or Torres Strait Islander interests; and

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- (d) making specialist commercial expertise available to Aboriginal persons and Torres Strait Islanders engaged in commercial activities.
- (3) This section does not apply to:
  - (a) business loans or housing loans made, or treated as having been made, by Indigenous Business Australia; or
  - (b) any grants made, or treated as having been made, by Indigenous Business Australia in relation to business loans or housing loans; or
  - (c) guarantees provided, or treated as having been provided, by Indigenous Business Australia in relation to business loans or housing loans.

**150 Consideration of corporate plan by Minister**

The Minister may, by notice in writing to the Indigenous Business Australia Board, request the Board to vary a corporate plan prepared by the Board under section 35 of the *Public Governance, Performance and Accountability Act 2013*.

**151 Directions by Minister**

- (1) Indigenous Business Australia must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.
- (2) Subject to subsection (3), the Minister must cause a copy of a direction to be laid before each House of the Parliament within 15 sitting days of that House after the direction was given.
- (3) A copy of a direction laid before each House of the Parliament in accordance with subsection (2) must not disclose any matter the disclosure of which in that manner would be inconsistent with the views or sensitivities of Aboriginal persons or Torres Strait Islanders because that matter is sacred or otherwise significant to those persons.

- (4) A direction given by the Minister under subsection (1) is not a legislative instrument.

### **152 Powers of Indigenous Business Australia**

- (1) Subject to section 153 and Division 8, Indigenous Business Australia has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of Indigenous Business Australia under subsection (1) include, but are not limited to, the following powers:
- (a) to enter into contracts (including contracts for the provision of business or housing loans);
  - (aa) to make grants for purposes associated with business loans or housing loans;
  - (b) to invest money of Indigenous Business Australia;
  - (c) to appoint agents and attorneys, and act as an agent for other persons;
  - (d) to form, and participate in the formation of, companies;
  - (e) to subscribe for and purchase shares in, and debentures and other securities of, companies;
  - (f) to enter into partnerships;
  - (g) to participate in joint ventures and arrangements for the sharing of profits;
  - (h) to accept gifts, grants, bequests and devises made to it;
  - (j) to act as trustee of money and other property vested in it on trust;
  - (k) to charge for the provision of services by it.
- (2A) Despite any other provision of this Act, in making a housing loan or business loan, or in making a grant, or giving a guarantee in relation to such a loan, Indigenous Business Australia must be satisfied that the making of the grant or loan, or the giving of the guarantee, will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.

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- (2B) A grant or loan made by Indigenous Business Australia is subject to such terms and conditions as Indigenous Business Australia determines.
- (3) In spite of anything contained in this Act, any money or other property held by Indigenous Business Australia on trust shall be dealt with in accordance with the powers and duties of Indigenous Business Australia as trustee.
- (4) The powers of Indigenous Business Australia may be exercised within or outside Australia.

**153 Guarantees**

- (1) If the Indigenous Business Australia Board is satisfied that money lent or to be lent to any person will be used in a way that furthers the commercial or economic development of Aboriginal persons or Torres Strait Islanders, Indigenous Business Australia may guarantee the due payment of all moneys (including interest) payable by the borrower in accordance with the terms and conditions of the loan concerned.
- (1A) If Indigenous Business Australia is satisfied that a housing loan or business loan made, or to be made, to any person will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders, Indigenous Business Australia may guarantee the due payment of all money (including interest) payable by the person in accordance with the terms and conditions of the loan.
- (2) The operation of this section is subject to such limits as the Finance Minister determines as to the total amount of money (other than interest) the payment of which may at any time be the subject of guarantees under this section.
- (3) Indigenous Business Australia shall not give guarantees except under this section.

**154 Minister may ask for information**

- (1) The Minister may from time to time ask the Indigenous Business Australia Board for information about Indigenous Business Australia's activities.
- (2) The Indigenous Business Australia Board shall give the Minister the information he or she asks for.

## **Division 3—Board of Directors of Indigenous Business Australia**

### **155 Board of Directors of Indigenous Business Australia**

- (1) There shall be a Board of Directors of Indigenous Business Australia.
- (2) The Board consists of the following members:
  - (a) a Chairperson;
  - (b) a Deputy Chairperson;
  - (c) 7 other members.

### **156 Responsibilities of Indigenous Business Australia Board**

It is the responsibility of the Indigenous Business Australia Board, subject to any direction from the Minister under section 151, to ensure the proper and efficient performance of the functions of Indigenous Business Australia and to determine the policy of Indigenous Business Australia with respect to any matter.

### **157 Appointment of Indigenous Business Australia Directors**

- (1) The Indigenous Business Australia Chairperson is to be appointed by the Minister on a full-time basis or a part-time basis.
- (2) The other Indigenous Business Australia Directors are to be appointed by the Minister on a part-time basis.
- (3) The Indigenous Business Australia Chairperson and at least 4 other Indigenous Business Australia Directors are to be Aboriginal persons or Torres Strait Islanders.
- (5) Each Indigenous Business Australia Director is to be a person who the Minister is satisfied has experience in:
  - (a) industry, commerce or finance; or

- (b) Aboriginal or Torres Strait Islander community life or enterprises.

### **158 Selection of Indigenous Business Australia Directors**

Whenever there is, or is expected to be, a vacancy in an office of Indigenous Business Australia Director, the Minister must consult Indigenous Business Australia about a suitable appointee.

## **Division 4—Administrative provisions**

### **159 Period of appointment**

- (1) An Indigenous Business Australia Director holds office for such period as is specified in the instrument of appointment.

(1A) The period must not be longer than 5 years.

### **160 Remuneration and allowances**

An Indigenous Business Australia Director is entitled to remuneration and allowances in accordance with section 194.

### **161 Leave of absence**

- (1) If the Indigenous Business Australia Chairperson was appointed on a full-time basis:
- (a) the Chairperson has the recreation leave entitlements that are determined by the Remuneration Tribunal; and
  - (b) the Minister may, by writing, grant to the Chairperson leave of absence (other than recreation leave) on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (2) The Minister may, by writing:
- (a) if the Indigenous Business Australia Chairperson was appointed on a part-time basis—grant to the Chairperson leave of absence from a meeting of the Indigenous Business Australia Board; and
  - (b) grant to any other Indigenous Business Australia Director leave of absence from a meeting of the Indigenous Business Australia Board.
- (3) The Minister may delegate to the Indigenous Business Australia Chairperson the power under paragraph (2)(b) to grant leave of absence to other Indigenous Business Australia Directors.



## **162 Acting appointments**

- (1) The Deputy Chairperson of the Indigenous Business Australia Board shall act as the Indigenous Business Australia Chairperson:
- (a) during a vacancy in the office of Indigenous Business Australia Chairperson, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Indigenous Business Australia Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to persons acting as the Indigenous Business Australia Chairperson, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Minister may appoint an Indigenous Business Australia Director to act as the Deputy Chairperson of the Indigenous Business Australia Board:
- (a) during a vacancy in the office of Deputy Chairperson of the Board, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Deputy Chairperson of the Board is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (3) The Minister may appoint a person to act as an Indigenous Business Australia Director (other than the Chairperson or Deputy Chairperson) of the Indigenous Business Australia Board:
- (a) during a vacancy in an office of Indigenous Business Australia Director, whether or not an appointment has previously been made to the office; or

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- (b) during any period, or during all periods, when an Indigenous Business Australia Director is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (4) The Minister shall not appoint a person to act in an office unless, having regard to section 157, the person could be appointed to that office.

**164 Resignation**

An Indigenous Business Australia Director may resign by writing signed by him or her and sent to the Minister.

**165 Termination of appointment**

- (1) The Minister may, after consulting Indigenous Business Australia, terminate the appointment of an Indigenous Business Australia Director because of misbehaviour or physical or mental incapacity.
- (2) If an Indigenous Business Australia Director:
  - (a) is absent, except on leave granted under section 161, from 3 consecutive meetings of the Indigenous Business Australia Board; or
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

the Minister must terminate the Director's appointment.

Note: The appointment of an Indigenous Business Australia Director may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

## **166 Other terms and conditions**

An Indigenous Business Australia Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*.

## **Division 5—Operations of Indigenous Business Australia and Indigenous Business Australia Board**

### **167 Meetings of Indigenous Business Australia Board**

- (1) The Indigenous Business Australia Chairperson shall convene such meetings of the Indigenous Business Australia Board as, in the Chairperson's opinion, are necessary for the efficient performance of the Indigenous Business Australia Board's responsibilities.
- (2) At a meeting of the Indigenous Business Australia Board a quorum is constituted by 5 Indigenous Business Australia Directors.
- (3) Where:
  - (a) an Indigenous Business Australia Director who is present at a meeting is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of Indigenous Business Australia Board with respect to a particular matter; and
  - (b) when Indigenous Business Australia Director leaves the meeting there is no longer a quorum present;Indigenous Business Australia Directors remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.
- (4) The Indigenous Business Australia Chairperson shall preside at all meetings of the Indigenous Business Australia Board at which he or she is present.
- (5) If the Indigenous Business Australia Chairperson is not present at a meeting of the Indigenous Business Australia Board:
  - (a) if the Deputy Chairperson of the Indigenous Business Australia Board is present, the Deputy Chairperson of the Indigenous Business Australia Board shall preside at the meeting; and

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- (b) in any other case, the Indigenous Business Australia Directors present shall elect one of their number to preside at the meeting.
- (6) Questions arising at a meeting of the Indigenous Business Australia Board shall be determined by a majority of the votes of the Indigenous Business Australia Directors present and voting.
- (7) The person presiding at a meeting of the Indigenous Business Australia Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (8) The Indigenous Business Australia Board may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.
- (9) If the Indigenous Business Australia Board so determines, an Indigenous Business Australia Director may participate in, and form part of a quorum at, a meeting of the Indigenous Business Australia Board by means of any of the following methods of communication:
  - (a) telephone;
  - (b) closed circuit television;
  - (c) another method of communication determined by the Indigenous Business Australia Board.
- (10) A determination of the Indigenous Business Australia Board under subsection (9) may be made in respect of a particular meeting, or in respect of all meetings, of the Indigenous Business Australia Board.
- (11) An Indigenous Business Australia Director who participates in a meeting as provided by subsection (9) shall be taken for the purposes of this section and rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) to be present at the meeting.

## **Division 6—Indigenous Business Australia Chief Executive Officer**

### **168 Indigenous Business Australia Chief Executive Officer**

- (1) There is to be a Chief Executive Officer of Indigenous Business Australia, who is to be appointed by the Indigenous Business Australia Board.
- (2) The Indigenous Business Australia Chief Executive Officer is, subject to subsection (3), to manage the day-to-day administration of Indigenous Business Australia.
- (3) The Indigenous Business Australia Chief Executive Officer must, in managing the administration of Indigenous Business Australia and in exercising any powers conferred on him or her by this Act, act in accordance with policies determined, and any directions given, by the Indigenous Business Australia Board in writing.

### **169 Term of appointment**

The Indigenous Business Australia Chief Executive Officer shall be appointed for a term not longer than 5 years from a day specified in the instrument of appointment.

### **170 Holding of office**

The Indigenous Business Australia Chief Executive Officer holds office during the Indigenous Business Australia Board's pleasure.

### **171 Remuneration and allowances**

The Indigenous Business Australia Chief Executive Officer shall be paid such remuneration and allowances as are determined by the Indigenous Business Australia Board in writing.

## **172 Acting Indigenous Business Australia Chief Executive Officer**

The Indigenous Business Australia Board may appoint a person to act as the Indigenous Business Australia Chief Executive Officer:

- (a) during a vacancy in the office of Indigenous Business Australia Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Indigenous Business Australia Chief Executive Officer is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 6 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

### **172A Disclosure of interests**

- (1) The Indigenous Business Australia Chief Executive Officer must give written notice to the Minister and the Chairperson of the Indigenous Business Australia Board of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate that carries on a business.
- (2) If the Indigenous Business Australia Chief Executive Officer has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Indigenous Business Australia Board, the Chief Executive Officer must, as soon as possible after becoming aware of the relevant facts, disclose the nature of the interest to the Chairperson of the Board in writing.
- (3) Subsections (1) and (2) apply in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

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**173 Resignation**

The Indigenous Business Australia Chief Executive Officer may resign by writing signed by him or her and sent to the Indigenous Business Australia Board.

**174 Other terms and conditions**

The Indigenous Business Australia Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Indigenous Business Australia Board in writing.



## **Division 7—Staff**

### **175 Staff**

- (1) The Indigenous Business Australia Chief Executive Officer may, on behalf of Indigenous Business Australia, engage such employees as are necessary for the performance of Indigenous Business Australia's functions under this Act.
- (2) The terms and conditions of employment of persons engaged under this section are as determined by the Indigenous Business Australia Board in writing.

### **177 Arrangements relating to staff**

The Indigenous Business Australia Chief Executive Officer may, on behalf of Indigenous Business Australia, make arrangements for the services of officers or employees of:

- (a) the Commonwealth, a State or a Territory; or
  - (b) an authority of the Commonwealth or of a State or Territory;  
or
  - (c) any other organisation or body;
- to be made available to Indigenous Business Australia.

### **178 Consultants**

- (1) The Indigenous Business Australia Chief Executive Officer may, on behalf of Indigenous Business Australia, engage as consultants to Indigenous Business Australia persons having suitable qualifications and experience.
- (2) The terms and conditions on which consultants are engaged are to be as determined by the Indigenous Business Australia Board in writing.

## Division 8—Finances

### 179 Capital of Indigenous Business Australia

The capital of Indigenous Business Australia consists of:

- (a) amounts paid under section 208 of this Act as previously in force to the body that was previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and is now known as Indigenous Business Australia; and
- (b) income derived by that body from investments; and
- (c) any amount appropriated from time to time by the Parliament as capital for that body.

### 181 Application of money held by Indigenous Business Australia

- (1) Money held by Indigenous Business Australia shall be applied only:
  - (a) in payment or discharge of the costs, expenses and other obligations incurred by Indigenous Business Australia in the performance of its functions or the exercise of its powers under this Act or any other law;
  - (b) in payment of any remuneration and allowances payable to any person under this Act or any other law; and
  - (c) in making any other payments which Indigenous Business Australia is authorised or required to make under this Act or any other law.
- (2) In this section:
  - money held by Indigenous Business Australia*** does not include:
    - (a) money held in trust by Indigenous Business Australia; or
    - (b) money in the New Housing Fund.

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**181A New Housing Fund**

- (1) There is established a fund to be known as the New Housing Fund.
- (2) The New Housing Fund comprises:
  - (a) the money that stood to the credit of the fund established under section 67 of this Act as in force immediately before ATSIC abolition day and that was transferred to Indigenous Business Australia by subitem 192(2) of Schedule 1 to the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*; and
  - (b) such amounts as are appropriated to Indigenous Business Australia for the purposes of the New Housing Fund; and
  - (c) such amounts as are paid to Indigenous Business Australia as repayment of, or otherwise in respect of:
    - (i) housing loans made by Indigenous Business Australia, or treated, by subitem 199(5) of Schedule 1 to the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*, as having been so made, out of the New Housing Fund; or
    - (ii) loans made by the Aboriginal Development Commission under section 25 of the *Aboriginal Development Commission Act 1980*; or
    - (iii) loans made by the Aboriginal Loans Commission under section 25 of the *Aboriginal Loans Commission Act 1974*; and
  - (d) interest received by Indigenous Business Australia on investment of money from the New Housing Fund; and
  - (e) such amounts of the money of Indigenous Business Australia as it determines, in writing, to make available to the New Housing Fund; and
  - (f) such amounts (if any) as are made available by any other person to Indigenous Business Australia for the purposes of the New Housing Fund.
- (3) The money in the New Housing Fund may only be applied:
  - (a) in making housing loans to individuals or bodies; or

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- (b) in making loans to individuals or bodies to enable the individuals or bodies to provide housing for Aboriginal persons or Torres Strait Islanders; or
  - (c) in making grants of money for the purpose of enabling Aboriginal persons or Torres Strait Islanders to obtain housing loans from lenders operating on a commercial basis.
- (4) Subsection (3) does not prevent the investment of money under section 59 of the *Public Governance, Performance and Accountability Act 2013*.
- (5) Indigenous Business Australia must prepare budget estimates for the New Housing Fund for each financial year and, if the Minister so directs, for any other period specified by the Minister, and must submit estimates so prepared to the Minister not later than such date as the Minister directs.
- (6) Money in the New Housing Fund must not be applied otherwise than in accordance with budget estimates approved by the Minister.
- (7) For the purposes of subsection (5):
  - (a) if the period from ATSIC abolition day to the 30 June next following that day is more than 6 months—that period; and
  - (b) in any other case—the period from ATSIC abolition day to the second 30 June next following that day;is taken to be first financial year for which Indigenous Business Australia must prepare budget estimates for the New Housing Fund.
- (8) A determination by Indigenous Business Australia for the purposes of paragraph (2)(e) is not a legislative instrument.

**181B Review of decisions to refuse loans from New Housing Fund**

An application may be made to the Administrative Appeals Tribunal for review of a decision made by Indigenous Business Australia to refuse a housing loan from the New Housing Fund to an individual.

### **182 Restriction on spending by Indigenous Business Australia**

The Indigenous Business Australia Board must not approve a proposal for Indigenous Business Australia to spend money (otherwise than for the purposes of the day-to-day administration of Indigenous Business Australia) without first considering a written assessment of the proposal that has been:

- (a) prepared by a member of the staff of Indigenous Business Australia; and
- (b) endorsed by or on behalf of the Indigenous Business Australia Chief Executive Officer.

### **183 Borrowing for temporary purposes**

- (1) Indigenous Business Australia may, for the purpose only of meeting a temporary deficit in the money of Indigenous Business Australia, borrow money on overdraft from a bank.
- (2) The operation of this section is subject to such limits as the Finance Minister determines as to:
  - (a) the total amount of money (other than interest) that may be owed by Indigenous Business Australia at any time as a result of borrowings under this section; and
  - (b) the periods for which money may be borrowed under this section.
- (3) In this section:  
*money of Indigenous Business Australia* does not include:
  - (a) money held in trust by Indigenous Business Australia; or
  - (b) money in the New Housing Fund.

### **184 Limit on Indigenous Business Australia's powers**

- (1) Indigenous Business Australia shall not borrow money except in accordance with section 183.
- (2) Indigenous Business Australia shall not raise money except by borrowing.

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**185 Giving of security over assets**

- (1) Indigenous Business Australia may give security over the whole or any part of its assets:
  - (a) for the repayment by Indigenous Business Australia of money borrowed under section 183 and the payment by Indigenous Business Australia of interest (including interest on interest) on money so borrowed; or
  - (b) in connection with a guarantee given by Indigenous Business Australia under section 153;and not otherwise.
- (2) In this section, the reference to assets of Indigenous Business Australia does not include a reference to:
  - (a) money held in trust by Indigenous Business Australia; or
  - (b) money in the New Housing Fund; or
  - (c) any money owed to Indigenous Business Australia on a housing loan made, or treated as having been made, from the New Housing Fund.

**187 Powers of companies in which Indigenous Business Australia has an interest**

Nothing in this Part (except section 185) shall be taken to limit the powers of any company:

- (a) formed by Indigenous Business Australia, whether alone or jointly with another person; or
- (b) in which Indigenous Business Australia holds shares, debentures or other securities.

**188 Exemption from taxation**

Indigenous Business Australia is not subject to taxation under any law of the Commonwealth or of a State or Territory.

**189 Annual report and financial statements**

- (1) The annual report prepared by the Indigenous Business Australia Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include details of:
  - (a) any direction given by the Minister under section 151 of this Act during that period; and
  - (b) any consultants engaged under section 178 of this Act during that period.
- (2) Subject to any direction by the Finance Minister, the financial statements included in the annual report as required by subsection 43(4) of the *Public Governance, Performance and Accountability Act 2013* must deal with the New Housing Fund separately from the other finances of Indigenous Business Australia.
- (3) A direction referred to in subsection (2) is not a legislative instrument.

