Aboriginal and Torres Strait Islander Commission Amendment Act 2005

Act No. 32 of 2005 as amended

This compilation was prepared on 4 April 2006

[This Act was amended by Act No. 9 of 2006]

Amendments from Act No. 9 of 2006

[Schedule 2 (item 1) amended heading to item 72 of Schedule 4
Schedule 2 (item 2) amended heading to item 73 of Schedule 4
Schedule 2 (items 1 and 2) commenced immediately after 24 March 2005]

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

1 Short title 1
2 Commencement 1
3 Schedule(s) 2

Schedule 1—Abolition of Aboriginal and Torres Strait Islander Commission, consequential amendments and transitional and saving arrangements 3

Part 1—Abolition of Aboriginal and Torres Strait Islander Commission 3

Aboriginal and Torres Strait Islander Commission Act 1989 3

Part 2—Consequential amendments relating to the abolition of Aboriginal and Torres Strait Islander Commission 4

Aboriginal and Torres Strait Islander Commission Act 1989 4

Part 3—Transitional and saving arrangements relating to Aboriginal and Torres Strait Islander Commission 35

Schedule 2—Amendments and transitional and saving arrangements relating to the Office of Evaluation and Audit 58

Part 1—Amendment relating to Office of Evaluation and Audit 58

Aboriginal and Torres Strait Islander Commission Act 1989 58

Part 2—Transitional and saving arrangements relating to Office of Evaluation and Audit 66

Schedule 3—Abolition of Regional Councils, consequential amendments and transitional and saving arrangements 70

Part 1—Abolition of Regional Councils 70

Aboriginal and Torres Strait Islander Act 2005 70

Part 2—Consequential amendments relating to abolition of Regional Councils 71

Aboriginal and Torres Strait Islander Act 2005 71

Aboriginal Councils and Associations Act 1976 76

Part 3—Transitional and saving arrangements relating to Regional Councils 77

Schedule 4—Amendment of other Acts and transitional and saving arrangements 80

Aboriginal and Torres Strait Islander Heritage Protection Act 1984 80

Aboriginal Councils and Associations Act 1976 80

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987 80

Aboriginal Land Rights (Northern Territory) Act 1976 81

Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989 81

Environment Protection and Biodiversity Conservation Act 1999 83

Human Rights and Equal Opportunity Commission Act 1986 83

National Health and Medical Research Council Act 1992 83

Native Title Act 1993 84

Remuneration Tribunal Act 1973 93

Social Security Act 1991 93

An Act to amend the *Aboriginal and Torres Strait Islander Commission Act 1989*, and for other purposes

[*Assented to 22 March 2005*]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 March 2005
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	24 March 2005 (*see* F2005L00768)

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
3. Schedule 3	The later of: (a) 1 July 2005; and (b) the day immediately following the day Schedules 1 and 2 to this Act commence.	1 July 2005 (paragraph (a) applies)
4. Schedule 4	At the same time as the provision(s) covered by table item 2.	24 March 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Abolition of Aboriginal and Torres Strait Islander Commission, consequential amendments and transitional and saving arrangements

Part 1—Abolition of Aboriginal and Torres Strait Islander Commission

Aboriginal and Torres Strait Islander Commission Act 1989

1 Part 2

Repeal the Part.

Part 2—Consequential amendments relating to the abolition of Aboriginal and Torres Strait Islander Commission

Aboriginal and Torres Strait Islander Commission Act 1989

2 Title

Omit "**an Aboriginal and Torres Strait Islander Commission,**".

3 Section 1

Omit "*Aboriginal and Torres Strait Islander Commission Act 1989*", substitute "*Aboriginal and Torres Strait Islander Act 2005*".

4 Subsection 4(1) (definition of *Advisory Board*)

Repeal the definition.

5 Subsection 4(1) (definition of *appointed Indigenous Land Corporation Director*)

Repeal the definition.

6 Subsection 4(1) (definition of *approved Regional Council estimates*)

Repeal the definition.

7 Subsection 4(1)

Insert:

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

8 Subsection 4(1) (definition of *Chief Executive Officer*)

Repeal the definition.

9 Subsection 4(1) (definition of *Commission*)

Repeal the definition.

10 Subsection 4(1) (definition of *Commission Chairperson*)

Repeal the definition.

11 Subsection 4(1) (definition of *Commissioner*)

Repeal the definition.

12 Subsection 4(1) (definition of *Housing Fund*)

Repeal the definition.

13 Subsection 4(1) (definition of *Ministerial Finance Direction*)

Repeal the definition.

14 Subsection 4(1)

Insert:

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

15 Subsection 4(1) (definition of *Office*)

Repeal the definition.

16 Subsection 4(1)

Insert:

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

17 Subsection 4(1) (definition of *Regional Council estimates*)

Repeal the definition.

18 Subsection 4(1) (definition of *Regional Land Fund*)

Repeal the definition.

19 Subsection 4(1) (definition of *regional statement*)

Repeal the definition.

20 Subsection 4(1) (definition of *zone*)

Repeal the definition.

21 Subsection 4(1) (definition of *zone election*)

Repeal the definition.

22 Subsection 4(1) (definition of *zone election rules*)

Repeal the definition.

23 Subsection 4(2)

Omit "of the Commission,".

24 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Regions and Regional Councils

25 Paragraph 91(1)(a)

Repeal the paragraph, substitute:

(a) each of which includes a place set out in Schedule 1 and does not include any other place included in the Schedule; and

26 Subsection 91(1B)

Omit "Commission", substitute "Minister".

27 Subsection 91(5)

Omit "the Commission and".

28 Subsections 93(2) and (3)

Repeal the subsections, substitute:

(3) The corporate name of a Regional Council for a region that includes a place listed in Schedule 1 is, if a name for the Regional Council has not been determined under subsection (1), the Regional Council for the region that includes that place.

29 Paragraph 94(1)(b)

Omit "the Commission,".

30 Paragraphs 94(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) to make proposals to the Indigenous Land Corporation for the expenditure of money that, before ATSIC abolition day, stood to the credit of the Regional Land Fund that was established under section 68 of this Act as in force before that day;

(d) to receive, and to pass on to the Minister and to the TSRA, the views of Aboriginal persons and Torres Strait Islanders about the activities in the region of the TSRA, other Commonwealth bodies and State, Territory and local government bodies;

31 Subsections 95(2) and 96(4)

Omit "Commission", substitute "Minister".

32 Sections 97 and 98

Repeal the sections.

33 Subsection 99(1)

Omit "Commission" (wherever occurring), substitute "Minister".