## Division 9—Miscellaneous

### 190 Delegation to Indigenous Business Australia Chief Executive Officer or member of staff

- (1) Indigenous Business Australia may, by writing under its seal, delegate all or any of its functions and powers to the Indigenous Business Australia Chief Executive Officer or to a member of its staff.
- (2) If Indigenous Business Australia delegates a function or power under subsection (1) to the Indigenous Business Australia Chief Executive Officer, the Indigenous Business Australia Chief Executive Officer may, by writing signed by him or her, sub-delegate the function or power to a member of the staff of Indigenous Business Australia.
- (3) Section 34AA and paragraphs 34AB(1)(a), (b) and (d) of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.
- (4) Section 34A and paragraphs 34AB(1)(c) and (d) of the *Acts Interpretation Act 1901* apply to a sub-delegation as if it were a delegation.

### 191 Secrecy

- (1) This section applies to a person:
  - (a) who is or has been an Indigenous Business Australia Director or acting Indigenous Business Australia Director;
  - (b) who is or has been the Indigenous Business Australia Chief Executive Officer or an acting Indigenous Business Australia Chief Executive Officer;
  - (c) who is or has been employed or engaged under section 175 or 178;



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- (d) who is performing, or who has performed, duties on behalf of Indigenous Business Australia pursuant to an arrangement under section 176; or
  - (e) whose services are being or have been made available to Indigenous Business Australia pursuant to an arrangement under section 177.
- (2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act, or of a prosecution for an offence against this Act:
- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the first-mentioned person in the performance of duties for the purposes of this Act; or
  - (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: 50 penalty units.

*Exception—housing or business loans*

- (2A) It is a defence to a prosecution for contravening subsection (2), if:
- (a) in relation to a prosecution for divulging information to a person or body:
    - (i) the information relates either to a housing loan or a business loan made, or treated as having been made, by Indigenous Business Australia or to a grant made, or treated as having been made, by Indigenous Business Australia, in relation to a housing loan or a business loan; and
    - (ii) the information was communicated to a person authorised in writing by the person to whose affairs the document relates to receive the information; or
  - (b) in relation to a prosecution for producing a document to a person or body:
    - (i) the document relates either to a housing loan or a business loan made, or treated as having been made, by Indigenous Business Australia or to a grant made, or

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treated as having been made, by Indigenous Business Australia, in relation to a housing loan or a business loan; and

- (ii) the document was produced to a person authorised in writing by the person to whose affairs the document relates to receive the document.

**Note:** A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

*Exception—Indigenous Business Australia Chief Executive Officer*

- (2B) Despite subsection (2), the Indigenous Business Australia Chief Executive Officer may divulge or communicate information, or produce a document, to the Secretary of the Department for the purposes of the Department.

**Note:** A defendant bears an evidential burden in relation to the matter in subsection (2B): see subsection 13.3(3) of the *Criminal Code*.

- (2C) In exercising a power under subsection (2B), the Indigenous Business Australia Chief Executive Officer must act in accordance with any guidelines in force under section 191AA.

*Exception—public interest*

- (2D) Despite subsection (2), the Indigenous Business Australia Chief Executive Officer may, if he or she determines in writing that it is necessary in the public interest, divulge or communicate information, or produce a document, to specified persons for specified purposes.

**Note:** A defendant bears an evidential burden in relation to the matter in subsection (2D): see subsection 13.3(3) of the *Criminal Code*.

- (2E) In making determinations under subsection (2D), the Indigenous Business Australia Chief Executive Officer must act in accordance with any guidelines in force under section 191AA.

- (2F) A determination under subsection (2D) is not a legislative instrument.

*Exception—consent*

- (2G) Despite subsection (2), a person may:
- (a) divulge or communicate information to a person authorised in writing, by the person to whose affairs the information relates, to receive the information; or
  - (b) produce a document to a person authorised in writing, by the person to whose affairs the document relates, to receive the document.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2G): see subsection 13.3(3) of the *Criminal Code*.

*Exception—information already publicly available*

- (2H) Despite subsection (2), a person may:
- (a) make a record of information, if the information is already publicly available; or
  - (b) divulge or communicate information to a person, if the information is already publicly available; or
  - (c) produce a document to a person, if the information contained in the document is already publicly available.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2H): see subsection 13.3(3) of the *Criminal Code*.

*Exception—making records*

- (2J) Despite subsection (2), a person may make a record of information in connection with the exercise of a power under subsection (2B), (2D) or (2G).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2J): see subsection 13.3(3) of the *Criminal Code*.

*Divulging or communicating information to courts*

- (3) A person to whom this section applies shall not be required to divulge or communicate to a court any information referred to in subsection (2) or to produce in a court any document referred to in that subsection, except when it is necessary to do so for the

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purposes of this Act, or of a prosecution for an offence against this Act.

*Definitions*

- (4) A reference in this section to an ***offence against this Act*** includes a reference to:

- (a) an offence against section 6 of the *Crimes Act 1914*; or
- (aa) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
- (b) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the *Criminal Code*;

where the offence relates to this Act.

- (5) In this section:

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

***produce*** includes permit access to.

***this Act*** includes the regulations.

**191AA Guidelines for exercise of Indigenous Business Australia  
Chief Executive Officer's powers**

The Minister may, by legislative instrument, make guidelines for the exercise of either or both of the following:

- (a) the Indigenous Business Australia Chief Executive Officer's power under subsection 191(2B);
- (b) the Indigenous Business Australia Chief Executive Officer's power to make determinations under subsection 191(2D).

## **Part 4A—Indigenous Land and Sea Corporation**

### **Division 1—Indigenous Land and Sea Corporation**

#### **191A Indigenous Land and Sea Corporation**

##### *Indigenous Land and Sea Corporation*

- (1) The corporation that was established under this section as previously in force by the name Indigenous Land Corporation is now to be known as the Indigenous Land and Sea Corporation.

Note: Subsection 25B(1) of the *Acts Interpretation Act 1901* provides that a body whose name is altered by an Act continues in existence under the new name so that its identity is not affected.

##### *Body corporate*

- (2) The Indigenous Land and Sea Corporation:
- (a) is a body corporate, with perpetual succession; and
  - (b) is to have a seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Indigenous Land and Sea Corporation. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

##### *Seal*

- (3) The seal of the Indigenous Land and Sea Corporation is to be kept in such custody as the Indigenous Land and Sea Corporation directs and must not be used except as authorised by the Indigenous Land and Sea Corporation.

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*Imprint of seal*

- (4) All courts, judges and persons acting judicially must:
- (a) take judicial notice of the imprint of the seal of the Indigenous Land and Sea Corporation appearing on a document; and
  - (b) presume that the imprint was duly affixed.

**191B Purposes of Indigenous Land and Sea Corporation**

The Indigenous Land and Sea Corporation is established:

- (a) to assist Aboriginal persons and Torres Strait Islanders to acquire land and water-related rights; and
  - (b) to assist Aboriginal persons and Torres Strait Islanders to manage indigenous-held land and indigenous waters;
- so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders.

## **Division 2—Functions and powers of Indigenous Land and Sea Corporation**

### **191C Functions of Indigenous Land and Sea Corporation**

The Indigenous Land and Sea Corporation has the following functions:

- (a) the acquisition functions referred to in section 191D;
- (b) the management functions referred to in section 191E;
- (c) such other functions as are conferred on the Indigenous Land and Sea Corporation by this Act or any other law of the Commonwealth;
- (d) to do anything incidental to or conducive to the performance of any of the preceding functions.

### **191D Acquisition functions of Indigenous Land and Sea Corporation**

#### *Functions*

- (1) The ***acquisition functions*** of the Indigenous Land and Sea Corporation are as follows:
  - (a) to grant interests in land, and water-related rights, to Aboriginal or Torres Strait Islander corporations;
  - (b) to acquire by agreement interests in land, and water-related rights, for the purpose of making grants under paragraph (a);
  - (c) to make grants of money to Aboriginal or Torres Strait Islander corporations for the acquisition of interests in land and water-related rights;
  - (d) to guarantee loans made to Aboriginal or Torres Strait Islander corporations for the purpose of the acquisition of interests in land and water-related rights.

Note 1: ***Interest***, in relation to land, is defined by section 4.

Note 1A: ***Water-related right*** is defined by section 4C.

**Part 4A** Indigenous Land and Sea Corporation

**Division 2** Functions and powers of Indigenous Land and Sea Corporation

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Note 2: *Aboriginal or Torres Strait Islander corporation* is defined by section 4.

*Grants may be subject to conditions*

- (1A) The grant of an interest in land, or a water-related right, by the Indigenous Land and Sea Corporation may be made subject to such terms and conditions as the Indigenous Land and Sea Corporation determines.
- (1B) An instrument determining terms and conditions under subsection (1A) is not a legislative instrument.

*Grants—terms and conditions*

- (2) The Indigenous Land and Sea Corporation may make a grant of money on terms and conditions that must relate to:
  - (a) the purposes for which the money may be spent; or
  - (b) the period within which the money is to be spent; or
  - (c) the acquittal of money spent; or
  - (d) the giving of information in relation to the grant.

If the grant becomes repayable because of a breach of such a term or condition, the Indigenous Land and Sea Corporation must take all reasonable steps to recover the repayment.

*Guarantees—terms and conditions*

- (2A) A guarantee is subject to such terms and conditions as the Indigenous Land and Sea Corporation determines.

*Performance of functions*

- (3) For the purpose of the performance of the Indigenous Land and Sea Corporation's acquisition functions, the Indigenous Land and Sea Corporation must give priority to the following:
  - (a) pursuing a policy of:
    - (i) acquiring interests in land, and water-related rights, and granting the interests and rights to Aboriginal or Torres Strait Islander corporations; or



- (ii) in cases where the Indigenous Land and Sea Corporation grants money to Aboriginal or Torres Strait Islander corporations for the acquisition of interests in land or water-related rights—acting as the agent of the Aboriginal or Torres Strait Islander corporations in connection with those acquisitions;  
except where the circumstances make the pursuit of such a policy impracticable or inadvisable;
- (b) in a case where the Indigenous Land and Sea Corporation acquires an interest in land, or a water-related right, for the purpose of making a grant of the interest or right to an Aboriginal or Torres Strait Islander corporation—that grant being made within a reasonable time after that acquisition.

*Searches under Native Title Act*

- (4) In performing its acquisition functions, the Indigenous Land and Sea Corporation must search any relevant Registers of the National Native Title Tribunal to ascertain whether any claims have been lodged or accepted or determined in relation to:
  - (a) land under consideration for acquisition; or
  - (b) waters, in relation to which water-related rights are under consideration for acquisition.

## **191E Management functions of Indigenous Land and Sea Corporation**

*Functions*

- (1) The ***management functions*** of the Indigenous Land and Sea Corporation are as follows:
  - (a) to carry on, or arrange for the carrying on of, management activities in relation to indigenous-held land under agreements with the holders of the land;
  - (b) to carry on, or arrange for the carrying on of, management activities in relation to land held by the Indigenous Land and Sea Corporation;

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- (c) to carry on other management activities in relation to indigenous-held land;
- (ca) to carry on, or arrange for the carrying on of, management activities in relation to indigenous waters;
- (cb) to carry on, or arrange for the carrying on of, management activities in relation to water, or waters, in relation to which the Indigenous Land and Sea Corporation holds water-related rights;
- (d) to make grants of money for the carrying on of management activities in relation to indigenous-held land and indigenous waters;
- (e) to make loans of money (whether secured or unsecured) for the purpose of carrying on management activities in relation to indigenous-held land and indigenous waters;
- (f) to guarantee loans made for the purpose of carrying on management activities in relation to indigenous-held land and indigenous waters.

Note 1: **Management activities** is defined by subsection (5).

Note 2: **Indigenous-held land** is defined by section 4B.

Note 3: **Holder** is defined by section 4.

Note 4: **Indigenous waters** is defined by section 4.

*Management activities relating to particular indigenous-held land*

- (1A) Paragraph (1)(c) does not authorise the Indigenous Land and Sea Corporation to carry on a management activity in relation to particular indigenous-held land otherwise than under an agreement with the holder of the land.

*Management activities relating to indigenous waters*

- (1B) Paragraph (1)(ca) does not authorise the Indigenous Land and Sea Corporation to carry on a management activity in relation to indigenous waters in a manner inconsistent with the rights and interests of other persons.

*Grants—terms and conditions*

- (2) The Indigenous Land and Sea Corporation may make a grant of money on terms and conditions that must relate to:

- (a) the purposes for which the money may be spent; or
- (b) the period within which the money is to be spent; or
- (c) the acquittal of money spent; or
- (d) the giving of information in relation to the grant.

If the grant becomes repayable because of a breach of such a term or condition, the Indigenous Land and Sea Corporation must take all reasonable steps to recover the repayment.

*Loans—terms and conditions*

- (2A) The Indigenous Land and Sea Corporation may make a loan of money on terms and conditions that must relate to:

- (a) the purposes for which the money may be spent; or
- (b) the period within which the money is to be spent; or
- (c) the acquittal of money spent; or
- (d) the giving of information relating to the loan; or
- (e) the repayment of the loan; or
- (f) the payment of interest (including interest on interest); or
- (g) if the loan is secured—the loan security.

*Guarantees—terms and conditions*

- (2B) A guarantee is subject to such terms and conditions as the Indigenous Land and Sea Corporation determines.

*Performance of functions*

- (3) For the purposes of the performance of the Indigenous Land and Sea Corporation's management functions, the Indigenous Land and Sea Corporation must give priority to the following:
- (a) pursuing sound land, water and environmental management practices;

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- (b) pursuing a policy of granting money or making loans only where the Indigenous Land and Sea Corporation considers that alternative approaches (such as guaranteeing loans obtained from external sources or carrying on management activities under an agreement with the holders of indigenous-held land) are impracticable;
- (c) in a case where the Indigenous Land and Sea Corporation carries on, or arranges for the carrying on of, management activities under agreements with holders of indigenous-held land—directly involving the holders of the land in those activities.

*Agreements may involve third parties*

- (4) A reference in this section to an agreement with the holder of indigenous-held land includes a reference to an agreement with the holder, where one or more other persons are parties to the agreement.

*Definition*

- (5) In this section:

***management activities*** means activities that consist of, or relate to, the managed use, care or improvement of land, water or waters, and includes the following:

- (a) carrying on a business that involves the use, care or improvement of land, water or waters;
- (b) providing any of the following services (whether on a commercial basis or otherwise) in connection with a business that involves the use, care or improvement of land, water or waters:
  - (i) management services;
  - (ii) clerical or administrative services;
  - (iii) services relating to financial administration;
  - (iv) technical or professional services;
  - (v) advisory services;
  - (vi) similar services;

- (c) providing environmental management services (whether on a commercial basis or otherwise) in relation to the use, care or improvement of land, water or waters;
- (d) providing training (whether on a commercial basis or otherwise) in the skills and knowledge relevant to:
  - (i) the carrying on of a business that involves the use, care or improvement of land, water or waters; or
  - (ii) the managed use, care or improvement of land, water or waters;
- (e) disseminating information (whether on a commercial basis or otherwise) about:
  - (i) land management practices and water management practices; and
  - (ii) environmental management practices relating to land, water or waters.

**191EA Indigenous Land and Sea Corporation may make money available to Indigenous Business Australia**

The Indigenous Land and Sea Corporation may make payments to Indigenous Business Australia to assist Indigenous Business Australia to carry out its functions.

**191F Performance of functions of Indigenous Land and Sea Corporation—general**

*Sound business principles*

- (1) The Indigenous Land and Sea Corporation must act in accordance with sound business principles whenever it performs its functions on a commercial basis.

*Relevant matters*

- (2) For the purpose of the performance of the Indigenous Land and Sea Corporation's functions, the Indigenous Land and Sea Corporation must give priority to the following:

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- (aa) ensuring that, as far as practicable, Aboriginal persons or Torres Strait Islanders derive social or cultural benefits as a result of the performance of those functions;
- (a) ensuring that the Indigenous Land and Sea Corporation has access to the skills and resources required to perform its functions;
- (b) maximising the employment of Aboriginal persons and Torres Strait Islanders;
- (c) maximising the use of goods and services provided by businesses owned or controlled (whether directly or indirectly) by Aboriginal persons or Torres Strait Islanders.

*Functions additional to functions of other bodies etc.*

- (3) The functions conferred on the Indigenous Land and Sea Corporation by this Act are in addition to, and not instead of, any functions conferred on a person or body by or under:
  - (a) any other law of the Commonwealth; or
  - (b) a law of a State or Territory.

*Sacred matters*

- (4) Subject to subsection (5), in performing a function that involves dealing with cultural material or information that is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders, the Indigenous Land and Sea Corporation must ensure that material or information is not disclosed if the disclosure would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders.

*Report to Minister if sacred matters affect performance etc.*

- (5) The Indigenous Land and Sea Corporation must provide a written report to the Minister in cases where the performance of its functions is affected by matters referred to in subsection (4).

**191G Subsidiaries of Indigenous Land and Sea Corporation may perform functions corresponding to the Indigenous Land and Sea Corporation's functions**

*Arrangements with subsidiaries*

- (1) The Indigenous Land and Sea Corporation may make an arrangement with a subsidiary of the Indigenous Land and Sea Corporation about the performance by the subsidiary of functions corresponding to one or more of the Indigenous Land and Sea Corporation's functions.

Note: **Subsidiary** is defined by subsection 4(2).

*Matters covered by arrangements*

- (2) Without limiting subsection (1), an arrangement may provide:
- (a) for the Indigenous Land and Sea Corporation to transfer money to the subsidiary in connection with the performance of the corresponding functions; or
  - (b) for the Indigenous Land and Sea Corporation to make loans to the subsidiary in connection with the performance of the corresponding functions; or
  - (c) for the Indigenous Land and Sea Corporation to guarantee loans made to the subsidiary for the purpose of the performance of the corresponding functions; or
  - (d) for the staff of the Indigenous Land and Sea Corporation to be made available to the subsidiary in connection with the performance of the corresponding functions.

*Restrictions on performance of functions*

- (3) Subsections 191D(3) and 191E(3) and sections 191F and 191Q apply in relation to the performance by the subsidiary of the corresponding functions in a corresponding way to the way in which they apply to the performance of the Indigenous Land and Sea Corporation's functions.

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*Generality of arrangements*

- (4) An arrangement may relate to a particular function either generally or as otherwise provided by the arrangement.

*Indigenous Land and Sea Corporation may continue to perform functions*

- (5) The making of an arrangement about a function does not prevent the Indigenous Land and Sea Corporation from performing that function.

*When subsidiary taken to perform a corresponding function*

- (6) For the purposes of this Act and any other law of the Commonwealth, a subsidiary of the Indigenous Land and Sea Corporation is taken to perform a function corresponding to a particular function of the Indigenous Land and Sea Corporation if, and only if, the subsidiary performs the first-mentioned function under an arrangement under this section.

*Independent function*

- (7) Anything done by the Indigenous Land and Sea Corporation under this section, or under an arrangement under this section, is taken to have been done by the Indigenous Land and Sea Corporation in the performance of a function that is separate and distinct from the Indigenous Land and Sea Corporation's acquisition functions or management functions.

**191H Powers of Indigenous Land and Sea Corporation**

*General powers*

- (1) The Indigenous Land and Sea Corporation has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.



*Specific powers*

- (2) The powers of the Indigenous Land and Sea Corporation under subsection (1) include, but are not limited to, the following powers:
- (a) to enter into contracts and agreements;
  - (b) to invest money of the Indigenous Land and Sea Corporation;
  - (c) to appoint agents and attorneys and act as an agent for other persons;
  - (d) to form, and participate in the formation of, companies;
  - (e) to subscribe for and purchase shares in, and debentures and securities of, companies;
  - (f) to enter into partnerships;
  - (g) to participate in joint ventures and arrangements for the sharing of profits;
  - (h) to accept gifts, grants, bequests and devises made to it;
  - (i) to act as trustee of money and other property vested in it on trust;
  - (j) to charge for the provision of services by it.