34 Subsections 99(1A) and (2)

Repeal the subsections.

35 Subsection 99(3)

Omit "Commission", substitute "Minister".

36 Subsection 99(4)

Repeal the subsection.

37 Subsection 100A(4B)

Omit "the Aboriginal and Torres Strait Islander Commission and".

38 Paragraph 102(1)(c)

Omit "the Commission or".

39 Subsection 102(1A)

Omit "a person who is the Commission Chairperson or to".

40 Section 103

Omit "the application of this Act to the Commission" (wherever occurring), substitute "this Act".

41 Subsection 105(3)

Omit "and to the Aboriginal and Torres Strait Islander Commission".

42 Subsection 105(4)

Repeal the subsection.

43 Subsection 113(1)

Omit "the Aboriginal and Torres Strait Islander Commission and".

44 Subsection 115(3)

Omit "Commission", substitute "Minister".

45 Section 115A

Repeal the section.

46 Subsection 116(1)

Omit ", after consulting the Commission,", substitute ", after consulting the Regional Council concerned,".

47 Subsection 119(3)

Repeal the subsection.

48 Subsections 119A(1), (2) and (3)

Omit "Commission", substitute "Regional Council".

49 Subsection 121(1)

Omit "Commission" (wherever occurring), substitute "Minister".

50 Subsections 121(1A) and (1B)

Repeal the subsections.

51 Subsection 121(2)

Omit "Commission", substitute "Minister".

52 Subsection 121(3)

Repeal the subsection, substitute:

(3) If the Minister is satisfied that a member of a Regional Council:

(a) has become a member of the staff of the TSRA; or

(b) has become a consultant to the TSRA; or

(c) has become a director of, or has acquired a controlling interest in, a body corporate that is a consultant to the TSRA; or

(d) is a director of, or has a controlling interest in, a body corporate that has become a consultant to the TSRA;

the Minister must declare, in writing, that he or she is so satisfied.

53 Subsection 121(4)

Omit "Commission", substitute "Minister".

54 Subsection 122(1)

Omit "Commission" (wherever occurring), substitute "Minister".

55 Subsection 122(1)

Omit "it is so satisfied", substitute "he or she is so satisfied".

56 Subsection 122(2)

Omit "Commission", substitute "Minister".

57 Section 122A

Omit "Commission" (wherever occurring), substitute "Minister".

Note 1: The heading to subsection 122A(1) is altered by omitting "*Commission*" and substituting "*Minister*".

Note 2: The heading to subsection 122A(2) is altered by omitting "*Commission*" and substituting "*Minister*".

Note 3: The heading to subsection 122A(5) is altered by omitting "*Commission*" and substituting "*Minister*".

58 Section 122B

Omit "Commission" (wherever occurring), substitute "Minister".

59 Subsection 123(1)

Omit "Commission" (wherever occurring), substitute "Minister".

60 Subsection 123(2) (paragraph (c) of the definition of *valid petition*)

Omit "Commission", substitute "Minister".

61 Paragraphs 123A(1)(b), (ca) and (cb)

Repeal the paragraphs.

62 Subsection 123A(1)

Omit "the Commission may", substitute "the Minister may".

63 Subsection 123A(2)

Repeal the subsection, substitute:

(2) The Minister must not remove the Regional Councillors from Office unless the Minister has, by written notice served on the Regional Councillors:

(a) given the Regional Councillors 28 days within to which to show cause why they should not be removed; and

(b) given reasons for the removal.

64 Subsection 123A(3)

Omit "Commission" (wherever occurring), substitute "Minister".

65 Paragraphs 124(c) and (d)

Repeal the paragraphs, substitute:

(c) has all powers necessary to rectify any problems in the affairs of the Regional Council.

66 Subsections 124C(1) and (3)

Omit "Commission Chairperson", substitute "Minister".

67 Section 124D

Omit "Commission", substitute "Minister".

68 Subsection 124E(2)

Omit "Commission" (wherever occurring), substitute "Minister".

69 Subsections 124F(1) and (2)

Omit "Commission", substitute "Minister".

Note 1: The heading to subsection 124F(1) is altered by omitting "*Commission*" and substituting "*Minister*".

Note 2: The heading to subsection 124F(2) is altered by omitting "*Commission*" and substituting "*Minister*".

70 Subsection 124G(1)

Omit "Commission", substitute "Minister".

71 Sections 124H and 124J

Omit "Commission", substitute "Minister".

Note: The heading to section 124J is altered by omitting "**Commission**" and substituting "**Minister**".

72 Subsection 127(1A)

Repeal the subsection.

73 Subsection 127A(2)

Repeal the subsection.

74 Subsection 127C(2)

Repeal the subsection, substitute:

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

75 Subsections 127D(2) and (3)

Omit "Commission Chairperson" (wherever occurring), substitute "Minister".

76 Subsection 127E(2)

Omit "a Commissioner or".

77 Subsection 127G(2)

Repeal the subsection, substitute:

(2) The Minister must not suspend the Deputy Chairperson from office unless the Minister has, 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.

78 Subsections 127J(2) and (4)

Repeal the subsections.

79 Subsections 128(2) and (3)

Repeal the subsections, substitute:

(2) The Minister may at any time convene a meeting of a Regional Council.

80 Subsection 128(4A)

Omit "Commission Chairperson", substitute "Minister".

81 Subsection 128(4A)

Omit "concerned", substitute "or Minister".

82 Subsection 128(12)

Repeal the subsection, substitute:

(12) The Registrar of Aboriginal Corporations under the *Aboriginal Councils and Associations Act 1976* may formulate model rules, not inconsistent with this Act, for the conduct of proceedings at meetings of Regional Councils.

(12A) Model rules formulated under subsection (12) are not legislative instruments for the purposes of the *Legislative Instruments Act 2003.*

83 Subsection 128(14)

Omit "by the Commission", substitute "by the Registrar of Aboriginal Corporations".

84 Section 129

Repeal the section.

85 Division 7 of Part 3

Repeal the Division.

86 Section 140

Omit ", a TSRA election or a zone election", substitute "or a TSRA election".

87 Division 9 of Part 3

Repeal the Division.

88 Subsection 142AA(1)

Repeal the subsection, substitute:

(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 for the purposes of the *Legislative Instruments Act 2003*.

89 Subsection 142AA(3) (definition of *departmental function*)

Omit ", but does not include a function of the Commission".

90 Subsection 142L(5)

Repeal the subsection.

91 Paragraph 142V(1)(b)

Omit "or the Commission".

92 Subsection 143L(3)

Repeal the subsection.

93 Subsection 143R(3)

Omit "or the Commission".

Note: The heading to subsection 142R(3) is altered by omitting "*or Commission*".

94 Subsection 143W(2)

Repeal the subsection.

95 Subsection 144(2)

Repeal the subsection.

96 Subsections 144D(2) and (4)

Repeal the subsections.

97 Subsection 144F(6)

Repeal the subsection.

98 Subsection 144L(3)

Repeal the subsection.

99 Section 144R (note 1)

Omit "or the Commission".

100 Section 144R (note 2)

Omit "or the Commission".

101 Section 144S

Repeal the section.

102 Section 144T (note 1)

Omit "or the Commission".

103 Section 144T (note 2)

Omit "or the Commission".

104 Division 10 of Part 3A (heading)

Repeal the heading, substitute:

Division 10—Minister may ask TSRA for information

105 Subsection 144ZE(1)

Omit "or the Commission".

106 Subsection 144ZE(3)

Repeal the subsection.

Note: The heading to section 144ZE is altered by omitting "**or Commission**".

107 Paragraphs 144ZF(c) and (d)

Repeal the paragraphs, substitute:

(c) has all powers necessary to rectify any problems in the affairs of the TSRA.

108 Subsection 147(2)

Repeal the subsection, substitute:

(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.

109 At the end of section 148

Add:

(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.

110 Subsection 150(1)

Repeal the subsection.

111 Subsection 150(2)

Omit "and may also give to the Minister a copy of any written comments by the Commission about the corporate plan".

112 Section 151

Repeal the section, substitute:

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 for the purposes of the *Legislative Instruments Act 2003*.

113 At the end of paragraph 152(2)(a)

Add "(including contracts for the provision of business or housing loans)".

114 After paragraph 152(2)(a)

Insert:

(aa) to make grants for purposes associated with business loans or housing loans;

115 After subsection 152(2)

Insert:

(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.

(2B) A grant or loan made by Indigenous Business Australia is subject to such terms and conditions as Indigenous Business Australia determines.

116 After subsection 153(1)

Insert:

(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.

117 Subsection 154(1)

Omit "or the Commission".

118 Subsection 154(3)

Repeal the subsection.

Note: The heading to section 154 is altered by omitting "**or Commission**".

119 Section 156

After "Board", insert ", subject to any direction from the Minister under section 151,".

120 Subsection 157(4)

Repeal the subsection.

121 Section 158

Repeal the section, substitute:

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.

122 Subsection 165(1)

Omit "the Commission and".

123 Subsection 165(3)

Repeal the subsection.

124 Section 176

Repeal the section.

125 At the end of section 181

Add:

(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.

126 After section 181

Insert:

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

(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 18 of the *Commonwealth Authorities and Companies Act 1997*.

(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 for the purposes of the *Legislative Instruments Act 2003*.

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.

127 At the end of section 183

Add:

(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.

128 At the end of section 185

Add:

(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.

129 At the end of Division 8 of Part 4

Add:

189 Annual report and financial statements

(1) In this section:

annual report means the annual report of Indigenous Business Australia prepared under section 9 of the *Commonwealth Authorities and Companies Act 1997*.

(2) Indigenous Business Australia must include in each annual report particulars of:

(a) any direction given by the Minister under section 151; and

(b) any consultants engaged under section 178;

during the period to which the report relates.

(3) Subject to any direction by the Minister responsible for administering the *Commonwealth Authorities and Companies Act 1997*, the financial statements included in the annual report must deal with the New Housing Fund separately from the other finances of Indigenous Business Australia.

(4) A direction referred to in subsection (3) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

130 After subsection 191(2)

Insert:

(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 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*).

131 Paragraph 191C(c)

After "this Act", insert "or any other law of the Commonwealth".

132 After subsection 191D(1)

Insert:

Grants may be subject to conditions

(1A) The grant of an interest in land by the Indigenous Land Corporation may be made subject to such terms and conditions as the Indigenous Land Corporation determines.

(1B) An instrument determining terms and conditions under subsection (1A) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

133 After section 191E

Insert:

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

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

134 Section 191K

Repeal the section.

135 At the end of section 191L

Add:

(2) In performing its functions and exercising its powers in relation to the expenditure, during the period starting on ATSIC abolition day and ending immediately before Regional Councils abolition day, of money that, before ATSIC abolition day, stood to the credit of the Regional Land Fund established under section 68 of this Act as in force before that day, the Indigenous Land Corporation must act in accordance with any general written directions given to it by the Minister.

(3) Subject to subsection (4), the Minister must cause a copy of a direction under subsection (2) to be laid before each House of the Parliament within 15 sitting days of that House after the direction was given.

(4) A copy of a direction laid before each House of the Parliament in accordance with subsection (3) 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.

(5) A direction given by the Minister under subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

136 Subsection 191N(3)

Repeal the subsection, substitute:

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

137 Paragraph 191V(2)(c)

Repeal the paragraph, substitute:

(c) an ordinary member (whose office may be referred to as the paragraph (c) office);

138 Section 191W

After "Board", insert ", subject to any direction from the Minister under subsection 191L(2),".

139 Subsection 191X(1)

Omit "referred to in paragraph 191V(2)(a), (b), (d), (e), (f) or (g)".

140 Subsection 191X(3)

Omit "the Commission and".

141 Subsection 191X(4)

Omit "appointed" (wherever occurring).

142 Subsection 191X(5)

Repeal the subsection.

143 Sections 191Z, 192A and 192G

Omit "appointed".

144 Subsection 192H(1)

Omit ", after consulting the Commission, terminate the appointment of an appointed", substitute "terminate the appointment of an".

145 Subsections 192H(2) and (4)

Omit "appointed".

146 Section 192I

Omit "appointed".

147 Subsection 192T(1)

Repeal the subsection.

Note: The heading to section 192T is altered by omitting "**Commission staff or**".

148 Section 192X

Omit "and the Commission".

149 Section 193B

Repeal the section.

150 Section 193H

Omit "Commission", substitute "Secretary of the Department".

151 At the end of section 193H

Add:

(2) Subject to any direction by the Minister responsible for administering the *Commonwealth Authorities and Companies Act 1997*, the financial statements relating to the financial year that includes ATSIC abolition day must deal with expenditure of money that, before that day, stood to the credit of the Regional Land Fund established under section 68 of this Act as in force before that day, separately from the other finances of the Indigenous Land Corporation.