*Trusts*

- (3) Despite anything contained in this Act, any money or other property held by the Indigenous Land and Sea Corporation on trust must be dealt with in accordance with the powers and duties of the Indigenous Land and Sea Corporation as trustee.

*Extra-territorial exercise of powers*

- (4) The powers of the Indigenous Land and Sea Corporation may be exercised within or outside Australia.

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**191I Guidelines about certain acquisition functions and management functions**

*When section applies*

- (1) This section applies if the Indigenous Land and Sea Corporation Board makes written guidelines about the performance of a function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(a), (c) or (d) or 191E(1)(d), (e) or (f).

*Guidelines to be made available*

- (2) The Indigenous Land and Sea Corporation must make a free copy of the guidelines available to any person who asks for a copy.

**191J Disposal of surplus land or water-related rights**

*When section applies*

- (1) This section applies if:
  - (a) either:
    - (i) the Indigenous Land and Sea Corporation has acquired an interest in land or a water-related right:
      - (A) under paragraph 191D(1)(b); or
      - (B) by way of a gift, grant, bequest or devise made to it; or
    - (ii) a subsidiary of the Indigenous Land and Sea Corporation has acquired an interest in land or a water-related right:
      - (A) as a result of the performance by it of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(b); or
      - (B) by way of a gift, grant, bequest or devise made to it for the purpose of the performance by it of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(a); and

- (b) the Indigenous Land and Sea Corporation or the subsidiary, as the case requires, considers that it no longer needs to hold the interest or right for the purpose of making a grant of the interest or right to an Aboriginal or Torres Strait Islander corporation within a reasonable time after that acquisition.

*Disposal of surplus land or rights*

- (2) The Indigenous Land and Sea Corporation or the subsidiary, as the case requires, may dispose of the interest or right to a person or body.

**191L Powers of Minister**

Except as expressly provided in this Act or the *Public Governance, Performance and Accountability Act 2013*, the Minister is not empowered to direct the Indigenous Land and Sea Corporation in relation to any of its activities.

## **Division 3—National and regional strategies**

### **191N National indigenous land and sea strategy**

*Indigenous Land and Sea Corporation Board to prepare national strategy*

- (1) The Indigenous Land and Sea Corporation Board must prepare, and revise from time to time, a strategy to be known as the national indigenous land and sea strategy.

*Contents of national strategy*

- (2) The national indigenous land and sea strategy must cover, but is not limited to, the following matters:
  - (a) the acquisition of interests in land, and water-related rights, for the purpose of making grants of those interests and rights to Aboriginal or Torres Strait Islander corporations;
  - (b) management issues relating to indigenous-held land and indigenous waters;
  - (c) environmental issues relating to indigenous-held land and indigenous waters.

Note: It is not intended that the strategy will contain commercially sensitive information.

- (3) In performing functions under this section, the Indigenous Land and Sea Corporation Board may consult such other persons and bodies as the Board considers appropriate.

*Period to which national strategy is to relate*

- (4) The national indigenous land and sea strategy must relate to a period of at least 3 years and not more than 5 years.

*Review of national strategy*

- (5) The Indigenous Land and Sea Corporation Board must review the national indigenous land and sea strategy regularly.

*Copy to be given to Minister*

- (6) The Indigenous Land and Sea Corporation Board must give a copy of the national indigenous land and sea strategy and a copy of any changes it has made to the national indigenous land and sea strategy to the Minister within 2 months of the Board agreeing to the strategy or change.

*Copy to be tabled in each House*

- (7) The Minister must cause a copy of the national indigenous land and sea strategy or of any changes made to the national indigenous land and sea strategy to be presented to each House of the Parliament within 15 sitting days of that House after the Minister has received the document.

**191P Regional indigenous land and sea strategies**

*Indigenous Land and Sea Corporation Board to prepare regional strategies*

- (1) The Indigenous Land and Sea Corporation Board must prepare, and revise from time to time, strategies to be known as regional indigenous land and sea strategies.

*Indigenous Land and Sea Corporation Board to determine regional areas*

- (2) For the purposes of this section, the Indigenous Land and Sea Corporation Board must, by writing, determine the boundaries of areas to be known as regional areas.

*Regional areas*

- (3) A regional indigenous land and sea strategy must relate to a specified regional area.

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*Contents of regional strategy*

- (4) A regional strategy relating to a regional area must cover, but is not limited to, the following matters:
- (a) the acquisition of interests in land, and water-related rights, in the regional area for the purpose of making grants of those interests and rights to Aboriginal or Torres Strait Islander corporations;
  - (b) management issues relating to indigenous-held land and indigenous waters in the regional area;
  - (c) environmental management issues relating to indigenous-held land and indigenous waters in the regional area.

Note: It is not intended that a strategy will contain commercially sensitive information.

*Consultation on regional strategies*

- (5) In performing functions under this section in connection with a regional area, the Indigenous Land and Sea Corporation Board may consult any persons or bodies the Board considers appropriate.

*Period to which regional strategy is to relate*

- (6) A regional indigenous land and sea strategy is to relate to a period of at least 3 years and not more than 5 years.

*Review*

- (7) The Indigenous Land and Sea Corporation Board must review each regional indigenous land and sea strategy regularly.

*Copy to Minister on request*

- (8) The Indigenous Land and Sea Corporation Board must give a copy of a regional strategy to the Minister on request.

**191Q Indigenous Land and Sea Corporation to have regard to strategies**

For the purpose of the performance of the Indigenous Land and Sea Corporation's functions, the Indigenous Land and Sea Corporation must have regard to:

- (a) the national indigenous land and sea strategy; and
- (b) each relevant regional indigenous land and sea strategy.

**191R Indigenous Land and Sea Corporation to make strategies available**

*Strategies to be made available*

- (1) The Indigenous Land and Sea Corporation must make a copy of the national indigenous land and sea strategy or a regional indigenous land and sea strategy available to any person who asks for a copy.

*Fee may be charged*

- (2) The Indigenous Land and Sea Corporation may charge a fee for making the copy available.

**Division 4—Dealings in land and in water-related rights  
granted by Indigenous Land and Sea  
Corporation**

**191S Restrictions on disposals and charges**

*When section applies*

- (1) This section applies if a body corporate has acquired an interest in land or a water-related right and:
  - (a) the interest or right was acquired from the Indigenous Land and Sea Corporation under paragraph 191D(1)(a); or
  - (b) the interest or right was acquired using money granted to the body corporate by the Indigenous Land and Sea Corporation under paragraph 191D(1)(c); or
  - (c) the interest or right was acquired from a subsidiary of the Indigenous Land and Sea Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(a); or
  - (d) the interest or right was acquired using money granted to the body corporate by a subsidiary of the Indigenous Land and Sea Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(c).

*Disposals and charges prohibited*

- (2) The body corporate must not, without the consent of the Indigenous Land and Sea Corporation:
  - (a) dispose of the interest or right; or
  - (b) give a charge with respect to an asset of the body corporate that consists of, or includes, the interest or right.



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*Purported disposals to be of no effect*

- (3) If the body corporate purports to dispose of the interest or right without the consent of the Indigenous Land and Sea Corporation, the purported disposition is of no effect.

*Purported charges to be of no effect*

- (4) If:
- (a) the body corporate purports to give a charge with respect to an asset of the body corporate that consists of, or includes, the interest or right; and
  - (b) the purported charge is given without the consent of the Indigenous Land and Sea Corporation;
- the purported charge is of no effect.

*Definition*

- (5) In this section:

**charge** means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise.

**191SA Indigenous Land and Sea Corporation's interest in land or in water-related rights**

- (1) Any liability or obligation of a body corporate to the Indigenous Land and Sea Corporation arising:
- (a) under the terms and conditions of a grant, loan or guarantee referred to in subsection 191D(2) or (2A) or 191E(2), (2A) or (2B); or
  - (b) under section 191S;
- is taken to be an interest of the Corporation in the land, or in the water-related right, to which the liability or obligation relates.

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- (2) The land or right is charged with the payment of all costs and expenses incurred by the Corporation in respect of its enforcement of the liability or obligation.

**191SB Interest in land, or in water-related rights, of subsidiary of Indigenous Land and Sea Corporation**

- (1) Any liability or obligation of a body corporate to a subsidiary of the Indigenous Land and Sea Corporation arising:
  - (a) under the terms and conditions of a grant, loan or guarantee made or given by the subsidiary under an arrangement referred to in subsection 191G(1); or
  - (b) under section 191S;is taken to be an interest of the subsidiary in the land, or in the water-related right, to which the liability or obligation relates.
- (2) The land or right is charged with the payment of all costs and expenses incurred by the subsidiary in respect of its enforcement of the liability or obligation.

**191T Surrender of land or of water-related right to Indigenous Land and Sea Corporation**

*When this section applies*

- (1) This section applies if a body corporate has acquired an interest in land or a water-related right and:
  - (a) the interest or right was acquired from the Indigenous Land and Sea Corporation under paragraph 191D(1)(a); or
  - (b) the interest or right was acquired using money granted to the body corporate by the Indigenous Land and Sea Corporation under paragraph 191D(1)(c); or
  - (c) the interest or right was acquired from a subsidiary of the Indigenous Land and Sea Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(a); or

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- (d) the interest or right was acquired using money granted to the body corporate by a subsidiary of the Indigenous Land and Sea Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(c).

*Surrender of interest or right to Indigenous Land and Sea Corporation*

- (2) The body corporate may dispose of the interest or right to the Indigenous Land and Sea Corporation. The disposal is subject to such terms and conditions as are agreed between the body corporate and the Indigenous Land and Sea Corporation.

*Effect of surrender of interest or right*

- (3) If the Indigenous Land and Sea Corporation acquires an interest in land, or a water-related right, as a result of a disposal under subsection (2), this Part has effect as if the interest or right had been acquired by the Indigenous Land and Sea Corporation under paragraph 191D(1)(b).

**191U Land granted by Indigenous Land and Sea Corporation must not be claimed under the *Aboriginal Land Rights (Northern Territory) Act 1976***

*When section applies*

- (1) This section applies to land if a body corporate has acquired an interest in the land and:
  - (a) the interest was acquired from the Indigenous Land and Sea Corporation under paragraph 191D(1)(a); or
  - (b) the interest was acquired using money granted to the body corporate by the Indigenous Land and Sea Corporation under paragraph 191D(1)(c); or
  - (c) the interest was acquired from a subsidiary of the Indigenous Land and Sea Corporation as a result of the performance by

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the subsidiary of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(a); or

- (d) the interest was acquired using money granted to the body corporate by a subsidiary of the Indigenous Land and Sea Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(c).

*No claims*

- (2) An application of the kind referred to in paragraph 50(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* must not be made if it relates to a claim to the land.

## **Division 5—Board of Directors of Indigenous Land and Sea Corporation**

### **191V Board of Directors of Indigenous Land and Sea Corporation**

#### *Board*

- (1) There is to be a Board of Directors of the Indigenous Land and Sea Corporation.

#### *Composition of Board*

- (2) The Indigenous Land and Sea Corporation Board consists of the following members:
- (a) a Chairperson;
  - (b) a Deputy Chairperson;
  - (c) an ordinary member (whose office may be referred to as the paragraph (c) office);
  - (d) an ordinary member (whose office may be referred to as the paragraph (d) office);
  - (e) an ordinary member (whose office may be referred to as the paragraph (e) office);
  - (f) an ordinary member (whose office may be referred to as the paragraph (f) office);
  - (g) an ordinary member (whose office may be referred to as the paragraph (g) office).

#### *Vacancy not to affect performance of functions etc.*

- (3) The performance of the functions, or the exercise of the powers, of the Indigenous Land and Sea Corporation Board is not affected only because of there being a vacancy or vacancies in the membership of the Indigenous Land and Sea Corporation Board.

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**191W Responsibilities of Indigenous Land and Sea Corporation Board**

It is the responsibility of the Indigenous Land and Sea Corporation Board to ensure the proper and efficient performance of the functions of the Indigenous Land and Sea Corporation and to determine the policy of the Corporation with respect to any matter.

**191X Appointment of Indigenous Land and Sea Corporation Directors**

*Appointment by Minister*

- (1) An Indigenous Land and Sea Corporation Director is to be appointed by the Minister by written instrument.

*Aboriginal persons/Torres Strait Islanders*

- (2) The Indigenous Land and Sea Corporation Chairperson and at least 4 other Indigenous Land and Sea Corporation Directors must be Aboriginal persons or Torres Strait Islanders.

*Consultation*

- (3) Before appointing a person as an Indigenous Land and Sea Corporation Director, the Minister must consult the Finance Minister about the appointment.

*Qualifications*

- (4) Each ordinary member of the Board is to be a person who the Minister is satisfied has experience in:
  - (a) land, water or environmental management; or
  - (b) business or financial management; or
  - (c) Aboriginal community life or Torres Strait Islander community life;and the Minister must ensure that at least 2 ordinary members of the Board have experience in business or financial management.

**191Y Automatic re-appointment of incumbent pending appointment of successor**

*When section applies*

- (1) This section applies if:
  - (a) a person appointed under subsection 191X(1) (the ***incumbent***) ceases to hold a particular office of Indigenous Land and Sea Corporation Director because of the expiry of the period specified in the instrument of appointment; and
  - (b) there is not in force an instrument under subsection 191X(1) re-appointing the incumbent, or appointing another person, to that office with effect from the end of that period.

*Automatic re-appointment*

- (2) The Minister is taken to have re-appointed the incumbent to that office under this subsection with effect from the end of that period. Section 191X does not apply to the re-appointment.

*Tenure*

- (3) The Minister may terminate the appointment of the incumbent at any time if an appointment under subsection 191X(1) of another person to that office takes effect immediately after that time. This subsection has effect despite section 191Z.

## **Division 6—Administrative provisions**

### **191Z Period of appointment**

An Indigenous Land and Sea Corporation Director holds office for such period as is specified in the instrument of appointment. The period must not exceed 4 years.

### **192 Basis on which Indigenous Land and Sea Corporation Directors hold office**

*General rule—part-time basis*

- (1) Subject to this section, an Indigenous Land and Sea Corporation Director holds office on a part-time basis.

*Chairperson may hold office on a full-time basis*

- (2) The instrument of appointment of the Indigenous Land and Sea Corporation Chairperson may declare that the Chairperson holds office on a full-time basis.

### **192A Remuneration and allowances**

An Indigenous Land and Sea Corporation Director is entitled to remuneration and allowances in accordance with section 194.

### **192B Outside employment—full-time Indigenous Land and Sea Corporation Chairperson**

*When section applies*

- (1) This section applies to the Indigenous Land and Sea Corporation Chairperson if the Chairperson holds office on a full-time basis.



*No outside employment*

- (2) The Indigenous Land and Sea Corporation Chairperson must not engage in any paid employment outside the duties of his or her office without the written agreement of the Indigenous Land and Sea Corporation Board.

**192C Leave of absence—part-time Indigenous Land and Sea Corporation Directors**

*When this section applies*

- (1) This section applies to an Indigenous Land and Sea Corporation Director who holds office on a part-time basis.

*Grant of leave*

- (2) The Indigenous Land and Sea Corporation Board may, by writing, grant leave of absence to an Indigenous Land and Sea Corporation Director from a meeting of the Indigenous Land and Sea Corporation Board.

*Delegation*

- (3) The Indigenous Land and Sea Corporation Board may, by writing, delegate to the Indigenous Land and Sea Corporation Chairperson the power under subsection (2) to grant leave of absence to the other Indigenous Land and Sea Corporation Directors.

**192D Leave of absence—full-time Indigenous Land and Sea Corporation Chairperson**

*Indigenous Land and Sea Corporation Chairperson to whom this section applies*

- (1) This section applies to the Indigenous Land and Sea Corporation Chairperson if the Chairperson holds office on a full-time basis.

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*Recreation leave*

- (2) The Indigenous Land and Sea Corporation Chairperson has such recreation leave entitlements as are determined by the Remuneration Tribunal.

*Other leave*

- (3) The Indigenous Land and Sea Corporation Board may grant the Indigenous Land and Sea Corporation Chairperson leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

**192E Acting appointments**

*Acting Chairperson*

- (1) The Deputy Chairperson of the Indigenous Land and Sea Corporation Board is to act as the Indigenous Land and Sea Corporation Chairperson:
- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to persons acting as the Indigenous Land and Sea Corporation Chairperson, see section 33A of the *Acts Interpretation Act 1901*.

*Acting Deputy Chairperson*

- (2) The Minister may appoint an Indigenous Land and Sea Corporation Director to act as the Deputy Chairperson of the Indigenous Land and Sea Corporation Board:
- (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or

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- (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;  
but a person appointed to act during a vacancy is not to continue so to act for more than 6 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

*Acting Director*

- (3) The Minister may appoint a person to act as an Indigenous Land and Sea Corporation Director (other than as the Chairperson or the Deputy Chairperson of the Indigenous Land and Sea Corporation Board):
  - (a) during a vacancy in an office of Director, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when a Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;but a person appointed to act during a vacancy is not to continue so to act for more than 6 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

*Eligibility for acting appointment*

- (4) The Minister must not appoint a person to act in an office unless, having regard to section 191X, the person could be appointed to that office.

**192F Disclosure of interests**

*Notification of business interests to Minister—full-time Chairperson*

- (3) If the Indigenous Land and Sea Corporation Chairperson holds office on a full-time basis, the Chairperson must give written notice to the Minister of all direct or indirect pecuniary interests

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that the Chairperson has or acquires in any business, or in any body corporate carrying on a business.

- (4) Subsection (3) applies in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

**192G Resignation**

An Indigenous Land and Sea Corporation Director may resign by writing signed by him or her and sent to the Minister.

**192H Termination of appointment**

*Misbehaviour or incapacity*

- (1) The Minister may terminate the appointment of an Indigenous Land and Sea Corporation Director because of misbehaviour or physical or mental incapacity.

*Bankruptcy, conflict of interest etc.*

- (2) If an Indigenous Land and Sea Corporation Director:
- (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with his or her creditors; or
  - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (e) fails, without reasonable excuse, to comply with subsection 192F(3);

the Minister must terminate the appointment of the Director.

Note: The appointment of an Indigenous Land and Sea Corporation Director may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

*Full-time Chairperson—unauthorised absence, paid employment*

- (3) If the Indigenous Land and Sea Corporation Chairperson holds office on a full-time basis and the Chairperson:
- (a) is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (b) engages, except with the agreement of the Indigenous Land and Sea Corporation Board, in paid employment outside the duties of his or her office;
- the Minister must terminate the appointment of the Chairperson.

*Part-time Directors—unauthorised absence*

- (4) If an Indigenous Land and Sea Corporation Director who holds office on a part-time basis is absent, except on leave granted under section 192C, from 3 consecutive meetings of the Indigenous Land and Sea Corporation Board, the Minister must terminate the appointment of the Director.

**192I Other terms and conditions**

An Indigenous Land and Sea Corporation Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*.

## **Division 7—Operations of Indigenous Land and Sea Corporation Board**

### **192J Meetings of Indigenous Land and Sea Corporation Board**

#### *Chairperson to convene meetings*

- (1) The Indigenous Land and Sea Corporation Chairperson must convene such meetings of the Indigenous Land and Sea Corporation Board as, in his or her opinion, are necessary for the efficient performance of the Board's responsibilities.

#### *Quorum*

- (2) At a meeting of the Indigenous Land and Sea Corporation Board, a quorum is constituted by 4 Indigenous Land and Sea Corporation Directors.

#### *Quorum if Director excluded*

- (3) If:
  - (a) an Indigenous Land and Sea Corporation Director who is present at a meeting is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Indigenous Land and Sea Corporation Board with respect to a particular matter; and
  - (b) when the Director leaves the meeting there is no longer a quorum present;the Indigenous Land and Sea Corporation Directors remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

*Chairperson to preside at meetings*

- (4) The Indigenous Land and Sea Corporation Chairperson is to preside at all meetings of the Indigenous Land and Sea Corporation Board at which he or she is present.