(3) A direction referred to in subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

152 After subsection 193I(2)

Insert:

(2A) There must also be included in the annual report for the financial year that includes ATSIC abolition day particulars of any direction given by the Minister under subsection 191L(2).

153 At the end of section 193M

Add:

(2) For the purpose of giving any security during the period starting on ATSIC abolition day and ending immediately before Regional Councils abolition day, assets of the Indigenous Land Corporation do not include any money that, before ATSIC abolition day, stood to the credit of the Regional Land Fund established under section 68 of this Act as in force before that day.

154 Paragraph 193R(1)(e)

Repeal the paragraph.

155 Sections 193U, 194A and 195

Repeal the sections.

156 Paragraphs 196(1)(a) to (c)

Repeal the paragraphs.

157 Paragraphs 196(1)(f), (fa) and (g)

Omit "Commission", substitute "Minister".

158 Paragraph 196(1)(h)

Omit "or the zone election rules".

159 Subsection 196(2)

Omit "Commission", substitute "Minister".

160 Subsection 196(4)

Repeal the subsection.

161 Subsection 199(9)

Omit ", the TSRA election rules or the zone election rules" (wherever occurring), substitute "or the TSRA election rules".

162 After section 200

Insert:

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 the 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

(vi) a member of the body known as the Torres Strait Islander Advisory Board; or

(b) is or has been:

(i) a Regional Councillor; or

(ii) a member of an advisory committee established under section 96; or

(iii) an Administrator; or

(iv) a member of the TSRA; or

(v) a member of an advisory committee established under section 142M; or

(vi) the TSRA General Manager; or

(vii) a member of the staff of the TSRA; or

(viii) engaged as a consultant under section 144T; or

(ix) 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

(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.

produce includes permit access to.

this Act includes the regulations.

200B 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:

(a) the power to make declarations under section 121; or

(b) the power to remove Regional Councillors and appoint administrators under section 123A; or

(c) the power to give directions to Indigenous Business Australia under section 151; or

(d) the power to give directions to the Indigenous Land Corporation under section 191L.

Note 1: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 17AA of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

163 Subsection 201(1)

Omit ", the TSRA election rules or the zone election rules", substitute "or the TSRA election rules".

164 Paragraph 201(2)(a)

Repeal the paragraph.

165 Paragraph 201(2)(c)

Repeal the paragraph, substitute:

(c) make provision in relation to requests under subsection 195A(1) and the reconsideration of matters under subsection 195A(2);

166 Section 202 (definition of *authorised officer*)

Omit "new Commission", substitute "successor Commission".

167 Section 202 (definition of *new Commission*)

Repeal the definition.

168 Section 202

Insert:

successor Commission means the Aboriginal and Torres Strait Islander Commission.

169 Sections 204 and 205

Repeal the sections.

170 Subsection 206(1)

Omit "to the new Commission or to Indigenous Business Australia", substitute "to Indigenous Business Australia or to the Indigenous Land Corporation".

171 Subsections 206(2), (3) and (4)

Omit "of the new Commission or of Indigenous Business Australia", substitute "of Indigenous Business Australia or of the Indigenous Land Corporation".

172 Subsection 206(5)

Repeal the subsection, substitute:

(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.

173 Sections 207, 209 and 210

Repeal the sections.

174 Paragraphs 211(2)(a), (b) and (c)

Repeal the paragraphs, substitute:

(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.

175 Sections 212, 213 and 214

Repeal the sections.

176 Paragraphs 215(1)(a), (b) and (c)

Repeal the paragraphs, substitute:

(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

(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.

177 Sections 217 and 218

Repeal the sections.

178 Subsection 220(1)

Omit "new" (wherever occurring), substitute "successor".

179 Section 221

Repeal the section.

180 Schedule 1

Repeal the Schedule, substitute:

Schedule 1—List of places for inclusion in regions whose boundaries are determined by the Minister

Note: See subsection 91(1)

Places included in regions
Adelaide
Alice Springs
Apatula
Ballarat
Bourke
Brisbane
Broome
Cairns
Ceduna
Coffs Harbour
Cooktown
Darwin
Derby
Geraldton
Hobart
Jabiru
Kalgoorlie
Katherine
Kununurra
Mt Isa
Narrogin
Nhulunbuy
Perth
Port Augusta
Queanbeyan
Rockhampton
Roma

Places included in regions
South Hedland
Sydney
Tamworth
Tennant Creek
Townsville
Wagga Wagga
Wangaratta
Warburton

181 Schedule 3

Repeal the Schedule.

182 Subclause 1(1) of Schedule 4 (definition of *election*)

Omit ", a TSRA election or a zone election", substitute "or a TSRA election".

183 Subclause 1(1) of Schedule 4 (definition of *illegal practice*)

Omit ", the TSRA election rules or the zone election rules", substitute "or the TSRA election rules".

184 Subclause 1(2) of Schedule 4

Omit ", the TSRA election rules or the zone election rules", substitute "or the TSRA election rules".

185 Subclause 3A(3) of Schedule 4 (paragraph (b) of the definition of *general election*)

Repeal the paragraph.

186 Paragraph 15(b) of Schedule 4

Omit ", the TSRA election rules and the zone election rules", substitute "and the TSRA election rules".

187 Paragraph 22(b) of Schedule 4

Repeal the paragraph.

Note: The heading to clause 22 of Schedule 4 is altered by omitting "**Commission,**".

188 Subclause 27(2) of Schedule 4

Repeal the subclause.

189 Subclause 27(3) of Schedule 4

Omit "by the Commission or".

190 Subclause 28(1) of Schedule 4

Omit ", the TSRA election rules and the zone election rules,", substitute "and the TSRA election rules".

Part 3—Transitional and saving arrangements relating to Aboriginal and Torres Strait Islander Commission

191 Transitional arrangements—Interpretation

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

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 an instrument or otherwise, and whether legal or equitable, liquidated or unliquidated, certain or contingent, accrued or accruing.

ATSIC abolition day means the day on which Schedules 1 and 2 to this Act commence.

ATSIC Act means the *Aboriginal and Torres Strait Islander Commission Act 1989*.

authorised officer means the Minister, the Secretary of the Department or any other person authorised by the Minister for the purposes of this Part.

business loan instrument means an instrument subsisting immediately before ATSIC abolition day under which:

(a) the Commonwealth makes a business loan, or makes a grant relating to a business loan, under a business loans program; or

(b) the Commonwealth takes a security, or gives a guarantee, in respect of a business loan, under a business loans program; or

(c) the Commonwealth protects its interest in such a business loan or grant or in respect of such a security or guarantee.

business loans program means a program of expenditure (other than expenditure under Part 2 of the ATSIC Act) that is declared by the Minister, by notice in writing, to be a business loans program.

class A exempted asset has the meaning given by item 192.

class A exempted instrument has the meaning given by item 193.

class A exempted liability has the meaning given by item 192.

class B exempted asset has the meaning given by item 192.

class B exempted instrument has the meaning given by item 193.

class B exempted liability has the meaning given by item 192.

Commission means the Aboriginal and Torres Strait Islander Commission that was established under section 6 of the ATSIC Act.

Commissioner means a member of the Commission.

Commission instrument means an instrument subsisting immediately before ATSIC abolition day:

(a) to which the Commission or a Commission predecessor was a party; or

(b) that was given to, or in favour of, the Commission or a Commission predecessor; or

(c) in which a reference is made to the Commission or a Commission predecessor; or

(d) under which money is or was, or may become or may have become, payable to the Commission or a Commission predecessor; or

(e) under which any other property is or was to be, or may become liable to be or to have been, transferred to or by the Commission or a Commission predecessor.

Commission predecessor means:

(a) the Aboriginal Loans Commission established by section 6 of the *Aboriginal Loans Commission Act 1974*; or

(b) the Department of Aboriginal Affairs, the Minister for Aboriginal Affairs or any officer of that Department; or

(c) the Aboriginal Development Commission.

Housing Fund means the fund of that name that was established under section 67 of the ATSIC Act.

liabilities means liabilities of every kind and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising at law or in equity, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

Regional Councils abolition day means the day on which Schedule 3 to this Act commences.

Regional Land Fund means the fund of that name that was established under section 68 of the ATSIC Act.

Secretary means the Secretary of the Department.

(2) In this Part, a reference to a grant that is declared to be a class A exempted asset or a class B exempted asset is taken to include a reference to a right in relation to such a grant that is so declared.

(3) A declaration by the Minister that a program of expenditure is a business loans program is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

192 Transfer of assets and liabilities

(1) On ATSIC abolition day:

(a) any assets, other than class A or class B exempted assets, that, immediately before that day, were vested in the Commission are, by force of this item, vested in the Commonwealth; and

(b) the Commonwealth becomes, by force of this item, liable to pay and discharge liabilities of the Commission, other than class A or class B exempted liabilities, that existed immediately before that day.

(2) On ATSIC abolition day:

(a) any assets comprising:

(i) class A exempted assets, that, immediately before that day, were vested in the Commission; or

(ii) the interest of the Commonwealth in any grant or loan made under a business loans program or in any security taken under such a program in respect of a business loan;

are, by force of this item, vested in Indigenous Business Australia; and

(b) so far as those assets are class A exempted assets comprising money standing to the credit of the Housing Fund—that money becomes money of the New Housing Fund; and

(c) Indigenous Business Australia becomes, by force of this item, liable to pay and discharge the class A exempted liabilities of the Commission that existed immediately before that day; and

(d) Indigenous Business Australia becomes, by force of this item, liable to pay and discharge liabilities of the Commonwealth that existed immediately before that day in relation to grants or loans made under a business loans program or in relation to any security taken or guarantee given under such a program.

(3) On ATSIC abolition day:

(a) any class B exempted assets that, immediately before that day, were vested in the Commission:

(i) are, by force of this item, vested in the Indigenous Land Corporation; and

(ii) so far as those class B exempted assets comprised money standing to the credit of the Regional Land Fund—may be used by the Indigenous Land Corporation only as permitted in accordance with item 194 of this Act; and

(b) the Indigenous Land Corporation becomes, by force of this item, liable to pay and discharge the class B exempted liabilities of the Commission that existed immediately before that day.

(4) If an asset that has become an asset of the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation by force of subitem (1), (2) or (3) was, immediately before ATSIC abolition day, held by the Commission on trust, that asset is taken, on and after that day, to be held by the body to which it is transferred on trust and subject to the terms of the trust on which the asset was so held by the Commission.

(5) In this item:

class A exempted asset means:

(a) the money standing to the credit of the Housing Fund immediately before ATSIC abolition day; or

(b) any housing loan or business loan made by, or vested in, the Commission that is declared by the Minister, by notice in writing, to be a class A exempted asset; or

(c) any other asset of the Commission that is declared by the Minister, by notice in writing, to be a class A exempted asset.

class A exempted liability means any liability of the Commission that is declared by the Minister, by notice in writing, to be a class A exempted liability.

class B exempted asset means:

(a) the money standing to the credit of the Regional Land Fund immediately before ATSIC abolition day; or

(b) any other asset of the Commission that is declared by the Minister, by notice in writing, to be a class B exempted asset.

class B exempted liability means any liability of the Commission that is declared by the Minister, by notice in writing, to be a class B exempted liability.

(6) A notice that declares assets to be class A or class B exempted assets or declares liabilities to be class A or class B exempted liabilities:

(a) may identify those assets or liabilities by class or in any other manner; and

(b) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

193 Commission instruments

(1) A Commission instrument (other than a class A or class B exempted instrument) in force immediately before ATSIC abolition day has effect on and after that day, in relation to everything occurring on or after that day, as if a reference in the instrument to the Commission or to a Commission predecessor were a reference to the Commonwealth.

(2) A class A exempted instrument in force immediately before ATSIC abolition day has effect on and after that day, in relation to everything occurring on or after that day, as if a reference in the instrument to the Commission or to a Commission predecessor were a reference to Indigenous Business Australia.

(3) A business loan instrument, in force immediately before ATSIC abolition day, has effect on and after that day, in relation to everything occurring on or after that day, as if a reference in the instrument to the Commonwealth were a reference to Indigenous Business Australia.

(4) A class B exempted instrument, in force immediately before ATSIC abolition day, has effect on and after that day, in relation to everything occurring on or after that day, as if a reference in the instrument to the

Commission or to a Commission predecessor, were a reference to the Indigenous Land Corporation.

(5) In this item:

class A exempted instrument means any Commission instrument that is declared by the Minister, by notice in writing, to be a class A exempted instrument.

class B exempted instrument means any Commission instrument that is declared by the Minister, by notice in writing, to be a class B exempted instrument.