*Arrangements if Chairperson not present at a meeting*

- (5) If the Indigenous Land and Sea Corporation Chairperson is not present at a meeting of the Indigenous Land and Sea Corporation Board:
- (a) if the Deputy Chairperson of the Indigenous Land and Sea Corporation Board is present—the Deputy Chairperson is to preside at the meeting; and
  - (b) in any other case—the Indigenous Land and Sea Corporation Directors present must elect one of their number to preside at the meeting.

*Voting*

- (6) Questions arising at a meeting of the Indigenous Land and Sea Corporation Board are to be determined by a majority of the votes of the Indigenous Land and Sea Corporation Directors present and voting.

*Deliberative vote*

- (7) The person presiding at a meeting of the Indigenous Land and Sea Corporation Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

*Procedure and minutes*

- (8) The Indigenous Land and Sea Corporation Board:
- (a) may regulate the conduct of proceedings at its meetings as it thinks fit; and
  - (b) must cause minutes of those proceedings to be kept.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

## **Division 8—Indigenous Land and Sea Corporation Chief Executive Officer**

### **192K Indigenous Land and Sea Corporation Chief Executive Officer**

#### *Appointment*

- (1) There is to be a Chief Executive Officer of the Indigenous Land and Sea Corporation, who is to be appointed by the Indigenous Land and Sea Corporation Board.

#### *Day-to-day administration*

- (2) Subject to subsection (3), the Indigenous Land and Sea Corporation Chief Executive Officer must manage the day-to-day administration of the Indigenous Land and Sea Corporation.

#### *Board's policies and directions*

- (3) The Indigenous Land and Sea Corporation Chief Executive Officer must, in:
  - (a) managing the administration of the Indigenous Land and Sea Corporation; and
  - (b) exercising any powers conferred on the Chief Executive Officer by this Act;act in accordance with any policies determined, and any directions given, by the Indigenous Land and Sea Corporation Board in writing.

### **192L Term of appointment**

The Indigenous Land and Sea Corporation Chief Executive Officer holds office for such period as is specified in the instrument of appointment. The period must not exceed 4 years.



**192M Holding of office**

The Indigenous Land and Sea Corporation Chief Executive Officer holds office during the pleasure of the Indigenous Land and Sea Corporation Board.

**192N Remuneration and allowances of Indigenous Land and Sea Corporation Chief Executive Officer**

The Indigenous Land and Sea Corporation Chief Executive Officer is to be paid such remuneration and allowances as are determined by the Indigenous Land and Sea Corporation Board in writing.

**192P Acting Indigenous Land and Sea Corporation Chief Executive Officer**

The Indigenous Land and Sea Corporation Board may appoint a person to act as the Indigenous Land and Sea Corporation Chief Executive Officer:

- (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

**192Q Resignation**

The Indigenous Land and Sea Corporation Chief Executive Officer may resign by writing signed by him or her and sent to the Indigenous Land and Sea Corporation Board.

**Part 4A** Indigenous Land and Sea Corporation

**Division 8** Indigenous Land and Sea Corporation Chief Executive Officer

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**192R Other terms and conditions**

The Indigenous Land and Sea Corporation Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Indigenous Land and Sea Corporation Board in writing.

## **Division 9—Staff**

### **192S Staff**

#### *Engagement of staff*

- (1) The Indigenous Land and Sea Corporation Chief Executive Officer may, on behalf of the Indigenous Land and Sea Corporation, engage such employees as are necessary for the performance of the Corporation's functions under this Act.

#### *Terms and conditions*

- (2) The terms and conditions of employment of persons engaged under this section are as determined by the Indigenous Land and Sea Corporation Board in writing.

### **192T Arrangements for Indigenous Business Australia staff to perform duties on behalf of Indigenous Land and Sea Corporation**

The Indigenous Land and Sea Corporation Chief Executive Officer may make arrangements with the Indigenous Business Australia Chief Executive Officer for the performance of duties by the staff of Indigenous Business Australia on behalf of the Indigenous Land and Sea Corporation.

### **192U Arrangements relating to staff**

The Indigenous Land and Sea Corporation Chief Executive Officer may, on behalf of the Indigenous Land and Sea Corporation, make arrangements for the services of officers or employees of:

- (a) the Public Service of the Commonwealth or of a State or Territory; or
- (b) an authority of the Commonwealth or of a State or Territory; or

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- (c) any other organisation or body;  
to be made available to the Indigenous Land and Sea Corporation.

**192V Consultants**

*Engagement of consultants*

- (1) The Indigenous Land and Sea Corporation Chief Executive Officer may, on behalf of the Indigenous Land and Sea Corporation, engage as consultants to the Corporation persons having suitable qualifications and experience.

*Terms and conditions*

- (2) The terms and conditions on which consultants are engaged are as determined by the Indigenous Land and Sea Corporation Board in writing.

## **Division 11—Finances**

### **193J Application of money held by Indigenous Land and Sea Corporation**

Money held by the Indigenous Land and Sea Corporation must be applied only:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the Corporation in the performance of its functions or the exercise of its powers under this Act or any other law; and
- (b) in payment of any remuneration and allowances payable to any person under this Act or any other law; and
- (c) in making any other payments which the Corporation is authorised or required to make under this Act or any other law.

Note: Paragraph 191H(2)(b) empowers the Indigenous Land and Sea Corporation to invest its money. This section is intended to authorise the Corporation to apply its money in making such investments.

### **193K Application of the *Public Governance, Performance and Accountability Act 2013***

- (1) Section 59 of the *Public Governance, Performance and Accountability Act 2013* (which deals with investment by corporate Commonwealth entities) does not apply to the Indigenous Land and Sea Corporation.
- (2) The annual report prepared by the Indigenous Land and Sea Corporation Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* must include such additional information (if any) as is specified in the regulations under this Act.

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**193L Borrowing**

*Power to borrow*

- (1) Subject to this section, the Indigenous Land and Sea Corporation may borrow money.

*Borrowing*

- (2) The Indigenous Land and Sea Corporation must not borrow money in a financial year if the sum of:
- (a) the proposed borrowing; and
  - (b) its current borrowings; and
  - (c) the total of its liabilities (whether actual or contingent) in respect of guarantees; and
  - (d) the current borrowings of its subsidiaries; and
  - (e) the total of the liabilities (whether actual or contingent) of its subsidiaries in respect of guarantees;
- is more than the borrowing limit for the year.

*Borrowing limit*

- (3) For the purposes of this section, the ***borrowing limit*** for a financial year is the amount worked out using the formula:

$$\text{Indexation factor} \times \frac{\text{Borrowing limit}}{\text{for the previous financial year}}$$

where:

***indexation factor*** means the indexation factor for the financial year worked out under section 192Y.

*Validity of transactions*

- (9) A failure to comply with subsection (2) does not affect the validity of any transaction.

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*Section to be sole source of power to borrow*

- (10) The Indigenous Land and Sea Corporation must not borrow money except in accordance with this section.

*Money not to be raised except by borrowing*

- (11) The Indigenous Land and Sea Corporation must not raise money except by borrowing.

**193M Giving of security over assets**

The Indigenous Land and Sea Corporation may give security over the whole or any part of its assets:

- (a) for the repayment by the Indigenous Land and Sea Corporation of money borrowed under section 193L and the payment by the Indigenous Land and Sea Corporation of interest (including interest on interest) on money so borrowed; or
  - (b) in connection with a guarantee given by the Indigenous Land and Sea Corporation;
- and not otherwise.

**193N Limit on guarantees**

*Limit*

- (1) The Indigenous Land and Sea Corporation must not guarantee a loan in a financial year if the sum of:
- (a) the contingent liabilities to which it would be subject if the proposed guarantee were to be given; and
  - (b) its current borrowings; and
  - (c) the total of its liabilities (whether actual or contingent) in respect of guarantees; and
  - (d) the current borrowings of its subsidiaries; and
  - (e) the total of the liabilities (whether actual or contingent) of its subsidiaries in respect of guarantees;

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is more than the guarantee limit for the financial year.

*Guarantee limit*

- (2) For the purposes of this section, the **guarantee limit** for a financial year is the amount worked out using the formula:

$$\text{Indexation factor} \times \frac{\text{Guarantee limit}}{\text{for the previous financial year}}$$

where:

**indexation factor** means the indexation factor for the financial year worked out under section 192Y.

*Validity of transactions*

- (8) A failure to comply with subsection (1) does not affect the validity of any transaction.

### 193P Exemption from taxation

The Indigenous Land and Sea Corporation is not subject to taxation under a law of the Commonwealth, a State or a Territory.

### 193Q Foreign subsidiaries

*No foreign subsidiaries*

- (1) The Indigenous Land and Sea Corporation must take all reasonable steps to ensure that a company incorporated in a foreign country does not become a subsidiary of the Indigenous Land and Sea Corporation.

*Exception—Minister's consent*

- (2) Subsection (1) does not apply if the Minister has given written consent to the company becoming or being a subsidiary of the Indigenous Land and Sea Corporation.



## **Division 12—Exemption from stamp duty etc.**

### **193R Exemption from stamp duty etc.**

#### *Definition*

(1) In this section:

***exempt matter*** means:

- (a) the grant of an interest in land, or water-related right, by the Indigenous Land and Sea Corporation under paragraph 191D(1)(a), if the grant occurs within 12 months after the interest or right was acquired by the Indigenous Land and Sea Corporation; or
- (b) an agreement relating to such a grant; or
- (c) the grant of an interest in land, or water-related right, by a subsidiary of the Indigenous Land and Sea Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land and Sea Corporation referred to in paragraph 191D(1)(a), if the grant occurs within 12 months after the interest or right was acquired by the subsidiary; or
- (d) an agreement relating to a grant referred to in paragraph (c); or
- (g) the disposal of an interest in land, or water-related right, by a body corporate under section 191T; or
- (h) an agreement relating to a disposal referred to in paragraph (g); or
- (i) the receipt of money by a body corporate, or by a person acting on behalf of a body corporate, in respect of a disposal referred to in paragraph (g).

#### *Exemption*

(2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:

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- (a) an exempt matter; or
- (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

## Division 13—Secrecy

### 193S Secrecy

#### *Definitions*

- (1) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**ILSC officer** means a person:

- (a) who is or has been an Indigenous Land and Sea Corporation Director or an acting Indigenous Land and Sea Corporation Director; or
- (b) who is or has been the Indigenous Land and Sea Corporation Chief Executive Officer or an acting Indigenous Land and Sea Corporation Chief Executive Officer; or
- (c) who is or has been employed or engaged under section 192S or 192V; or
- (d) who is performing, or who has performed, duties on behalf of the Indigenous Land and Sea Corporation under an arrangement under section 192T; or
- (e) whose services are being, or have been, made available to the Indigenous Land and Sea Corporation under an arrangement under section 192U; or
- (f) who is or has been a director or employee of a subsidiary of the Indigenous Land and Sea Corporation.

**produce** includes permit access to.

- (1A) A person who was covered by the definition of **ILC officer** as in force immediately before this subsection commenced is covered by the definition of **ILSC officer**.

Note: This is intended to make it clear that any person who held an office, or undertook any other role, covered by the definition at a time when the corporation had its original name of the Indigenous Land Corporation,

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is still an ***ILSC officer***. See also subsection 25B(1) of the *Acts Interpretation Act 1901*.

*Information and documents to which this section applies*

- (2) This section applies to information acquired, or a document obtained, by an ILSC officer:
- (a) in connection with the performance of a function, or the exercise of a power, of the Indigenous Land and Sea Corporation; or
  - (b) in connection with the performance by a subsidiary of the Indigenous Land and Sea Corporation of a function that corresponds to a function of the Indigenous Land and Sea Corporation; or
  - (c) in connection with the exercise of a power by a subsidiary of the Indigenous Land and Sea Corporation, where the power relates to such a corresponding function.

*ILSC officer not to disclose certain information*

- (3) Subject to this section, an ILSC officer must not, either directly or indirectly:
- (a) disclose to any person any information concerning the affairs of another person acquired by the ILSC officer, where:
    - (i) the information was acquired by the ILSC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
    - (ii) disclosure of the information could reasonably be expected to prejudice substantially the commercial interests of the other person; or
  - (b) disclose to any person information acquired by the ILSC officer, where, to the knowledge of the ILSC officer:
    - (i) the information is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
    - (ii) the disclosure would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders; or

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- (c) produce to any person a document relating to the affairs of another person, where:
  - (i) the document was obtained by the ILSC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
  - (ii) the production of the document could reasonably be expected to prejudice substantially the commercial interests of the other person; or
- (d) produce to any person a document obtained by the ILSC officer, where, to the knowledge of the ILSC officer:
  - (i) the document contains information that is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
  - (ii) the production of the document would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders.

*Offence*

- (4) A person who contravenes subsection (3) commits an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

*ILSC officer not required to disclose certain information to a court*

- (5) Subject to this section, an ILSC officer must not be required to:
  - (a) disclose to a court any information concerning the affairs of another person acquired by the ILSC officer, where:
    - (i) the information was acquired by the ILSC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
    - (ii) disclosure of the information could reasonably be expected to prejudice substantially the commercial interests of the other person; or
  - (b) disclose to a court information acquired by the ILSC officer, where:

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- (i) the information is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
  - (ii) the disclosure would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders; or
- (c) produce to a court a document relating to the affairs of another person, where:
  - (i) the document was obtained by the ILSC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
  - (ii) the production of the document could reasonably be expected to prejudice substantially the commercial interests of the other person; or
- (d) produce to a court a document obtained by the ILSC officer, where:
  - (i) the document contains information that is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
  - (ii) the production of the document would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders.

*Exception—disclosure for the purposes of performance of functions etc.*

- (6) Subsections (3) and (5) do not apply to the disclosure of information, or the production of a document, if the disclosure or production, as the case requires, is for the purposes of:
  - (a) the performance of a function, or the exercise of a power, of the Indigenous Land and Sea Corporation; or
  - (b) the performance by a subsidiary of the Indigenous Land and Sea Corporation of a function that corresponds to a function of the Indigenous Land and Sea Corporation; or
  - (c) the exercise of a power by a subsidiary of the Indigenous Land and Sea Corporation, where the power relates to such a corresponding function.

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*Exception—prosecutions*

- (7) Paragraphs (3)(a), (3)(c), (5)(a) and (5)(c) do not apply to the disclosure of information, or the production of a document, if the disclosure or production, as the case requires, is for the purposes of a criminal proceeding.

## **Division 14—Delegation**

### **193T Delegation to Indigenous Land and Sea Corporation Chief Executive Officer or member of staff**

The Indigenous Land and Sea Corporation may, by writing under its seal, delegate any or all of its functions and powers to the Indigenous Land and Sea Corporation Chief Executive Officer or to a member of the staff of the Corporation.



## **Division 15—Reviews**

### **193U Reviews**

- (1) The regulations must provide for independent reviews of the operation of this Part to be conducted.
- (2) Regulations made for the purposes of this section must provide for:
  - (a) the purpose of reviews; and
  - (b) the timing of reviews; and
  - (c) the content of reviews.
- (3) Subsection (2) does not limit subsection (1).
- (4) The report of each review must be given to the Minister.

## Part 5—Miscellaneous

### 194 Remuneration and allowances

- (1) The following provisions apply in relation to the holder of an office who is, by a provision of this Act, entitled to remuneration and allowances in accordance with this section:
  - (a) the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal;
  - (b) if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined by the Minister by legislative instrument;
  - (c) the holder of the office shall be paid such allowances as are determined by the Minister by legislative instrument.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### 195A Review by TSRA of delegates' decisions

- (1) If a delegate of the TSRA:
  - (a) refuses a loan under section 142F to an individual; or
  - (b) refuses to give a guarantee under section 142G in respect of a loan made or to be made to an individual;the individual may, within 30 days after being notified of the refusal, request the TSRA to reconsider the matter.
- (2) If a request is made, the TSRA must reconsider the matter and must decide whether to make the loan or to give the guarantee.

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**196A Review by Administrative Appeals Tribunal**

- (1) An application may be made to the Administrative Appeals Tribunal for review of:
  - (a) a decision made by the TSRA to refuse a loan under section 142F to an individual; or
  - (b) a decision made by the TSRA to refuse to give a guarantee under section 142G in respect of a loan made or to be made to an individual; or
  - (c) a decision made by the TSRA to give notice to a person or body under subsection 142H(1) or (3); or
  - (d) a decision of the TSRA to make a declaration under subsection 143R(1) or (1A); or
  - (e) any other decision of the TSRA included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section; or
  - (f) any decision made under the TSRA election rules included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section.
- (2) If the TSRA notifies a person of a decision of a kind referred to in subsection (1), the notice must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision by or on behalf of a person whose interests are affected by the decision.
- (3) A failure to comply with subsection (2) in relation to a decision does not affect the validity of the decision.
- (4) In this section:

***decision made by the TSRA*** does not include a decision made by a delegate of the TSRA.

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**197 Offences—guarantees, grants and loans**

- (1) A person shall not, in or in connection with a claim under a guarantee given under this Act, make a statement that the person knows to be false or misleading in a material particular or present a document that, to the person's knowledge, contains information that is false or misleading in a material particular.

Penalty: Imprisonment for 5 years or 100 penalty units.

**198 Offences—elections**

- (1) A person shall not, in relation to an election under this Act, ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for the person or any other person, on an understanding that:
- (a) any vote of the first-mentioned person;
  - (b) any candidature of the first-mentioned person;
  - (c) any support of, or opposition to, a candidate or a group of candidates by the first-mentioned person; or
  - (d) the doing of any act or thing by the first-mentioned person:
    - (i) with the intention of influencing the preferences set out in the vote of an elector; or
    - (ii) with the likely result that the preferences set out in the vote of an elector are influenced;

will, in any manner, be influenced or affected.

Penalty: 50 penalty units.

- (2) A person shall not, in relation to an election under this Act, with the intention of influencing or affecting:
- (a) any vote of another person;
  - (b) any candidature of another person;
  - (c) any support of, or opposition to, a candidate or a group of candidates by another person; or
  - (d) the doing of any act or thing by another person:

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(i) with the intention of influencing the preferences set out in the vote of an elector; or

(ii) with the likely result that the preferences set out in the vote of an elector are influenced;

give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.

Penalty: 50 penalty units.

(3) A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act.

Penalty: 10 penalty units.

(3A) A person must not make a statement to another person, either orally or in writing, as to the other person's right to vote in an election under this Act if the person making the statement knows that the statement is false or misleading in a material particular.

Penalty: 25 penalty units.

(3B) A person must not encourage another person to vote in an election under this Act if the first-mentioned person knows that the other person is not entitled to vote in the election.

Penalty: 25 penalty units.

(4) This section does not apply in relation to a declaration of public policy or a promise of public action.

### **199 Conduct of directors, employees and agents**

(1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, employee or agent had the state of mind.

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- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercises due diligence to avoid the conduct.
- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
  - (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) Where:
  - (a) a person other than a body corporate is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
  - (a) the knowledge, intention, opinion, belief or purpose of the person; and

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- (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to:
  - (a) an offence created by the regulations, the Regional Council election rules or the TSRA election rules; and
  - (b) an offence created by:
    - (i) section 6 of the *Crimes Act 1914*; or
    - (ii) section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code*; or
    - (iii) section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the *Criminal Code*;being an offence that relates to this Act, the regulations, the Regional Council election rules or the TSRA election rules.
- (10) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

**200 Aboriginal Hostels Limited**

- (1) The staff required to assist Aboriginal Hostels Limited in the performance of its functions shall, in spite of anything in the constituent documents of Aboriginal Hostels Limited, be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:

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- (a) the Chief Executive Officer of Aboriginal Hostels Limited, and the APS employees assisting Aboriginal Hostels Limited, together constitute a Statutory Agency; and
  - (b) the Chief Executive Officer of Aboriginal Hostels Limited is the Head of that Statutory Agency.
- (6) For the purposes of the *Administrative Decisions (Judicial Review) Act 1977*, if Aboriginal Hostels Limited makes a decision relating to an application by an incorporated body for the provision of accommodation for one or more Aboriginal persons or Torres Strait Islanders, the decision is taken to be a decision of an administrative character made under an enactment.
- (7) The Minister may, on behalf of the Commonwealth, enter into an agreement with Aboriginal Hostels Limited.
- (8) The Minister must cause notice of the making of the agreement to be published in the *Gazette*.
- (9) An agreement between the Commonwealth and Aboriginal Hostels Limited that was in force immediately before the commencement of this subsection is taken to have been made under subsection (7).