(6) A notice that declares Commission instruments to be class A or class B exempted instruments:

(a) may identify those instruments by class or in any other manner; and

(b) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

194 Constraints on expenditure of money transferred from Regional Land Fund

(1) If class B exempted assets that are vested in the Indigenous Land Corporation comprise money that stood to the credit of the Regional Land Fund immediately before ATSIC abolition day, that money may only be used by the Indigenous Land Corporation:

(a) during the period starting on that day and ending immediately before Regional Councils abolition day—if the money is applied:

(i) to make a grant to a person or body on condition that the grant money is spent in acquiring an interest in land and that acquisition has been proposed by a Regional Council; or

(ii) to acquire an interest in land for the purpose of transferring that interest to a person or body, where that acquisition has been proposed by a Regional Council;

and the grant so made or the transfer for which the interest in land was acquired will further the social, economic and cultural development of Aboriginal persons or Torres Strait Islanders; and

(b) on and after Regional Councils abolition day—in performing any function conferred on the Indigenous Land Corporation by the *Aboriginal and Torres Strait Islander Act 2005*.

(2) Any interest in land acquired by the Indigenous Land Corporation for the purpose referred to in subparagraph (1)(a)(ii) must be transferred to a person or body in accordance with that purpose.

195 Pending proceedings

(1) If, immediately before ATSIC abolition day, proceedings to which the Commission was a party, other than proceedings relating to:

(a) a class A or class B exempted asset; or

(b) a class A or class B exempted liability; or

(c) a class A or class B exempted instrument; or

(d) a loan or grant made, a security taken, or a guarantee given, under a business loans program;

were pending in any court or tribunal, the Commonwealth is, on and after that day and despite the provisions of any other law or instrument, substituted for the Commission as a party to the proceedings and has the same rights in the proceedings as the Commission had.

(2) If, immediately before ATSIC abolition day, proceedings to which the Commission was a party and that relate to:

(a) a class A exempted asset; or

(b) a class A exempted liability; or

(c) a class A exempted instrument;

were pending in any court or tribunal, Indigenous Business Australia is, on and after that day and despite the provisions of any other law or instrument, substituted for the Commission as a party to the proceedings and has the same rights in the proceedings as the Commission had.

(3) If, immediately before ATSIC abolition day, proceedings to which the Commonwealth was a party and that relate to a loan or grant made, a security taken, or a guarantee given, under a business loans program were pending in any court or tribunal, Indigenous Business Australia is, on and after that day and despite the provisions of any other law or instrument, substituted for the Commonwealth as a party to the proceedings and has the same rights in the proceedings as the Commonwealth had.

(4) If, immediately before ATSIC abolition day, proceedings to which the Commission was a party and that relate to:

(a) a class B exempted asset; or

(b) a class B exempted liability; or

(c) a class B exempted instrument;

were pending in any court or tribunal, the Indigenous Land Corporation is, on and after that day and despite the provisions of any other law or instrument, substituted for the Commission as a party to the proceedings and has the same rights in the proceedings as the Commission had.

196 Final report and financial statements for Commission

(1) The Secretary must, as soon as practicable after ATSIC abolition day, prepare and give to the Minister:

(a) a report on the operations of the Commission during the period (in this section called the ***closure period***) commencing on 1 July 2004 and ending immediately before ATSIC abolition day; and

(b) financial statements that relate to the Commission during that period in such form as the Minister administering the *Commonwealth Authorities and Companies Act 1997* approves.

(2) The report prepared by the Secretary in accordance with paragraph (1)(a):

(a) must include particulars of any directions given to the Commission during the closure period under section 12 of the ATSIC Act; and

(b) must not disclose any matters known to the Secretary to be held sacred by Aboriginal persons or Torres Strait Islanders or by any particular community or group of Aboriginal persons or Torres Strait Islanders.

(3) Subject to any direction by the Minister administering the *Commonwealth Authorities and Companies Act 1997*, the financial statements prepared by the Secretary under paragraph (1)(b) must deal with the Housing Fund and the Regional Land Fund separately from each other and from the other finances of the Commission, and must:

(a) in the case of the Housing Fund—properly reflect the state of the Fund immediately before ATSIC abolition day; and

(b) in the case of the Regional Land Fund—properly reflect the state of the Fund immediately before ATSIC abolition day.

(4) A direction referred to in subsection (3) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(5) Before giving financial statements to the Minister under subitem (1), the Secretary must give them to the Auditor-General, who must report to the Minister:

(a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records; and

(b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and state of affairs of the Commission; and

(c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets by the Commission during the closure period were in accordance with the ATSIC Act; and

(d) such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(6) The Secretary and the Auditor-General may, in discharging their obligations under this item, rely on accounts and records of the Commission that are in the possession of the Commonwealth or to which the Secretary is allowed access, and on any other information provided to a person who was a member of the Commission or who was a member of the staff of the Commission.

(7) The Minister must cause copies of the reports and financial reports, together with a copy of the report to the Auditor-General, to be laid before each House of the Parliament within 15 sittings days of that House after the receipt by the Minister.

197 Certificates relating to assets, liabilities and instruments

(1) An authorised officer may certify, in writing, that:

(a) an asset or liability specified in the certificate becomes or became, because of item 192 of this Schedule, an asset or liability of the Commonwealth, of Indigenous Business Australia or of the Indigenous Land Corporation; or

(b) an instrument specified in the certificate is a Commission instrument; or

(c) an instrument specified in the certificate is a class A or class B exempted instrument; or

(d) an instrument specified in the certificate is a business loan instrument.

(2) The certificate is, in all courts and for all purposes, prima facie evidence of the matter stated in the certificate.

(3) If:

(a) under item 192 of this Part, an estate or interest in land becomes an asset of the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation; and

(b) a certificate under subitem (1) to that effect is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

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 Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation, as the case may be, duly executed under the laws in force in that state or Territory.

(4) If a document purports to be a certificate under subitem (1) or (3) signed by a person purporting to be an authorised officer, judicial notice must be taken of the signature of the person and of the fact that the person is or was an authorised officer.

198 Exemption from taxation

(1) Any transfer or other dealing under this Part, and any instrument facilitating or evidencing such a transfer or other dealing, is not subject to stamp duty or other tax under a law of the Commonwealth or of a State or Territory if an authorised officer certifies, in writing:

(a) that the transfer or dealing is a transfer or dealing for a purpose connected with, or arising out of, the operation of this Part; or

(b) that the instrument facilitating or evidencing a transfer or dealing is an instrument made or given because of, or for a

purpose connected with, or arising out of, the operation of this Part.

(2) A certificate given by an authorised officer under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

199 Repayment of grants and loans

(1) If, before ATSIC abolition day, the Commission had made a grant to a person or body under Part 2 of the ATSIC Act (other than a grant that is, on ATSIC abolition day, declared to be a class A exempted asset or a class B exempted asset) on particular terms and conditions:

(a) the Commonwealth is treated, on and after that day, as if it had made the grant on the same terms and conditions; and

(b) if the Minister is satisfied that the person or body has failed to fulfil such a term or condition—the Minister may, on behalf of the Commonwealth, give notice to the person or body receiving the grant that the Minister is so satisfied; and

(c) if the Commission had, before ATSIC abolition day, given a notice under section 20 of the ATSIC Act to the effect that the Commission was satisfied that the person or body receiving the grant had failed to fulfil a term or condition of the grant—that notice has effect, on and after that day, as if it had been given by the Minister under paragraph (b).

(2) A person or body to whom a notice is given, or treated as having been given, by the Commonwealth under subitem (1) is liable to pay to the Commonwealth, immediately, an amount equal to:

(a) the amount of the grant; or

(b) so much of the amount of the grant as was specified in the notice.

(3) If, before ATSIC abolition day, the Commission had made a loan to a person or body under Part 2 of the ATSIC Act (other than a loan that is, on ATSIC abolition day, declared to be a class A exempted asset) on particular terms and conditions:

(a) the Commonwealth is treated, on and after that day, as if it had made the loan on the same terms and conditions; and

(b) if the Minister is satisfied that the person or body has failed to fulfil such a term or condition—the Minister may, on

behalf of the Commonwealth, give notice to the person or body receiving the loan that the Minister is so satisfied; and

(c) if the Commission had, before ATSIC abolition day, given a notice under section 20 of the ATSIC Act to the effect that the Commission was satisfied that the person or body receiving the loan had failed to fulfil a term or condition of the loan—that notice has effect, on and after that day, as if it had been given by the Minister under paragraph (b).

(4) A notice given, or treated as having been given, by the Minister under paragraph (1)(b) or (3)(b) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(5) A person or body to whom a notice is given, or treated as having been given, by the Commonwealth under subitem (3) is liable to pay to the Commonwealth, 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 was specified in the notice.

(6) If:

(a) the Commission had, before ATSIC abolition day, made a grant or loan under Part 2 of the ATSIC Act to a person or body on particular terms and conditions; and

(b) on ATSIC abolition day the grant or loan is declared to be a class A exempted asset;

then:

(c) Indigenous Business Australia is to be treated, on and after that day, as if it had made the grant or loan on the same terms and conditions, and, in the case of a housing loan, as if it had made the loan from the New Housing Fund; and

(d) if Indigenous Business Australia is satisfied that the person or body has failed to fulfil such a term or condition—Indigenous Business Australia may give notice to the person or body receiving the grant or loan that it is so satisfied; and

(e) if the Commission had, before ATSIC abolition day, given a notice under section 20 of the ATSIC Act to the effect that the Commission was satisfied that the person or body receiving the grant or loan had failed to fulfil a term or

condition of the grant or loan—that notice has effect, on and after that day, as if it had been given by Indigenous Business Australia under paragraph (d) of this item.

(7) A notice given, or treated as having been given, by Indigenous Business Australia under paragraph (6)(d) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(8) A person or body to whom a notice is given, or treated as having been given, by Indigenous Business Australia under subitem (6) is liable to pay to Indigenous Business Australia, immediately, an amount equal to the sum of:

(a) in the case of a grant:

(i) the amount of the grant; or

(ii) so much of the amount of the grant as was specified in the notice; and

(b) in the case of a loan:

(i) so much of the amount of the loan as has not yet been repaid; and

(ii) any accrued interest that has not been paid;

or so much of that amount as was specified in the notice.

(9) If:

(a) before ATSIC abolition day, the Commission had made a grant under section 14 of the ATSIC Act to a person or body from the Regional Land Fund on particular terms and conditions; and

(b) on ATSIC abolition day the grant is declared to be a class B exempted asset;

then:

(c) the Indigenous Land Corporation is treated, on and after that day, as if it had made the grant on the same terms and conditions; and

(d) if the Indigenous Land Corporation is satisfied that the person or body has failed to fulfil such a term or condition—the Corporation may give notice to the person or body receiving the grant that the Corporation is so satisfied; and

(e) if the Commission had, before ATSIC abolition day, given a notice under section 20 of the ATSIC Act to the effect that the Commission was satisfied that the person or body

receiving the grant had failed to fulfil a term or condition of the grant—that notice has effect, on and after that day, as if it had been given by the Indigenous Land Corporation under paragraph (d).

(10) A notice given, or treated as having been given, by the Indigenous Land Corporation under paragraph (9)(d) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

(11) A person or body to whom a notice is given, or treated as having been given, by the Indigenous Land Corporation under subitem (9) is liable to pay to the Corporation, immediately, an amount equal to:

(a) the amount of the grant; or

(b) so much of the amount of the grant as was specified in the notice.

(12) This item does not affect the availability to the Commonwealth, to Indigenous Business Australia or to the Indigenous Land Corporation, of any legal or equitable remedy for a failure to fulfil a term or condition of a grant or loan that was made by the Commission before ATSIC abolition day under Part 2 of the ATSIC Act.

200 Restrictions on right to dispose of certain property

(1) This item applies if an individual or body has acquired an interest in land and any of the following applies:

(a) the interest was acquired using money granted to the individual or body by the Commission before ATSIC abolition day under paragraph 14(1)(a) of the ATSIC Act;

(b) the interest was acquired from the Commission before ATSIC abolition day under paragraph 14(1)(b) of the ATSIC Act;

(c) the acquisition of the interest was financed by a loan that was guaranteed by the Commission before ATSIC abolition day under section 15 of the ATSIC Act.

(2) The individual or body must not dispose of the interest without the appropriate consenting authority giving written consent to that disposal.

(3) The consent must specify the disposal it covers by identifying the person or class of persons to whom the interest is to be disposed of.

(4) Subitem (3) does not prevent a consent from further specifying a particular disposal in other ways.

(5) A purported disposal of the interest by the individual or body has no effect unless it is covered by the consent.

(6) The appropriate consenting authority may attach a condition to a consent by specifying the condition in the document setting out the consent.

(7) Contravention of a condition does not affect the disposal of the interest by the individual or body.

(8) The appropriate consenting authority may give the individual or body written notice requiring the individual or body to pay to the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation, as the case requires, the amount specified in the notice if:

(a) the interest disposed of was acquired by the individual or body either:

(i) using money granted by the Commission to the individual or body under paragraph 14(1)(a) of the ATSIC Act; or

(ii) by way of a grant of that interest in land from the Commission under paragraph 14(1)(b) of that Act; and

(b) the condition attached to the consent to the disposal of that interest was that some or all of the proceeds of the disposal be applied for a purpose specified by the appropriate consenting authority; and

(c) the appropriate consenting authority is satisfied that the condition was not complied with.