**200A Secrecy**

- (1) This section applies to a person who:
  - (a) has been, at any time:
    - (i) a member of the Aboriginal and Torres Strait Islander Commission (the **former Commission**) before the abolition of Commission on ATSIC abolition day; or
    - (ii) a member of a committee that was established by the former Commission to advise it in relation to the performance of its functions; or
    - (iii) the Chief Executive Officer of the former Commission; or
    - (iv) a member of the staff of the former Commission; or
    - (v) engaged as a consultant by the former Commission; or



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- (vi) a member of the body known as the Torres Strait Islander Advisory Board; or
  - (vii) a member of a Regional Council before the abolition of Regional Councils on Regional Councils abolition day; or
  - (viii) a member of an advisory committee established by such a Regional Council to advise it in relation to the performance of its functions; or
  - (ix) an Administrator of such a Regional Council; or
  - (b) is or has been:
    - (i) a member of the TSRA; or
    - (ii) a member of an advisory committee established under section 142M; or
    - (iii) the TSRA Chief Executive Officer; or
    - (iv) a member of the staff of the TSRA; or
    - (v) engaged as a consultant under section 144T; or
    - (vi) a TSRA Administrator; or
  - (c) has been, before ATSIC abolition day, a Director of Evaluation and Audit.
- (2) Subject to this section, a person to whom this section applies must not, either directly or indirectly:
- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the first-mentioned person in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee under this Act; or
  - (b) produce to any person a document relating to the affairs of another person furnished in connection with an application for, or the giving of, a loan, grant or guarantee under this Act;
- unless that record is made, information divulged or document produced:
- (c) for the purposes of this Act or of a prosecution for an offence against this Act; or

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- (d) if the person is a statutory office holder in, or an officer or employee of, a Department or agency that has taken over a function or functions previously performed by the former Commission—in the performance of the person's duties as such a statutory office holder, officer or employee.

Penalty: Imprisonment for one year.

- (3) It is a defence to a prosecution for contravening subsection (2), if:
  - (a) in relation to a prosecution for divulging information to a person or body—the information was communicated to a person authorised in writing by the person to whose affairs the document relates to receive the information; or
  - (b) in relation to a prosecution for producing a document to a person or body—the document was produced to a person authorised in writing by the person to whose affairs the document relates to receive the document.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) A person to whom this section applies must not be required:
  - (a) to divulge or communicate to a court any information referred to in subsection (2); or
  - (b) to produce in a court any document referred to in that subsection;

except when it is necessary to do so for the purposes of this Act, or of a prosecution for an offence against this Act.

- (5) A reference in this section to an offence against this Act includes a reference to:
  - (a) an offence relating to this Act against section 6 of the *Crimes Act 1914*; or
  - (b) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the *Criminal Code*.

- (6) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

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*produce* includes permit access to.

*this Act* includes the regulations.

**200B Delegation by Finance Minister**

- (1) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under section 142G, 144X, 153 or 183 to an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of a non-corporate Commonwealth entity (within the meaning of that Act).
- (2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

**200C Delegations**

- (1) Subject to subsection (2) the Minister may, by written instrument, delegate to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee or acting SES employee;all or any of the powers or functions conferred on the Minister under this Act.
- (2) Subsection (1) does not apply to the power to give directions to Indigenous Business Australia under section 151.

Note 1: The expressions **SES employee** and **acting SES employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

**201 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, the Regional Council election rules or the TSRA election rules, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may:
  - (b) make provision in relation to the conduct of elections for the purposes of section 143L or 144D including, without limiting the generality of the foregoing, provision for a system of optional preferential voting to be used in such elections;
  - (c) make provision in relation to requests under subsection 195A(1) and the reconsideration of matters under subsection 195A(2);
  - (d) prescribe fees payable in respect of any matter under this Act; and
  - (e) provide penalties for breaches of the regulations not exceeding:
    - (i) in the case of a natural person—\$1,000; or
    - (ii) in the case of a body corporate—\$5,000.

## **Part 6—Transitional provisions**

### **Division 1—Preliminary**

#### **202 Interpretation**

In this Part, unless the contrary intention appears:

**ADC Act** means the *Aboriginal Development Commission Act 1980*.

**assets** means property of every kind, and, without limiting the generality of the foregoing, includes:

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

**authorised officer** means the Minister, the Chief Executive Officer or a member of the staff of the successor Commission authorised by the Minister in writing for the purposes of this Part.

**commencement** means the commencement of this Act.

**liabilities** means liabilities of every kind, and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

**old Commission** means the Aboriginal Development Commission.

**old Commission instrument** means an instrument:

- (a) to which the old Commission was a party;
- (b) that was given to or in favour of the old Commission;
- (c) in which a reference is made to the old Commission; or

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- (d) under which money is, or may become, payable, or any other property is to be, or may become liable to be, transferred to or by the old Commission;

being an instrument subsisting immediately before the commencement.

***old Department*** means the Department of Aboriginal Affairs.

***successor Commission*** means the Aboriginal and Torres Strait Islander Commission.

**Division 3—Transitional provisions relating to Aboriginal  
Development Commission and Department of  
Aboriginal Affairs**

**206 Transfer of assets and liabilities of old Department**

- (1) The Minister may, in writing, declare that a specified asset of the Commonwealth that was, before the commencement, used by the old Department is to be transferred to Indigenous Business Australia or to the Indigenous Land Corporation.
- (2) Where the Minister makes a declaration under subsection (1), the asset specified in the declaration becomes an asset of Indigenous Business Australia or of the Indigenous Land Corporation, as provided by the declaration.
- (3) The Minister may, in writing, declare that a specified liability of the Commonwealth incurred before the commencement in connection with the operation of the old Department is to become a liability of Indigenous Business Australia or of the Indigenous Land Corporation.
- (4) Where the Minister makes a declaration under subsection (3), the liability specified in the declaration becomes a liability of Indigenous Business Australia or of the Indigenous Land Corporation, as provided by the declaration.
- (5) Liabilities of the Commonwealth that have become liabilities of Indigenous Business Australia or of the Indigenous Land Corporation because of subsection (4) are, after the commencement, taken to be liabilities incurred by Indigenous Business Australia or by the Indigenous Land Corporation, as the case requires, in the performance of its functions and the exercise of its powers.

**Part 6** Transitional provisions

**Division 3** Transitional provisions relating to Aboriginal Development Commission and Department of Aboriginal Affairs

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**211 Old Commission instruments**

- (1) An old Commission instrument continues to have effect after the commencement but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring after that commencement, has effect as if a reference in the instrument to the old Commission were a reference to the appropriate new body.
- (2) For the purposes of the application of subsection (1) in relation to an old Commission instrument, the appropriate new body is:
  - (a) in the case of an instrument relating to an asset or liability that has, because of section 208 of this Act as in force before 17 April 2001, or because of section 210 of this Act as in force before ATSIC abolition day, become an asset or liability of the body previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and now known as Indigenous Business Australia—Indigenous Business Australia; or
  - (b) in the case of an instrument relating to a liability that has, because of a declaration under subsection 209(1) of this Act as in force before ATSIC abolition day, become a liability of the Commonwealth—the Commonwealth; or
  - (c) in any other case—the successor Commission.

**215 Certificates relating to assets, liabilities and instruments**

- (1) An authorised officer may certify, in writing, that:
  - (a) an asset or liability specified or described in the certificate became, because of section 207 of this Act as in force before ATSIC abolition day, an asset or liability of the successor Commission; or
  - (b) an asset or liability specified or described in the certificate became, because of section 208 of this Act as in force before 17 April 2001, an asset or liability of the body previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and now known as Indigenous Business Australia; or



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- (c) an instrument specified or described in the certificate is an old Commission instrument for the purposes of section 211 of this Act as in force before ATSIC abolition day.
- (2) A certificate under subsection (1) is, in all courts and for all purposes, evidence of the matter stated in the certificate.
- (3) Where a document purports to be a certificate under subsection (1) signed by a person purporting to be an authorised officer, judicial notice shall be taken of the signature of the person and of the fact that the person is or was an authorised officer.

## **216 Exemption from taxation**

An instrument is not subject to stamp duty or any other tax under a law of the Commonwealth or of a State or Territory if an authorised officer certifies, in writing, that the instrument was made or given because of, or for a purpose connected with, or arising out of, the operation of this Division.

## Division 4—General transitional provisions

### 219 Transfer of staff to Australian Public Service

Section 81B of the *Public Service Act 1922* has effect in relation to any person who, immediately before the commencement:

- (a) was employed by the old Commission or Aboriginal Hostels Limited; and
- (b) was an unattached officer for the purposes of the *Public Service Act 1922*;

as if the person had ceased to be an officer of the Australian Public Service immediately before the commencement.

### 220 Operation of Superannuation Benefit (Interim Arrangement) Act

- (1) The Superannuation Act and any related law apply in relation to any person who:

- (a) before the commencement, was employed by the old Commission; and
- (b) after the commencement, is employed under the *Public Service Act 1922* in the successor Commission;

as if:

- (c) the person's employer was in each case the same body; and
- (d) the continuity of the person's employment was not affected by the abolition of the old Commission and the establishment of the successor Commission.

- (2) The Superannuation Act and any related law apply in relation to any person who:

- (a) before the commencement, was employed by Aboriginal Hostels Limited; and
- (b) after the commencement, is employed under the *Public Service Act 1922* in Aboriginal Hostels Limited;

as if:

- (c) the person's employer was in each case the same body; and
- (d) the continuity of the person's employment was not affected by the changes made by this Act to the staffing arrangements in respect of Aboriginal Hostels Limited.

(3) In this section:

***related law*** means any law of the Commonwealth to the extent that it relates to the superannuation benefits covered by the Superannuation Act.

***Superannuation Act*** means the *Superannuation Benefit (Interim Arrangement) Act 1988*.

## **222 State or Territory officer may act on certificate**

Where:

- (a) under section 206 or 207, or under section 208 of this Act as previously in force, an estate or interest in land has become or becomes an asset of the new Commission, or of the body previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and now known as Indigenous Business Australia; and
- (b) a certificate that:
  - (i) identifies the land and the estate or interest;
  - (ii) states that the estate or interest has, because of that section, become an asset of the new Commission, or of the body previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and now known as Indigenous Business Australia, as the case may be; and
  - (iii) is signed by an officer of the Attorney-General's Department authorised by the Secretary to that Department to give such certificates;is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

**Part 6** Transitional provisions

**Division 4** General transitional provisions

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the officer with whom the certificate is lodged may deal with and give effect to the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the estate or interest to the new Commission or Indigenous Business Australia, as the case may be, duly executed under the laws in force in that state or Territory.

## **Schedule 2—Method of counting votes and determining successful candidates at elections for 2 or more members for a TSRA ward**

Note: See section 143E.

1. In a TSRA ward election for 2 or more members for the ward concerned, the scrutiny shall be conducted, and the several vacancies shall be filled, in the manner set out in this Schedule.
2. Where, for the purposes of this Schedule:
  - (a) the number of ballot papers or votes in any category is required to be ascertained;
  - (b) a quota, a transfer value or the order of standing of continuing candidates in a poll is required to be determined;
  - or
  - (c) a candidate is required to be identified;the authorised electoral officer shall ascertain the number, determine the quota, transfer value or order, or identify the candidate, as the case may be.
3. The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by one more than the designated number in relation to the ward and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.
4. Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this clause called **surplus votes**) of each elected candidate shall be transferred to the continuing candidates as follows:

- (a) the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by him or her and the resulting fraction shall be the transfer value;
- (b) the total number of ballot papers of the elected candidate that express the first preference vote for him or her and the next available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;

and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

- 5. Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under clause 4, or elected subsequently under this clause, shall be transferred to the continuing candidates in accordance with paragraphs 4(a) and (b), and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.
- 6. Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 4 or 5 of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate.
- 7. For the purposes of the application of paragraphs 4(a) and (b) in relation to a transfer under clause 5 or 12 of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by him or her on a transfer under this section shall be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly.

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8. Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or fewer than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who stands lowest in the poll shall be excluded or, if a bulk exclusion can be effected in accordance with clause 9, the candidates who may be excluded in accordance with that clause shall be excluded, and:
- (a) the total number of ballot papers expressing a first preference vote for an excluded candidate and the next available preference for a particular continuing candidate shall be transferred, each ballot paper at a transfer value of 1 vote, to the continuing candidate and added to the number of votes of the continuing candidate; and
  - (b) the total number (if any) of other ballot papers obtained by an excluded candidate or candidates, as the case may be, shall be transferred beginning with the ballot papers received by that candidate or those candidates at the highest transfer value and ending with the ballot papers received at the lowest transfer value, as follows:
    - (i) the total number of ballot papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value and expressing the next available preference for a particular continuing candidate shall be multiplied by that transfer value;
    - (ii) the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;
    - (iii) all those ballot papers shall be transferred to the continuing candidate.
9. (1) The procedure for a bulk exclusion, and the circumstances in which such an exclusion may be made, are as provided by this clause.
- (2) A continuing candidate (in this clause called **Candidate A**) shall be identified, if possible, who, of the continuing candidates who each have a number of notional votes equal to or greater than the vacancy shortfall, stands lower or lowest in the poll.
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- (3) A continuing candidate (in this clause called **Candidate B**) shall be identified, if possible, who:
    - (a) stands lower in the poll than Candidate A, or if Candidate A cannot be identified, has a number of notional votes that is fewer than the vacancy shortfall;
    - (b) has a number of notional votes that is fewer than the number of votes of the candidate standing immediately higher than him or her in the poll; and
    - (c) if 2 or more candidates satisfy paragraphs (a) and (b)—is the candidate who of those candidates stands higher or highest in the poll.
  - (4) In a case where Candidate B has been identified and has a number of notional votes fewer than the leading shortfall, Candidate B and any other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.
  - (5) In a case where Candidate B has been identified and has a number of notional votes equal to or greater than the leading shortfall:
    - (a) a continuing candidate (in this clause called **Candidate C**) shall be identified who:
      - (i) has a number of notional votes that is fewer than the leading shortfall; and
      - (ii) if 2 or more candidates satisfy subparagraph (i)—is the candidate who of those candidates stands higher or highest in the poll; and
    - (b) Candidate C and all other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.
10. Where, apart from this clause, the number of continuing candidates after a bulk exclusion under clause 9 would be fewer than the number of remaining unfilled vacancies, clause 9 shall operate to exclude only the number of candidates, beginning with the candidate who stands lowest in the poll, that would leave sufficient continuing candidates to fill the remaining unfilled vacancies.



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11. Notwithstanding any other provision of this Schedule (other than clause 16), where a candidate or candidates has or have been elected and there are surplus votes as a result of that election, subclauses 9(2), (3), (4) and (5) may be applied as if references in those paragraphs to notional votes were references to adjusted notional votes.
  12. Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 8 or 13 of ballot papers of an excluded candidate or candidates, as the case may be, shall be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with paragraphs 4(a) and (b), except that, where the candidate so elected is elected before all the ballot papers of the excluded candidate or candidates, as the case may be, have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until the remaining ballot papers of the excluded candidate or candidates, as the case may be, have been transferred in accordance with paragraphs 8(a) and (b) to continuing candidates.
  13. Subject to clause 15, where, after the transfer of all of the ballot papers of an excluded candidate or candidates, as the case may be, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who stands lowest in the poll shall be excluded and his or her ballot papers transferred in accordance with paragraphs 8(a) and (b).
  14. Where a candidate is elected during a transfer of ballot papers under clause 8 or 13, no other ballot papers of an excluded candidate or candidates, as the case may be, shall be transferred to the candidate so elected.
  15. In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes shall be elected notwithstanding that that number is below the quota, and if those candidates have an equal number of votes the authorised electoral officer shall decide by lot which candidate shall be elected.
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**Schedule 2** Method of counting votes and determining successful candidates at elections for 2 or more members for a TSRA ward

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16. Notwithstanding any other provision of this Schedule, where the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates shall be elected.
  17. Subject to clauses 18 and 19, where, after any count under this Schedule, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
  18. Subject to clause 19, where, after any count under this Schedule, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count being transferred first, but if there has been no such count the authorised electoral officer shall determine the order in which the surpluses shall be dealt with.
  19. Where, after any count under this section, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count.
  20. Where a candidate is elected by reason that the number of first preference votes received by him or her, or the aggregate of first preference votes received by him or her and all other votes obtained by him or her, on transfers under this Schedule, is equal to the quota, all the ballot papers expressing those votes shall be set aside as finally dealt with.
  21. A ballot paper shall be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate.
  22. Where a candidate dies before the scrutiny, a vote indicated on a ballot paper opposite the name of that candidate shall be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences shall be deemed to be altered accordingly.
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23. For the purposes of this Schedule, each of the following is a separate transfer:
- (a) a transfer under clause 4, 5 or 12 of all the surplus votes of an elected candidate;
  - (b) a transfer under paragraph 8(a) of all ballot papers expressing a first preference vote for an excluded candidate;
  - (c) a transfer under paragraph 8(b) of all ballot papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value.

24. In this Schedule:

***adjusted notional vote***, in relation to a continuing candidate, means, in a case where a candidate or candidates has or have been elected, the sum of:

- (a) the number of notional votes of the continuing candidate; and
- (b) the number, before the transfer of any of the surplus votes, of those surplus votes.

***continuing candidate*** means a candidate not already elected or excluded from the count.

***leading shortfall***, in relation to a particular stage during the scrutiny in a TSRA ward election, means the shortfall of the continuing candidate standing highest in the poll at that stage.

***notional vote***, in relation to a continuing candidate, means the aggregate of the votes obtained by that candidate and the votes obtained by each other candidate who stands lower in the poll than him or her.

***shortfall***, in relation to a continuing candidate at a particular stage during the scrutiny in a TSRA ward election, means the number of votes that the candidate requires at that stage in order to reach the quota referred to in clause 3.

***vacancy shortfall***, in relation to a particular stage during the scrutiny in a TSRA ward election, means the aggregate of the shortfalls of that number of leading candidates equal to the number of remaining unfilled vacancies, the leading candidates being ascertained by taking the continuing candidate who stands highest

**Schedule 2** Method of counting votes and determining successful candidates at elections for 2 or more members for a TSRA ward

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- in the poll, the continuing candidate who stands next highest in the poll, and so on in the order in which the continuing candidates stand in the poll.
25. In this Schedule, a reference to votes or ballot papers, as the case may be, of or obtained or received by a candidate includes votes or ballot papers, as the case may be, obtained or received by the candidate on any transfer under this Schedule.
26. For the purposes of this Schedule, at any time after the counting of first preference votes the order of standing of the continuing candidates in the poll shall be determined as follows:
- (a) subject to paragraph (b), the continuing candidates shall stand in the poll in the order of the relative number of votes of each continuing candidate, with the continuing candidate with the greatest number of votes standing highest in the poll and the continuing candidate with the fewest number of votes standing lowest in the poll;
  - (b) if 2 or more continuing candidates have the same number of votes, those candidates shall stand in the poll in the order of the relative number of votes of each of those candidates at the last count at which each of them had a different number of votes, with the continuing candidate with the greater or greatest number of votes at that count standing higher in the poll and the continuing candidate with the fewer or fewest number of votes at that count standing lower in the poll, but if there has been no such count the authorised electoral officer shall determine the order of standing of those candidates in the poll.

## **Schedule 2A—Method of determining the successful candidate at an election for a single member for a TSRA ward**

Note: See section 143E.

### **1 Absolute majority required for election**

A candidate needs an absolute majority of votes to be elected.

### **2 Candidate with absolute majority of first preference votes elected**

A candidate who receives an absolute majority of first preference votes is elected.

### **3 Distribution of preferences**

- (1) If there is no candidate who receives an absolute majority of first preference votes, the candidate who has received the fewest first preference votes must be excluded, and each of that candidate's ballot papers must be transferred to the unexcluded candidate for whom the next available preference is expressed.
- (2) If there is then no candidate who has an absolute majority of votes, the process of excluding the candidate who has the fewest votes, and transferring that candidate's ballot papers to the unexcluded candidates for whom the next available preferences are expressed, must be repeated as often as necessary until one candidate receives an absolute majority of votes.
- (3) A candidate who receives an absolute majority of votes at any stage of the process described in this clause is elected.
- (4) Without limiting the generality of section 143G, the rules made by the Minister under that section may include provisions about:

Clause 3

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- (a) the determination of an absolute majority of votes; and
- (b) the method of choosing between 2 or more candidates, each of whom has the same number of votes, in order to work out which candidate to exclude; and
- (c) determining when a ballot paper is exhausted.

## Schedule 4—Disputes about electoral matters

Section 140

### Part 1—Interpretation

#### 1 Interpretation

- (1) In this Schedule:

**bribery** or **corruption** means a contravention of subsection 198(1) or (2).

**Court** means the Federal Court of Australia.

**election** means a TSRA election.

**election petition** means a petition addressed to the Court under subclause 2(1).

**Electoral Commission** means the Australian Electoral Commission.

**illegal practice** means a contravention of this Act or the TSRA election rules.

**reference** means a reference of a question to the Court under clause 17.

**returned** means declared to be elected at a poll for an election.

**undue influence** means a contravention of subsection 198(3) of this Act or section 83.4 of the *Criminal Code*.

- (2) For the purposes of this Schedule, a person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the contravention of a provision of this Act, the *Crimes Act 1914* or the TSRA election rules shall be deemed to have contravened that provision.

## **Part 2—Disputed elections**

### **2 Method of disputing elections**

- (1) The validity of any election, or of the declaration of a poll for an election, may be disputed by petition addressed to the Court and not otherwise.
- (2) The Court has jurisdiction to try election petitions.
- (3) The jurisdiction of the Court to try election petitions may be exercised by a single judge of the Court.

### **3 Requisites of election petitions**

Subject to clause 5, every election petition shall:

- (a) set out the facts relied on to invalidate the election or declaration;
- (b) contain a request for the relief the petitioner claims to be entitled to;
- (c) be signed by a candidate at the election in dispute or by a person who was, or who claimed to be, qualified to vote at that election;
- (d) be attested by 2 witnesses whose occupations and addresses are stated.

### **3A Deadline for filing a petition**

- (1) Any petition disputing an election held as part of a general election must be filed in a Registry of the Court within 40 days after the last day on which a poll is declared in relation to the general election.
- (2) Any petition disputing any other election must be filed in a Registry of the Court within 40 days after the poll is declared in relation to the election.



- (3) In this clause:  
*general election* means:  
(c) a TSRA election for all wards.

#### **4 Deposit as security for costs**

At the time of filing an election petition the petitioner shall deposit with the Chief Executive Officer and Principal Registrar, a Registrar, a District Registrar or a Deputy District Registrar of the Court the sum of \$100 as security for costs.

#### **5 Petition by Electoral Commission**

- (1) The Electoral Commission is entitled to file an election petition disputing an election.
- (2) Paragraphs 3(c) and (d) do not apply in relation to an election petition filed by the Electoral Commission disputing an election but such a petition shall be signed by the Electoral Commissioner for and on behalf of the Commission.

#### **6 No proceedings unless requisites complied with**

No proceedings shall be had on an election petition unless the requirements of clauses 3, 3A, 4 and 5 are complied with.

#### **7 Right of Electoral Commission to be represented**

- (1) The Electoral Commission shall be entitled by leave of the Court to enter an appearance in any proceedings in which the validity of any election or declaration of a poll is disputed.
- (2) Where the Electoral Commission enters an appearance in such proceedings the Electoral Commission:
- (a) is entitled to be represented and heard in the proceedings; and
  - (b) shall be taken to be a party respondent to the proceedings.

Clause 8

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**8 Right of Minister to be represented**

- (1) If the Minister thinks that it is in the public interest to do so, the Minister is entitled to enter an appearance in any proceedings in which the validity of any election or declaration of a poll is disputed.
- (2) When the Minister enters an appearance in such proceedings, the Minister:
  - (a) is entitled to be represented and heard in the proceedings; and
  - (b) shall be taken to be a party respondent to the proceedings.

**9 Election petitions to be tried in open court**

When trying an election petition, the Court shall sit as an open court.

**10 Powers of Court**

- (1) The powers of the Court in trying an election petition, include, but are not limited to, the following powers:
  - (a) to adjourn the proceedings;
  - (b) to compel the attendance of witnesses and the production of documents;
  - (c) to grant to any party to the petition leave to inspect, in the presence of a person who was an authorised electoral officer for the purposes of Division 4 or 7 of Part 3 in relation to the election concerned, the documents (except ballot papers) used at or in connection with the election and to take, in the presence of the prescribed officer, extracts from those documents;
  - (ca) to grant to any party to the petition leave to inspect, in the presence of a person who was an authorised electoral officer for the purposes of Division 5 of Part 3A in relation to the election concerned, the documents (except ballot papers) used at or in connection with the election and to take, in the presence of the prescribed officer, extracts from those documents;

- (d) to examine witnesses on oath;
  - (e) to declare that any person who was returned was not duly elected;
  - (f) to declare any candidate duly elected who was not returned;
  - (g) to declare the election absolutely void;
  - (h) to dismiss or uphold the petition in whole or in part;
  - (j) to make any order, or give any direction, that the Court thinks is necessary or convenient for the purpose of giving effect to any declaration or other decision of the Court in the proceedings;
  - (k) to award costs;
  - (m) to punish any contempt of its authority by fine or imprisonment.
- (2) The Court may exercise all or any of its powers under this clause on such grounds as the Court in its discretion thinks just and sufficient.
- (3) Without limiting the powers conferred by this clause, it is hereby declared that the power of the Court to declare that any person who was returned was not duly elected, or to declare an election absolutely void, may be exercised on the ground that illegal practices were committed in connection with the election.
- (4) The power of the Court under paragraph (1)(k) to award costs includes the power to order costs to be paid by the Commonwealth where the Court considers it appropriate to do so.

## **11 Inquiries by Court**

The Court shall inquire whether or not an election petition is duly signed, and so far as rolls and voting are concerned may inquire into the identity of persons, and whether their votes were improperly admitted or rejected, assuming the Commonwealth Electoral Roll to be correct, but the Court shall not inquire into the correctness of the Commonwealth Electoral Roll.

## **12 Voiding election for illegal practices**

- (1) If the Court finds that a candidate at an election has committed or has attempted to commit bribery or undue influence, the candidate's election, if he or she is a successful candidate, shall be declared void.
- (2) No finding by the Court shall bar or prejudice any prosecution for any illegal practice.
- (3) The Court shall not declare that any person returned was not duly elected, or declare any election void:
  - (a) on the ground of any illegal practice committed by any person other than the candidate and without his or her knowledge or authority; or
  - (b) on the ground of any illegal practice other than bribery or corruption or attempted bribery or corruption;unless the Court is satisfied that the result of the election was likely to be affected, and that it is just that the candidate should be declared not to be duly elected or that the election should be declared void.

## **13 Court to report cases of illegal practices**

When the Court finds that any person has committed an illegal practice, the Chief Executive Officer and Principal Registrar of the Court shall forthwith report the finding to the Minister.

## **14 Immaterial errors not to vitiate election**

- (1) No election shall be avoided on account of any delay in the declaration of nominations, the polling, or the declaration of the poll, or on account of the absence or error of or omission by any officer which did not affect the result of the election.
- (2) Where any elector was, on account of the absence or error of, or omission by, any officer, prevented from voting in any election, the Court shall not, for the purpose of determining whether the absence or error of, or omission by, the officer did or did not affect the

result of the election, admit any evidence of the way in which the elector intended to vote in the election.

### **15 Evidence that person not permitted to vote**

On the trial of any election petition the Court shall not admit the evidence of any witness that he or she was not permitted to vote in the election during the hours of polling on a polling day unless the witness satisfies the Court:

- (a) that he or she claimed to vote, in the election, pursuant to that provision of this Act or the TSRA election rules under which he or she was entitled or might be permitted to vote; and
- (b) that he or she complied with the requirements of this Act and the TSRA election rules, relative to voting by electors in so far as he or she was permitted so to do.

### **16 Deposit applicable for costs**

If costs are awarded to any party against a petitioner, the deposit shall be applicable in payment of the sum ordered, but otherwise the deposit shall be repaid to the petitioner.

## **Part 3—Qualifications and vacancies**

### **17 Reference of question as to qualification or vacancy**

- (1) Any question respecting:
  - (c) the qualifications of a member of the TSRA; or
  - (d) a vacancy in the TSRA;may be referred to the Court by the Minister.
- (2) The Court has jurisdiction to hear and determine the question.
- (3) The jurisdiction of the Court to hear and determine questions may be exercised by a single Judge of the Court.

### **18 Minister to state case**

Where the Minister refers a question to the Court under this Part, the Minister shall also give to the Court a statement of the question upon which the determination of the Court is desired, and any documents relating to the question that are in the Minister's possession.

### **19 Parties to the reference**

- (1) The Court may:
  - (a) allow any person who, in the Court's opinion, is interested in the determination of a question to be heard on the hearing of the reference; or
  - (b) direct notice of a reference to be served on any person.
- (2) A person who is:
  - (a) allowed to be heard under paragraph (1)(a); or
  - (b) directed to be served under paragraph (1)(b);is a party to the reference.

## **20 References to be heard in open court**

When hearing a reference, the Court shall sit as an open court.

## **21 Powers of Court**

The powers of the Court in hearing a reference include, but are not limited to, the following powers:

- (a) the powers conferred on the Court under clause 10, so far as they are applicable;
- (d) the power to declare that any person was not qualified to be a member of the TSRA;
- (e) the power to declare that there is a vacancy in the TSRA.

## **22 Order etc. to be sent to Minister and TSRA**

After the hearing and determination of a reference, the Chief Executive Officer and Principal Registrar of the Court shall send a copy of the declaration or other decision of the Court to:

- (a) the Minister; and
- (d) if the reference relates to the TSRA—the TSRA.

## **Part 4—General**

### **23 Real justice to be observed**

The Court shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in accordance with the law of evidence or not.

### **24 Decisions to be final**

All decisions of the Court shall be final and conclusive and without appeal, and shall not be questioned in any way.

### **25 Counsel or solicitor**

- (1) No party to an election petition or a reference shall, except by consent of all parties, or by leave of the Court, be represented by counsel or solicitor.
- (2) In no case shall more than one counsel or one solicitor appear on behalf of any party.

### **26 Costs**

The Court may award costs against an unsuccessful party to a petition or reference.

### **27 Effect of declarations etc.**

- (1) A declaration made by the Court in proceedings under this Schedule has effect according to its terms.
- (4) The validity of anything done by the TSRA is not affected by the fact that a person has since ceased to be a member of the TSRA because of a declaration of the Court under this Schedule.



## **28 Power to make Rules of Court**

The judges of the Court or a majority of them may make Rules of Court not inconsistent with this Act and the TSRA election rules for carrying this Schedule into effect and in particular for regulating the practice and procedure of the Court and the forms to be used.

Note: Section 59 of the *Federal Court of Australia Act 1976* provides that certain provisions of the *Legislation Act 2003* apply, with modification, to rules of court made by the Court. Section 59A of the *Federal Court of Australia Act 1976* provides that regulations may be made modifying or adapting certain provisions of the *Legislation Act 2003* in their application to the Court.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aboriginal and Torres Strait Islander Commission Act 1989	150, 1989	27 Nov 1989	5 Mar 1990 (s 2(1) and gaz 1990, No S48)	
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s 31(2) and Sch: 10 Dec 1991 (gaz 1991, No S332)	s 31(2)
Aboriginal and Torres Strait Islander Commission Amendment Act 1993	26, 1993	9 June 1993	s 6: 2 Aug 1993 (s 2(2) and gaz 1993, No S231) Remainder: 9 June 1993 (s 2(1))	s 4(2), 6(2), (3), 8(2), 19(2), 20(2) and 24
Aboriginal and Torres Strait Islander Commission Amendment Act (No. 2) 1993	37, 1993	20 Sept 1993	20 Sept 1993 (s 2)	s 6, 20, 32, 38–42)
Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993	1, 1994	14 Jan 1994	s 3–43, 53–68, 73–75, 81–83, 105–112 and 116–118: 14 Jan 1994 (s 2(1)) s 69–72: 15 Jan 1994 (s 2(2)) s 113, 115 and Sch 4: 1 July 1996 (s 2(4)) s 44, 45, 47–52, 76–78, Sch 1 and 2: 1 July 1994 (s 2(3))	s 4, 16, 21, 22, 24, 28, 31, 35–40, 42, 47–52, 59, 63, 66, 68, 75, 79(2), 81–104, 111, 112, 115 and 117
<b>as amended by</b>				
Aboriginal and Torres Strait Islander Commission Amendment Act 1994	100, 1994	30 June 1994	s 32: 30 June 1994 (s 2(1))	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aboriginal and Torres Strait Islander Commission Amendment Act 1994	100, 1994	30 June 1994	s 3 and 5–31: 1 July 1994 (s 2(2)) s 4: 30 June 1994 (s 2(1))	s 4(2)
Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995	20, 1995	29 Mar 1995	s 3–14: 1 June 1995 (s 2(1) and gaz 1995, No GN18)	—
Aboriginal and Torres Strait Islander Commission Amendment Act 1996	35, 1996	12 Sept 1996	Sch 1 (item 68): 10 Oct 1996 (s 2(4)) Sch 2: 7 Dec 1999 (s 2(5)) Remainder: 12 Sept 1996 (s 2(1))	Sch 1 (items 5, 37, 39, 69)
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (items 1, 3–5): 5 Mar 1990 (s 2(2)) Sch 2 (item 2): 1 June 1995 (s 2(2)) Sch 4 (item 2): 25 Oct 1996 (s 2(1))	—
Aboriginal and Torres Strait Islander Commission Amendment (TSRA) Act 1997	98, 1997	30 June 1997	30 June 1997 (s 2)	Sch 1 (item 8)
Aged Care (Consequential Provisions) Act 1997	114, 1997	7 July 1997	Sch 5 (item 1): 1 Oct 1997 (s 2(1))	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (items 1–70) and Sch 4 (item 4): 1 Jan 1998 (s 2(2))	Sch 4 (item 4)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Aboriginal and Torres Strait Islander Commission Amendment Act 1998	20, 1998	17 Apr 1998	Sch 1 (items 4, 8): 12 Sept 1996 (s 2(2)) Sch 1 (item 10): 27 Nov 1989 (s 2(3)) Sch 1 (item 11): 1 July 1994 (s 2(4)) Remainder: 17 Apr 1998 (s 2(1))	Sch 1 (items 12, 13)
Aboriginal and Torres Strait Islander Commission Amendment Act (No. 1) 1999	120, 1999	1 Oct 1999	Sch 1: 7 Dec 1999 (s 2(2)) Remainder: 1 Oct 1999 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 1–19): 5 Dec 1999 (s 2(1), (2))	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Sch 10 (items 1–11): 13 Mar 2000 (s 2(2)(c) and gaz 2000, No S114)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 1–6, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Aboriginal and Torres Strait Islander Commission Amendment Act 2001	4, 2001	20 Mar 2001	17 Apr 2001	Sch 1 (items 61, 74, 77, 89)
Corporations (Repeals, Consequential and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (item 1): 15 July 2001 (s 2(1), (3))	s 4–14

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Act 2001	112, 2001	17 Sept 2001	s 4 and Sch 1 (items 1–10): 15 Oct 2001 (s 2)	s 4
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	Sch 1 (items 1–5): 29 Oct 2001 (s 2(1))	Sch 1 (item 97)
Aboriginal and Torres Strait Islander Commission Amendment Act 2002	40, 2002	27 June 2002	27 June 2002 (s 2)	s 4
Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003	140, 2003	17 Dec 2003	Sch 1 (items 1, 2): 1 Jan 2005 (s 2(1) item 3)	—
Law and Justice Legislation Amendment Act 2004	62, 2004	26 May 2004	Sch 1 (item 1): 26 Nov 2004 (s 2(1) item 2)	—
Bankruptcy Legislation Amendment Act 2004	80, 2004	23 June 2004	Sch 1 (items 188, 189, 212, 213, 215): 1 Dec 2004 (s 2(1) item 2 and gaz 2004, No GN34)	Sch 1 (items 212, 213, 215)
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	Sch 2 (items 1–10) 24 Mar 2005 (s 2(1) item 11) Sch 2 (item 174): 22 Feb 2005 (s 2(1) item 12)	Sch 2 (item 174)



## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aboriginal and Torres Strait Islander Commission Amendment Act 2005	32, 2005	22 Mar 2005	Sch 1 and 2: 24 Mar 2005 (s 2(1) item 2) Sch 3 (items 1–43, 47–53): 1 July 2005 (s 2(1) item 3)	Sch 1 (items 191–213), Sch 2 (items 2–6) and Sch 3 (items 47–53)
<b>as amended by</b>				
Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Act 2018	2, 2018	20 Feb 2018	Sch 2: 21 Feb 2018 (s 2(1) item 1)	—
Financial Framework Legislation Amendment Act (No. 1) 2006	30, 2006	6 Apr 2006	Sch 1 (items 1–19) and Sch 3 (item 1): 7 Apr 2006 (s 2(1) items 2, 4)	—
Aboriginal Land Rights (Northern Territory) Amendment Act 2006	93, 2006	5 Sept 2006	Sch 1 (items 1, 206): 1 Oct 2006 (s 2(1) items 2, 24)	Sch 1 (item 206)
Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006	125, 2006	4 Nov 2006	Sch 2 (items 2, 3): 1 July 2007 (s 2(1) item 2)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Sch 10 (item 1): 20 Feb 2010 (s 2(1) item 13)	—
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Act 2010	33, 2010	13 Apr 2010	Sch 3 (items 1–3): 13 Apr 2010 (s 2(1) item 4)	—

*Aboriginal and Torres Strait Islander Act 2005*

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## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Social Security and Indigenous Legislation Amendment (Budget and Other Measures) Act 2010	89, 2010	29 June 2010	Sch 3: 1 July 2010 (s 2(1) item 15)	Sch 3 (item 24)
Financial Framework Legislation Amendment Act 2010	148, 2010	17 Dec 2010	Sch 11 (item 7): 18 Dec 2010 (s 2(1) item 10)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (item 1): 22 Mar 2011 (s 2(1) item 2)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 1–25) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Indigenous Affairs Legislation Amendment Act 2011	97, 2011	15 Sept 2011	Sch 3: 5 Nov 2011 (s 2(1) item 3)	—
Indigenous Affairs Legislation Amendment Act (No. 2) 2011	188, 2011	7 Dec 2011	Sch 1 (items 1–72, 74–80): 8 Dec 2011 (s 2)	Sch 1 (items 72, 80)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 3 (items 13–18, 343): 29 June 2013 (s 2(1) item 16)	Sch 3 (item 343)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 6 (items 1–6, 23): 24 June 2014 (s 2(1) item 9)	Sch 6 (item 23)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 7 (items 1–45) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 1–5): 25 Mar 2015 (s 2(1) item 10)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 30, 31): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
<b>as amended by</b>				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 1, 2): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 4 (item 1): 10 Dec 2015 (s 2(1) item 7)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 2): 10 Mar 2016 (s 2(1) item 6)	—
Courts Administration Legislation Amendment Act 2016	24, 2016	18 Mar 2016	Sch 5 (items 13, 14): 1 July 2016 (s 2(1) item 7) Sch 6: 18 Mar 2016 (s 2(1) item 9)	Sch 6
Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Act 2018	2, 2018	20 Feb 2018	Sch 1: 21 Feb 2018 (s 2(1) item 1)	—
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 1 (item 26): 30 June 2018 (s 2(1) item 2)	—
Aboriginal and Torres Strait Islander Amendment (Indigenous Land Corporation) Act 2018	144, 2018	30 Nov 2018	Sch 1 and Sch 2 (items 1–105): 1 Feb 2019 (s 2(1) items 2, 3) Sch 2 (items 107–110): never commenced (s 2(1) item 4)	Sch 1 (item 99)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Aboriginal and Torres Strait Islander Land and Sea Future Fund (Consequential Amendments) Act 2018	146, 2018	30 Nov 2018	Sch 1 (items 1–3, 37): 1 Feb 2019 (s 2(1) item 2)	Sch 1 (item 37)

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
Title .....	am No 1, 1994; No 20, 1995; No 4, 2001; No 32, 2005; No 144, 2018
Preamble .....	ad No 1, 1994
<b>Part 1</b>	
s 1 .....	am No 32, 2005
s 4 .....	am Nos 26 and 37, 1993; Nos 1 and 100, 1994; No 20, 1995; No 35, 1996; No 152, 1997; Nos 4 and 55, 2001; Nos 8 and 32, 2005; Nos 30 and 125, 2006; No 89, 2010; Nos 97 and 188, 2011; No 62, 2014; No 126, 2015; No 144, 2018; No 146, 2018
s 4A.....	ad No 37, 1993 am No 103, 2013
s 4B.....	ad No 20, 1995
s 4C.....	ad No 144, 2018
s 5 .....	am No 59, 2015
s 5A.....	ad No 112, 2001
Part 2.....	rep No 32, 2005
s 6 .....	am No 152, 1997 rep No 32, 2005
s 7 .....	am No 4, 2001 rep No 32, 2005
s 8 .....	rep No 32, 2005
s 9 .....	rep No 32, 2005
s 10 .....	am No 1, 1994; No 4, 2001 rep No 32, 2005
s 11 .....	am No 1, 1994 (as am by No 100, 1994) rep No 32, 2005
s 12 .....	am No 43, 1996 rep No 32, 2005
s 13 .....	am No 1, 1994 rep No 32, 2005

## Endnote 4—Amendment history

Provision affected	How affected
s 13A–13C .....	ad No 1, 1994 rep No 32, 2005
s 14–17 .....	rs No 1, 1994 rep No 32, 2005
s 18, 19 .....	rep No 1, 1994
s 20 .....	am No 1, 1994; No 20, 1998 rep No 32, 2005
s 21 .....	am No 1, 1994; No 20, 1998 rep No 32, 2005
s 21A .....	ad No 35, 1996 am No 20, 1998 rep No 32, 2005
s 22 .....	rs No 1, 1994 rep No 32, 2005
s 23–25 .....	rep No 1, 1994
s 26 .....	rs No 1, 1994 rep No 32, 2005
s 27 .....	rs No 26, 1993 am No 1, 1994 rs No 35, 1996; No 120, 1999 rep No 32, 2005
s 28 .....	rep No 26, 1993
s 29 .....	rep No 32, 2005
s 30 .....	rs No 26, 1993 rep No 32, 2005
s 31A .....	ad No 1, 1994 rs No 35, 1996 am No 120, 1999 rep No 32, 2005
s 31 .....	am No 40, 2002 rep No 32, 2005

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s 32 .....	am No 26, 1993; No 1, 1994; No 35, 1996 rep No 32, 2005
s 32A.....	ad No 35, 1996 rep No 32, 2005
s 33 .....	am No 26, 1993; No 1, 1994; No 35, 1996; No 40, 2002 rep No 32, 2005
s 34 .....	rep No 32, 2005
s 35 .....	am No 122, 1991; No 26, 1993; No 35, 1996; No 146, 1999 rep No 32, 2005
s 36 .....	am No 26, 1993; No 1, 1994; No 35, 1996; No 20, 1998 rep No 32, 2005
s 37 .....	rep No 152, 1997
s 38 .....	rs No 35, 1996 rep No 32, 2005
s 39 .....	am No 26, 1993; No 1, 1994; No 35, 1996; No 120, 1999 rep No 32, 2005
s 40 .....	am No 122, 1991; No 26, 1993; No 1, 1994; No 35, 1996; No 152, 1997; No 156, 1999; No 40, 2002 rep No 32, 2005
s 41 .....	am No 1, 1994 rep No 32, 2005
s 41A.....	ad No 1, 1994 rep No 32, 2005
s 42 .....	am No 152, 1997 rep No 32, 2005
s 43 .....	rep No 32, 2005
s 44 .....	am No 1, 1994; No 35, 1996; No 152, 1997; No 156, 1999; No 40, 2002 rep No 32, 2005
s 45 .....	am No 1, 1994; No 20, 1998; No 40, 2002 rep No 32, 2005
s 45A.....	ad No 1, 1994



## Endnote 4—Amendment history

Provision affected	How affected
	am No 20, 1998
	rep No 32, 2005
s 45B.....	ad No 4, 2001
	rep No 32, 2005
s 46 .....	rep No 32, 2005
s 47 .....	am No 1, 1994; No 159, 2001
	rep No 32, 2005
s 48 .....	rep No 32, 2005
s 49 .....	rs No 122, 1991
	am No 146, 1999
	rep No 32, 2005
s 50 .....	rep No 32, 2005
s 51 .....	am No 1, 1994
	rep No 32, 2005
s 52–54.....	rep No 32, 2005
s 55 .....	am No 1, 1994; No 146, 1999
	rep No 32, 2005
s 56 .....	am No 1, 1994
	rep No 32, 2005
s 57 .....	rep No 32, 2005
s 58 .....	am No 1, 1994; No 20, 1995; No 98, 1997; No 4, 2001
	rep No 40, 2002
s 59 .....	am No 20, 1995; No 4, 2001
	rep No 40, 2002
s 60 .....	rep No 32, 2005
s 61 .....	am No 1, 1994; No 20, 1995; Nos 98 and 152, 1997; No 4, 2001; No 40, 2002
	rep No 32, 2005
s 62 .....	am No 1, 1994; No 40, 2002
	rep No 32, 2005
s 63 .....	am No 1, 1994; No 20, 1995; No 98, 1997; No 4, 2001

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	rep No 32, 2005
s 64, 65.....	rep No 32, 2005
s 66 .....	am No 1, 1994; No 20, 1995; No 98, 1997; No 4, 2001; No 40, 2002
	rep No 32, 2005
s 67 .....	am No 1, 1994; No 152, 1997; No 40, 2002
	rep No 32, 2005
s 68 .....	am No 1, 1994; No 20, 1995; Nos 35 and 43, 1996; No 152, 1997
	rep No 32, 2005
s 69 .....	am No 152, 1997
	rep No 32, 2005
s 70 .....	rep No 32, 2005
s 71 .....	am No 1, 1994
	rep No 32, 2005
s 72 .....	am No 1, 1994; No 20, 1995; No 152, 1997
	rep No 32, 2005
s 73 .....	rep No 152, 1997
s 74 .....	am No 1, 1994; No 152, 1997
	rep No 32, 2005
s 75 .....	rep No 32, 2005
s 76 .....	rs No 1, 1994
	am No 1, 1994; No 20, 1995; No 35, 1996; No 4, 2001
	rep No 32, 2005
s 77 .....	rep No 32, 2005
s 77A.....	ad No 1, 1994
	am No 159, 2001
	rep No 32, 2005
s 77B.....	ad No 1, 1994
	rep No 32, 2005
s 77C.....	ad No 1, 1994
	am No 146, 1999
	rep No 32, 2005

## Endnote 4—Amendment history

Provision affected	How affected
s 77D.....	ad No 1, 1994 rep No 32, 2005
s 77E.....	ad No 1, 1994 am No 146, 1999 rep No 32, 2005
s 77F–77H .....	ad No 1, 1994 rep No 32, 2005
s 77J.....	ad No 1, 1994 rep No 32, 2005
s 78 .....	am No 1, 1994 rep No 32, 2005
s 78A.....	ad No 1, 1994 am No 1, 1994; No 20, 1995; No 35, 1996; No 20, 1998; No 112, 2001 rep No 32, 2005
Division 10 heading.....	am No 1, 1994 rep No 32, 2005
s 79 .....	rep No 1, 1994
s 80 .....	rep No 32, 2005
s 81 .....	am No 1, 1994; No 35, 1996 rep No 32, 2005
s 82 .....	rep No 32, 2005
s 83, 84.....	am No 1, 1994 rep No 32, 2005
s 85, 86.....	rep No 32, 2005
s 86A–86C .....	ad No 1, 1994 rep No 32, 2005
s 87 .....	rep No 32, 2005
s 88, 89.....	rep No 1, 1994
s 90 .....	am No 1, 1994; No 35, 1996; No 137, 2000; No 112, 2001 rep No 32, 2005
Part 3 heading .....	rs No 32, 2005

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	rep No 32, 2005
Part 3.....	rep No 32, 2005
s 91 .....	am No 26, 1993; No 1, 1994; No 20, 1995; No 35, 1996; No 32, 2005
	rep No 32, 2005
s 92 .....	rep No 32, 2005
s 93 .....	am No 32, 2005
	rep No 32, 2005
s 94 .....	am No 1, 1994; No 20, 1998; No 40, 2002; No 32, 2005
	rep No 32, 2005
s 95 .....	am No 32, 2005
	rep No 32, 2005
s 96 .....	am No 37, 1993; No 32, 2005
	rep No 32, 2005
s 96A–96C .....	ad No 37, 1993
	rep No 32, 2005
s 97 .....	am No 1, 1994; No 20, 1995
	rep No 32, 2005
s 98 .....	rep No 32, 2005
s 99 .....	am No 1, 1994; No 152, 1997; No 32, 2005
	rep No 32, 2005
s 100 .....	rep No 32, 2005
s 100A.....	ad No 37, 1993
	am No 1, 1994; No 35, 1996; No 32, 2005
	rep No 32, 2005
s 101 .....	am No 37, 1993
	rep No 32, 2005
s 102 .....	am Nos 26 and 37, 1993; No 1, 1994; No 35, 1996; No 40, 2002; No 80, 2004; No 32, 2005
	rep No 32, 2005
s 103 .....	am No 1, 1994; No 32, 2005
	rep No 32, 2005

## Endnote 4—Amendment history

Provision affected	How affected
s 104 .....	rep No 32, 2005
s 104A.....	ad No 37, 1993
	rep No 1, 1994
s 105 .....	am Nos 26 and 37, 1993; No 1, 1994; No 32, 2005
	rep No 32, 2005
s 106 .....	am Nos 26 and 37, 1993
	rep No 32, 2005
s 107 .....	rs No 37, 1993
	rep No 32, 2005
s 108–110.....	rep No 32, 2005
s 111 .....	am No 37, 1993
	rep No 32, 2005
s 112 .....	rep No 32, 2005
s 113 .....	am Nos 26 and 37, 1993; No 1, 1994; No 40, 2002; No 32, 2005
	rep No 32, 2005
s 114 .....	rep No 32, 2005
s 115 .....	am No 37, 1993; No 1, 1994; No 35, 1996; No 40, 2002; No 32, 2005
	rep No 32, 2005
s 115A.....	ad No 40, 2002
	rep No 32, 2005
s 116 .....	am No 1, 1994
	rep No 1, 1994
	ad No 35, 1996
	am No 32, 2005
	rep No 32, 2005
s 117 .....	am No 1, 1994
	rep No 32, 2005
s 118 .....	rep No 32, 2005
s 119 .....	am No 37, 1993; No 35, 1996; No 32, 2005
	rep No 32, 2005
s 119A.....	ad No 35, 1996

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am No 32, 2005
	rep No 32, 2005
s 120 .....	rep No 32, 2005
s 121 .....	am Nos 26 and 37, 1993; No 1, 1994; Nos 35 and 43, 1996; No 32, 2005
	rep No 32, 2005
s 122 .....	am No 37, 1993; No 35, 1996; No 32, 2005
	rep No 32, 2005
s 122A.....	ad No 37, 1993
	am No 32, 2005
s 122B.....	ad No 37, 1993
	am No 32, 2005
	rep No 32, 2005
s 123 .....	am No 1, 1994; No 32, 2005
	rep No 32, 2005
s 123A.....	ad No 1, 1994
	am No 1, 1994; No 32, 2005
	rep No 32, 2005
s 124 .....	am No 1, 1994; No 32, 2005
	rep No 32, 2005
s 124A.....	ad No 1, 1994
	rep No 32, 2005
s 124B.....	ad No 1, 1994
	rep No 32, 2005
s 124C.....	ad No 1, 1994
	am No 146, 1999; No 32, 2005
	rep No 32, 2005
s 124D.....	ad No 1, 1994
	am No 32, 2005
	rep No 32, 2005
s 124E.....	ad No 1, 1994
	am No 146, 1999; No 32, 2005

## Endnote 4—Amendment history

Provision affected	How affected
	rep No 32, 2005
s 124F–124H.....	ad No 1, 1994
	am No 32, 2005
	rep No 32, 2005
s 124J.....	ad No 1, 1994
	am No 32, 2005
	rep No 32, 2005
s 125 .....	am No 1, 1994
	rep No 32, 2005
s 126 .....	rep No 32, 2005
s 127 .....	am Nos 26 and 37, 1993; No 40, 2002; No 32, 2005
	rep No 32, 2005
s 127A.....	ad No 26, 1993
	am No 40, 2002; No 32, 2005
	rep No 32, 2005
s 127B.....	ad No 26, 1993
	rep No 32, 2005
s 127C.....	ad No 26, 1993
	am No 37, 1993; No 35, 1996; No 40, 2002; No 32, 2005
	rep No 32, 2005
s 127D.....	ad No 26, 1993
	am No 146, 1999; No 32, 2005
	rep No 32, 2005
s 127E.....	ad No 37, 1993
	am No 35, 1996; No 32, 2005
	rep No 32, 2005
s 127F .....	ad No 37, 1993
	rep No 32, 2005
s 127G.....	ad No 37, 1993
	am No 35, 1996; No 32, 2005
	rep No 32, 2005

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s 127H.....	ad No 37, 1993 rep No 32, 2005
s 127J.....	ad No 37, 1993 am No 35, 1996; No 32, 2005 rep No 32, 2005
s 128 .....	am No 37, 1993; No 35, 1996; No 40, 2002; No 32, 2005 rep No 32, 2005
s 128A–128C .....	ad No 35, 1996 rep No 32, 2005
s 129 .....	rep No 32, 2005
Division 7 .....	rep No 32, 2005
s 130, 131.....	am No 1, 1994 rep No 32, 2005
s 132 .....	am No 26, 1993 rs No 100, 1994 am No 100, 1994 rep No 32, 2005
s 133 .....	am Nos 1 and 100, 1994 rep No 32, 2005
s 134–137.....	rep No 32, 2005
s 138 .....	am No 26, 1993; No 1, 1994; No 35, 1996 rep No 32, 2005
s 139 .....	rep No 32, 2005
s 139A.....	ad No 35, 1996 rep No 32, 2005
s 140 .....	am No 1, 1994; No 32, 2005 rep No 32, 2005
Division 9 .....	rs No 1, 1994 rep No 32, 2005
s 141 .....	rs No 1, 1994 am No 1, 1994; No 35, 1996



## Endnote 4—Amendment history

Provision affected	How affected
	rep No 32, 2005
s 141A.....	ad No 1, 1994
	am No 1, 1994; No 40, 2002
	rep No 32, 2005
s 141B.....	ad No 1, 1994
	rep No 40, 2002
s 141C–141H.....	ad No 1, 1994
	rep No 32, 2005
s 141J–141N .....	ad No 1, 1994
	rep No 32, 2005
s 141P–141R.....	ad No 1, 1994
	rep No 32, 2005
s 141S .....	ad No 1, 1994
	am No 1, 1994; No 40, 2002
	rep No 32, 2005
s 141T .....	ad No 1, 1994
	rep No 40, 2002
s 141U–141Z.....	ad No 1, 1994
	rep No 32, 2005
s 141ZA–141ZE.....	ad No 1, 1994
	rep No 32, 2005
<b>Part 3A</b>	
Part 3A.....	ad No 1, 1994
<b>Division 1</b>	
s 142 .....	rs No 1, 1994
	am No 152, 1997
	rs No 62, 2014
<b>Division 2</b>	
s 142A.....	ad No 1, 1994
s 142AA.....	ad No 100, 1994
	am No 32, 2005; No 126, 2015

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 142B.....	ad No 1, 1994
s 142C.....	ad No 1, 1994
	am No 100, 1994
s 142D.....	ad No 1, 1994
	am No 188, 2011
s 142E.....	ad No 1, 1994
<b>Division 3</b>	
s 142F.....	ad No 1, 1994
s 142G.....	ad No 1, 1994
	am No 8, 2005
s 142GA.....	ad No 100, 1994
s 142H.....	ad No 1, 1994
s 142J.....	ad No 1, 1994
	am No 100, 1994
s 142JA.....	ad No 35, 1996
s 142K.....	ad No 1, 1994
	am No 100, 1994; No 188, 2011
s 142L.....	ad No 1, 1994
	am No 32, 2005
s 142M.....	ad No 1, 1994
s 142N.....	ad No 1, 1994
s 142P.....	ad No 1, 1994
s 142Q.....	ad No 1, 1994
<b>Division 4</b>	
s 142R.....	ad No 1, 1994
	am No 100, 1994; No 97, 2011; No 103, 2013
s 142S.....	ad No 1, 1994
	am No 100, 1994
	rs No 97, 2011
<b>Division 5</b>	
s 142T.....	ad No 1, 1994

## Endnote 4—Amendment history

Provision affected	How affected
s 142TA .....	ad No 100, 1994 am No 97, 2011
s 142U.....	ad No 1, 1994 am No 100, 1994
s 142V.....	ad No 1, 1994 am No 100, 1994; No 80, 2004; No 32, 2005
s 142W.....	ad No 1, 1994 am No 100, 1994
s 142X.....	ad No 1, 1994
s 142Y.....	ad No 1, 1994 am No 97, 2011
s 142Z.....	ad No 1, 1994 am No 100, 1994
s 143 .....	rs No 1, 1994 am No 100, 1994
s 143A.....	ad No 1, 1994 rs No 100, 1994
s 143B.....	ad No 1, 1994
s 143D.....	ad No 1, 1994
s 143E.....	ad No 1, 1994 rs No 100, 1994
s 143F .....	ad No 1, 1994
s 143G.....	ad No 1, 1994 am No 100, 1994; No 103, 2013
s 143H.....	ad No 1, 1994 am No 100, 1994
s 143I.....	ad No 32, 2005
<b>Division 6</b>	
s 143J.....	ad No 1, 1994
s 143K.....	ad No 1, 1994
s 143L.....	ad No 1, 1994

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am No 32, 2005
s 143M.....	ad No 1, 1994
	am No 46, 2011
s 143N.....	ad No 1, 1994
	rep No 152, 1997
s 143P.....	ad No 1, 1994
	am No 146, 1999
s 143Q.....	ad No 1, 1994
s 143R.....	ad No 1, 1994
	am No 100, 1994; No 32, 2005; No 97, 2011
s 143S.....	ad No 1, 1994
	am No 152, 1997; No 156, 1999; No 62, 2014
s 143T.....	ad No 1, 1994
s 143U.....	ad No 1, 1994
	am No 152, 1997; No 62, 2014
s 143V.....	ad No 1, 1994
s 143W.....	ad No 1, 1994
	am No 32, 2005
s 143X.....	ad No 1, 1994
s 143Y.....	ad No 1, 1994
s 143Z.....	ad No 1, 1994
	am No 146, 1999
s 144.....	rs No 1, 1994
	am No 32, 2005
s 144A.....	ad No 1, 1994
s 144B.....	ad No 1, 1994
s 144C.....	ad No 1, 1994
	am No 31, 2014
s 144D.....	ad No 1, 1994
	am No 32, 2005; No 31, 2014
s 144E.....	ad No 1, 1994

## Endnote 4—Amendment history

Provision affected	How affected
	am No 152, 1997; No 156, 1999; No 62, 2014
s 144F .....	ad No 1, 1994
	am No 32, 2005; Nos 46 and 188, 2011
<b>Division 7</b>	
Division 7 heading .....	rs No 188, 2011
s 144G .....	ad No 1, 1994
	am No 188, 2011
s 144H .....	ad No 1, 1994
	am No 159, 2001; No 188, 2011
s 144J .....	ad No 1, 1994
	am No 188, 2011
s 144K .....	ad No 1, 1994
	am No 146, 1999; No 188, 2011
s 144L .....	ad No 1, 1994
	am No 32, 2005; Nos 46 and 188, 2011
s 144M .....	ad No 1, 1994
	am No 188, 2011; No 62, 2014
s 144N .....	ad No 1, 1994
	am No 188, 2011
s 144P .....	ad No 1, 1994
	am No 188, 2011; No 62, 2014
s 144Q .....	ad No 1, 1994
	am No 188, 2011
<b>Division 8</b>	
s 144R .....	ad No 1, 1994
	am No 146, 1999; No 32, 2005; No 188, 2011
s 144S .....	ad No 1, 1994
	rep No 32, 2005
s 144T .....	ad No 1, 1994; No 32, 2005
<b>Division 9</b>	
s 144TA .....	ad No 98, 1997

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am No 8, 2005
s 144U.....	ad No 1, 1994
s 144V.....	ad No 1, 1994
	am No 100, 1994; No 152, 1997; No 62, 2014
s 144W.....	ad No 1, 1994
	am No 100, 1994; No 152, 1997; No 62, 2014
s 144X.....	ad No 1, 1994
	am No 152, 1997; No 8, 2005; No 62, 2014
s 144Y.....	ad No 1, 1994
s 144Z.....	ad No 1, 1994
s 144ZA.....	ad No 1, 1994
	am Nos 98 and 152, 1997; No 62, 2014
s 144ZB.....	ad No 1, 1994
	am No 152, 1997; No 62, 2014
s 144ZC.....	ad No 1, 1994
	rep No 152, 1997
s 144ZD.....	ad No 1, 1994
	am No 152, 1997; No 188, 2011; No 62, 2014
Division 10 heading.....	rs No 32, 2005
	rep No 62, 2014
Division 10.....	rep No 62, 2014
s 144ZE.....	ad No 1, 1994
	am No 32, 2005
	rep No 62, 2014
<b>Division 11</b>	
s 144ZF.....	ad No 1, 1994
	am No 32, 2005; No 62, 2014
s 144ZG.....	ad No 1, 1994
s 144ZH.....	ad No 1, 1994
s 144ZJ.....	ad No 1, 1994
s 144ZK.....	ad No 1, 1994

## Endnote 4—Amendment history

Provision affected	How affected
	am No 146, 1999
s 144ZL.....	ad No 1, 1994
s 144ZM.....	ad No 1, 1994
	am No 146, 1999; No 62, 2014
s 144ZN .....	ad No 1, 1994
	am No 62, 2014
s 144ZP .....	ad No 1, 1994
	am No 46, 2011
s 144ZQ .....	ad No 1, 1994
<b>Part 4</b>	
Part 4 heading .....	rs No 4, 2001
<b>Division 1</b>	
Division 1 heading .....	rs No 4, 2001
s 145 .....	am No 20, 1995; No 152, 1997; No 4, 2001
	rs No 62, 2014
s 146 .....	am No 20, 1995; No 4, 2001
<b>Division 2</b>	
Division 2 heading .....	am No 20, 1995
	rs No 4, 2001
s 147 .....	am No 20, 1995
	rs No 4, 2001
	am No 32, 2005
s 148 .....	am No 20, 1995; No 4, 2001; No 32, 2005
s 149 .....	am No 20, 1995; No 4, 2001
	rep No 62, 2014
s 150 .....	am No 20, 1995; No 4, 2001; No 32, 2005; No 62, 2014; No 2, 2018
s 151 .....	am No 20, 1995; No 152, 1997; No 4, 2001
	rs No 32, 2005
	am No 126, 2015
s 152 .....	am No 20, 1995; No 4, 2001; No 32, 2005
s 153 .....	am No 20, 1995; No 4, 2001; Nos 8 and 32, 2005

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 154 .....	am No 20, 1995; No 4, 2001; No 32, 2005
<b>Division 3</b>	
Division 3 heading .....	am No 20, 1995
	rs No 4, 2001
s 155 .....	am No 20, 1995; No 4, 2001
s 156 .....	am No 20, 1995
	rs No 4, 2001
	am No 32, 2005
s 157 .....	am No 1, 1994; No 20, 1995
	rs No 4, 2001
	am No 32, 2005
s 158 .....	am No 1, 1994; No 20, 1995
	rs No 4, 2001; No 32, 2005
<b>Division 4</b>	
s 159 .....	am No 1, 1994; No 20, 1995; Nos 4 and 159, 2001
s 160 .....	am No 20, 1995; No 4, 2001
s 161 .....	am No 20, 1995
	rs No 4, 2001
s 162 .....	am No 20, 1995; No 4, 2001; No 46, 2011
s 163 .....	am No 20, 1995
	rep No 152, 1997
s 164 .....	am No 20, 1995
	rs No 4, 2001
s 165 .....	am No 1, 1994; No 20, 1995; No 152, 1997; No 156, 1999
	rs No 4, 2001
	am No 32, 2005; No 62, 2014
s 166 .....	am No 20, 1995; No 4, 2001
<b>Division 5</b>	
Division 5 heading .....	am No 20, 1995
	rs No 4, 2001
s 167 .....	am No 20, 1995; No 152, 1997; No 156, 1999; No 4, 2001; No 62, 2014



## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 6</b>	
Division 6 heading.....	am No 20, 1995 rs No 4, 2001; No 188, 2011
s 168 .....	am No 20, 1995 rs No 4, 2001 am No 188, 2011
s 169 .....	am No 20, 1995; Nos 4 and 159, 2001; No 188, 2011
s 170 .....	am No 20, 1995; No 4, 2001; No 188, 2011
s 171 .....	am No 20, 1995; No 4, 2001; No 188, 2011
s 172 .....	am No 20, 1995; No 4, 2001; Nos 46 and 188, 2011
s 172A.....	ad No 35, 1996 am No 4, 2001; No 188, 2011; No 62, 2014
s 173 .....	am No 20, 1995; No 4, 2001; No 188, 2011
s 174 .....	am No 20, 1995; No 4, 2001; No 188, 2011
<b>Division 7</b>	
s 175 .....	am No 20, 1995 rs No 4, 2001 am No 188, 2011
s 176 .....	am No 20, 1995 rs No 4, 2001 rep No 32, 2005
s 177 .....	am No 20, 1995 rs No 4, 2001 am No 188, 2011
s 178 .....	am No 20, 1995; No 20, 1998 rs No 4, 2001 am No 188, 2011
<b>Division 8</b>	
s 179 .....	am No 20, 1995 rs No 4, 2001
s 180 .....	am No 20, 1995

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	rep No 152, 1997
s 181 .....	am No 20, 1995; No 4, 2001; No 32, 2005
s 181A.....	ad No 32, 2005
	am No 62 2014; No 126, 2015
s 181B.....	ad No 32, 2005
s 182 .....	am No 20, 1995
	rs No 4, 2001
	am No 188, 2011
s 183 .....	am No 20, 1995; No 4, 2001; Nos 8 and 32, 2005
s 184 .....	am No 20, 1995; No 4, 2001
s 185 .....	am No 20, 1995; No 4, 2001; No 32, 2005
s 186 .....	am No 20, 1995
	rep No 152, 1997
s 187 .....	am No 20, 1995; No 4, 2001
s 188 .....	am No 20, 1995; No 4, 2001
s 189 .....	am No 20, 1995
	rep No 152, 1997
	ad No 32, 2005
	rs No 62 2014
<b>Division 9</b>	
s 190 .....	am No 20, 1995
	rs No 4, 2001
	am Nos 46 and 188, 2011
s 191 .....	am No 20, 1995; Nos 35 and 43, 1996; No 137, 2000; Nos 4 and 112, 2001; No 32, 2005; No 188, 2011
s 191AA.....	ad No 188, 2011
<b>Part 4A</b>	
Part 4A heading .....	rs No 30, 2006
	am No 144, 2018; No 146, 2018
Part 4A.....	ad No 20, 1995

## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 1</b>	
Division 1 heading.....	am No 144, 2018
s 191A.....	ad No 20, 1995 am No 152, 1997; No 62, 2014; No 144, 2018
s 191B.....	ad No 20, 1995 am No 144, 2018
<b>Division 2</b>	
Division 2 heading.....	am No 144, 2018
s 191C.....	ad No 20, 1995 am No 32, 2005; No 144, 2018
s 191D.....	ad No 20, 1995 am No 32, 2005; No 126, 2015; No 144, 2018
s 191E.....	ad No 20, 1995 am No 144, 2018
s 191EA.....	ad No 32, 2005 am No 144, 2018
s 191F.....	ad No 20, 1995 am No 144, 2018
s 191G.....	am No 144, 2018
s 191H.....	am No 144, 2018
s 191I.....	am No 144, 2018
s 191J.....	ad No 20, 1995 am No 144, 2018
s 191K.....	ad No 20, 1995 rep No 32, 2005
s 191L.....	ad No 20, 1995 am No 152, 1997; No 32, 2005; No 89, 2010; No 62 2014; No 144, 2018
s 191M.....	ad No 20, 1995 rep No 152, 1997
<b>Division 3</b>	
Division 3 heading.....	rs No 144, 2018

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 191N.....	ad No 20, 1995 am No 32, 2005; No 144, 2018
s 191P .....	ad No 20, 1995 am No 144, 2018
s 191Q.....	ad No 20, 1995 am No 144, 2018
s 191R.....	ad No 20, 1995 am No 144, 2018
<b>Division 4</b>	
Division 4 heading.....	am No 144, 2018
s 191S .....	ad No 20, 1995 am No 144, 2018
s 191SA .....	ad No 35, 1996 am No 144, 2018
s 191SB.....	ad No 35, 1996 am No 144, 2018
s 191T .....	ad No 20, 1995 am No 144, 2018
s 191U.....	ad No 20, 1995 am No 144, 2018
<b>Division 5</b>	
Division 5 heading.....	am No 144, 2018
s 191V.....	ad No 20, 1995 am No 32, 2005; No 144, 2018
s 191W.....	ad No 20, 1995 am No 32, 2005; No 89, 2010; No 144, 2018
s 191X.....	ad No 20, 1995 am Nos 8 and 32, 2005; No 144, 2018
s 191Y.....	ad No 20, 1995 am No 144, 2018

## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 6</b>	
s 191Z.....	ad No 20, 1995 am No 32, 2005; No 144, 2018
s 192 .....	ad No 20, 1995 am No 144, 2018
s 192A.....	ad No 20, 1995 am No 32, 2005; No 144, 2018
s 192B.....	ad No 20, 1995 am No 144, 2018
s 192C.....	ad No 20, 1995 am No 144, 2018
s 192D.....	ad No 20, 1995 am No 146, 1999; No 144, 2018
s 192E.....	ad No 20, 1995 am No 46, 2011; No 144, 2018
s 192F.....	ad No 20, 1995 am No 152, 1997; No 62 2014; No 144, 2018
s 192G.....	ad No 20, 1995 am No 32, 2005; No 144, 2018
s 192H.....	ad No 20, 1995 am No 152, 1997; No 156, 1999; No 32, 2005; No 62 2014; No 144, 2018
s 192I.....	ad No 20, 1995 am No 32, 2005; No 144, 2018
<b>Division 7</b>	
Division 7 heading.....	am No 144, 2018
s 192J.....	ad No 20, 1995 am No 152, 1997; No 156, 1999; No 62 2014; No 144, 2018
<b>Division 8</b>	
Division 8 heading.....	rs No 188, 2011 am No 144, 2018
s 192K.....	ad No 20, 1995

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am No 188, 2011; No 144, 2018
s 192L .....	ad No 20, 1995
	am No 188, 2011; No 144, 2018
s 192M .....	ad No 20, 1995
	am No 188, 2011; No 144, 2018
s 192N .....	ad No 20, 1995
	am No 188, 2011; No 144, 2018
s 192P .....	ad No 20, 1995
	am Nos 46 and 188, 2011; No 144, 2018
s 192Q .....	ad No 20, 1995
	am No 188, 2011; No 144, 2018
s 192R .....	ad No 20, 1995
	am No 188, 2011; No 144, 2018
<b>Division 9</b>	
s 192S .....	am No 144, 2018
s 192T .....	ad No 20, 1995
	am No 4, 2001; No 32, 2005; No 188, 2011; No 144, 2018
s 192U .....	ad No 20, 1995
	am No 188, 2011; No 144, 2018
s 192V .....	ad No 20, 1995
	am No 188, 2011; No 144, 2018
Division 10 .....	rep No 146, 2018
s 192W .....	ad No 20, 1995
	am No 152, 1997
	rs No 30, 2006
	am No 62 2014
	rep No 146, 2018
s 192X .....	ad No 20, 1995
	am No 32, 2005; No 30, 2006
	rep No 146, 2018
s 192Y .....	ad No 20, 1995

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Provision affected	How affected
	rs No 89, 2010
	am No 145, 2015
	rep No 146, 2018
s 192Z.....	ad No 20, 1995
	am No 30, 2006
	rep No 89, 2010
s 193 .....	ad No 20, 1995
	am No 30, 2006
	rs No 89, 2010
	am No 62 2014
	rep No 146, 2018
s 193AA.....	ad No 20, 1995
	am No 8, 2005; No 30, 2006
	rep No 89, 2010
s 193A.....	ad No 20, 1995
	am No 30, 2006
	rep No 89, 2010
s 193B.....	ad No 20, 1995
	rep No 32, 2005
s 193C.....	ad No 20, 1995
	am No 30, 2006
	rep No 89, 2010
s 193D.....	ad No 20, 1995
	rep No 89, 2010
s 193E.....	ad No 20, 1995
	am No 30, 2006
	rep No 89, 2010
s 193F .....	ad No 20, 1995
	rep No 152, 1997
s 193G.....	ad No 20, 1995
	am No 152, 1997; No 30, 2006; No 89, 2010; No 62 2014

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### Endnote 4—Amendment history

Provision affected	How affected
	rep No 146, 2018
s 193H.....	ad No 20, 1995
	am Nos 8 and 32, 2005; No 30, 2006; No 89, 2010
	rep No 146, 2018
s 193I.....	ad No 20, 1995
	am No 32, 2005; No 30, 2006; No 89, 2010
	rep No 146, 2018
<b>Division 11</b>	
s 193J.....	ad No 20, 1995
	am No 144, 2018
s 193K.....	ad No 20, 1995
	rs No 152, 1997
	am No 89, 2010
	rs No 62 2014
	am No 144, 2018
s 193L.....	ad No 20, 1995
	am No 89, 2010; No 144, 2018
s 193M.....	ad No 20, 1995
	am No 32, 2005; No 89, 2010; No 144, 2018
s 193N.....	ad No 20, 1995
	am No 89, 2010; No 144, 2018
s 193P.....	ad No 20, 1995
	am No 144, 2018
s 193Q.....	ad No 20, 1995
	am No 144, 2018
<b>Division 12</b>	
s 193R.....	ad No 20, 1995
	am No 32, 2005; No 89, 2010; No 144, 2018
<b>Division 13</b>	
s 193S.....	ad No 20, 1995
	am No 112, 2001; No 188, 2011; No 4, 2016; No 144, 2018



## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 14</b>	
s 193T .....	ad No 20, 1995 am No 188, 2011; No 144, 2018
<b>Division 15</b>	
Division 15 .....	ad No 89, 2010
s 193U (prev s 192).....	renum No 20, 1995 rep No 32, 2005 ad No 89, 2010
Part 4B .....	ad No 32, 2005 rep No 148, 2010
s 193V (prev s 193).....	renum No 20, 1995 rep No 152, 1997 ad No 32, 2005 rep No 148, 2010
s 193W .....	ad No 32, 2005 rep No 148, 2010
s 193X.....	ad No 32, 2005 am No 93, 2006 rep No 148, 2010
s 193Y, 193Z .....	ad No 32, 2005 rep No 148, 2010
s 193ZA–193ZG .....	ad No 32, 2005 rep No 148, 2010
<b>Part 5</b>	
Part 5 heading .....	am No 1, 1994
s 194 .....	am No 43, 1996; No 103, 2013
s 194A.....	ad No 37, 1993 rep No 32, 2005
s 195 .....	am No 1, 1994; No 40, 2002 rep No 32, 2005
s 195A.....	ad No 1, 1994

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### Endnote 4—Amendment history

Provision affected	How affected
s 196 .....	am No 1, 1994; No 4, 2001; No 40, 2002; No 32, 2005 rep No 32, 2005
s 196A.....	ad No 1, 1994 am No 100, 1994; No 20, 1998
s 197 .....	am No 35, 1996; No 137, 2000
s 198 .....	am No 35, 1996; No 112, 2001
s 199 .....	am No 1, 1994; No 137, 2000; No 112, 2001; No 32, 2005; No 4, 2010; No 5, 2015
s 200 .....	am No 1, 1994; Nos 114 and 152, 1997; No 146, 1999; No 188, 2011
s 200A.....	ad No 32, 2005 am No 32, 2005; No 188, 2011
s 200B.....	ad No 8, 2005 am No 62 2014
s 200C (prev s 200B) .....	ad No 32, 2005 am No 32, 2005 renum No 30, 2006 am No 89, 2010; No 46, 2011
s 201 .....	am No 37, 1993; No 1, 1994; No 43, 1996; No 32, 2005
<b>Part 6</b>	
Part 6 heading .....	am No 1, 1994
<b>Division 1</b>	
s 202 .....	am No 32, 2005
Division 2 .....	rep No 1, 1994
s 203 .....	rep No 1, 1994
<b>Division 3</b>	
s 204, 205.....	rep No 32, 2005
s 206 .....	am No 20, 1995; No 4, 2001; No 32, 2005
s 207 .....	rep No 32, 2005
s 208 .....	am No 20, 1995 rep No 4, 2001
s 209 .....	rep No 32, 2005

## Endnote 4—Amendment history

Provision affected	How affected
s 210 .....	am No 20, 1995; No 4, 2001 rep No 32, 2005
s 211 .....	am No 20, 1995; No 4, 2001; No 32, 2005
s 212–214.....	rep No 32, 2005
s 215 .....	am No 20, 1995; No 4, 2001; No 32, 2005
s 217 .....	rep No 32, 2005
<b>Division 4</b>	
s 218 .....	rep No 32, 2005
s 220 .....	am No 32, 2005
s 221 .....	rep No 32, 2005
s 222 .....	am No 20, 1995; No 4, 2001
Division 5 .....	rep No 1, 1994
s 223–232.....	rep No 1, 1994
Schedule 1.....	rs Nos 26 and 37, 1993 am No 1, 1994 rs No 32, 2005 rep No 33, 2010
<b>Schedule 2</b>	
Schedule 2 heading .....	rs No 32, 2005 am No 33, 2010
Schedule 2.....	am No 37, 1993; No 100, 1994; No 32, 2005
<b>Schedule 2A</b>	
Schedule 2A heading .....	rs No 32, 2005 am No 33, 2010
Schedule 2A.....	ad No 37, 1993 am No 100, 1994; No 32, 2005
Schedule 2B.....	ad No 1, 1994 rep No 100, 1994
Schedule 3.....	rep No 32, 2005

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Schedule 4</b>	
Schedule 4.....	am Nos 1 and 100, 1994; No 140, 2003; No 62, 2004; No 32, 2005; No 5, 2011; No 126, 2015; No 24, 2016; No 67, 2018