(9) The appropriate consenting authority must not specify in a notice under subitem (8) an amount greater than the amount of the grant made to the individual or body under paragraph 14(1)(a) or (b) of the ATSIC Act.

(10) An individual or body that is given a notice is liable to pay to the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation, as the case requires, the amount specified in the notice.

(11) Subitems (8), (9) and (10) do not affect the availability to the Commonwealth, Indigenous Business Australia or the Indigenous Land

Corporation, of any legal or equitable remedy for contravention of a condition attached to the consent.

(12) A consent given under subitem (2) or a notice under subitem (8) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

(13) In this item:

appropriate consenting authority means:

(a) unless paragraph (b) or (c) applies—the Secretary; and

(b) if the interest in land to which the consent relates:

(i) was acquired using money made available to the individual or body by means of a grant made by the Commission before ATSIC abolition day under section 14 of the ATSIC Act and the grant is declared to be a class A exempted asset; or

(ii) was acquired using money made available to the individual or body by means of a loan that was guaranteed by the Commission before ATSIC abolition day under section 15 of the ATSIC Act and the guarantee is declared to be a class A exempted liability;

Indigenous Business Australia; and

(c) if the interest in land to which the consent relates:

(i) was acquired using money made available to the individual or body by means of a grant made by the Commission before ATSIC abolition day under paragraph 14(1)(a) of the ATSIC Act from the Regional Land Fund; or

(ii) was granted to the individual or body by the Commission before ATSIC abolition day after the Commission acquired the interest using money from the Regional Land Fund; or

(iii) was acquired using money made available to the individual or body by means of a loan that was guaranteed by the Commission before ATSIC abolition day under section 15 of the ATSIC Act and the guarantee is declared to be a class B exempted liability;

the Indigenous Land Corporation.

201 Liabilities taken to be interests in land

(1) Any liability of an individual, a body corporate or an unincorporated body to the Commission (other than a liability arising under subitem (2) or (3)) arising:

(a) under the terms and conditions of a grant or loan referred to in subsection 14(2) of the ATSIC Act; or

(b) under section 20 or 21 of the ATSIC Act in relation to such a grant or loan;

is taken, on and after ATSIC abolition day, to be an interest of the Commonwealth in the land to which it relates.

(2) Any liability of an individual, a body corporate or an unincorporated body to the Commission arising:

(a) under the terms and conditions of a grant or loan referred to in subsection 14(2) of the ATSIC Act that is, on ATSIC abolition day, declared to be a class A exempted asset; or

(b) under section 20 or 21 of the ATSIC Act in relation to such a grant or loan;

is taken, on and after that day, to be an interest of Indigenous Business Australia in the land to which it relates.

(3) Any liability of an individual, a body corporate or an unincorporated body to the Commission arising:

(a) under the terms and conditions of a grant referred to in subsection 14(2) of the ATSIC Act that is, on ATSIC abolition day, declared to be a class B exempted asset; or

(b) under section 20 or 21 of the ATSIC Act in relation to such a grant;

is taken, on and after that day, to be an interest of the Indigenous Land Corporation in the land to which it relates.

(4) Any liability of an individual, a body corporate or an unincorporated body to the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation arising under item 199 or 200 of this Schedule is taken to be an interest of the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation in the land to which the liability relates.

(5) The land is charged with a payment of all costs and expenses incurred by the Commission, the Commonwealth, Indigenous Business Australia

or the Indigenous Land Corporation in respect of its enforcement of the liability.

(6) The land referred to in subitem (1), (2), (3) or (4) is taken, for the purposes of the *Aboriginal Land Rights (Northern Territory) Act 1976* to be alienated Crown land in which all estates or interests not held by the Crown are held on behalf of Aboriginals.

(7) This item does not apply to a liability arising under subsection 21(10) of the ATSIC Act or under subitem 200(10) of this Schedule.

202 Preservation of model rules

Despite the repeal of subsection 128(12) of the ATSIC Act, the model rules formulated by the Commission under that subsection and in force immediately before ATSIC abolition day have effect, on and after that day, as if they were model rules formulated by the Registrar of Aboriginal Corporations under subsection 128(12) of the *Aboriginal and Torres Strait Islander Act 2005*.

203 Transitional provision—Suspension of Regional Councillors before ATSIC abolition day

If, before ATSIC abolition day:

(a) the Commission had suspended a Regional Councillor under section 122A of the ATSIC Act; and

(b) the Commission had caused a statement in relation to that suspension to be laid before each House of the Parliament in accordance with the requirements of that section; and

(c) neither House of the Parliament had, before that day, passed a resolution declaring that the Regional Councillor ought to be restored to office; and

(d) the period within which such a resolution could be passed had not, as at ATSIC abolition day, finally elapsed;

section 122A of the ATSIC Act as amended by this Act applies, on and after ATSIC abolition day, in relation to that suspension as if:

(e) that section as so amended had been in force at the time when the Regional Councillor had been suspended; and

(f) the actions of the Commission before ATSIC abolition day had been actions of the Minister.

204 Transitional provision—Petitions for suspension of Regional Council received by the Commission

If:

(a) at any time within the period of 6 months before ATSIC abolition day, the Commission had received a petition under section 123 of the ATSIC Act calling for the suspension of a Regional Council; and

(b) the Commission had not, by notice published in the *Gazette*, taken action to remove the members of the Regional Council from office or to appoint an administrator to administer the affairs of the Regional Council;

then section 123 of the ATSIC Act as amended by this Act has effect, on and after ATSIC abolition day, as if:

(c) that section as so amended had been in force at the time when the Commission had received the petition; and

(d) the petition received by the Commission had been received by the Minister.

205 Former Commissioners on Board of Directors of Indigenous Business Australia or on Board of Indigenous Land Corporation

(1) A person who was a Commissioner at any time on or after 14 April 2004 and who is, immediately before ATSIC abolition day, a member of the Board of Directors of Indigenous Business Australia, ceases on ATSIC abolition day, by force of this subitem, to hold office as such a member.

(2) A person who was a Commissioner at any time on or after 14 April 2004 and who is, immediately before ATSIC abolition day, a member of the Board of the Indigenous Land Corporation, ceases on ATSIC abolition day, by force of this subitem, to hold office as such a member.

206 Saving provision—Rights of internal review of decisions made before ATSIC abolition day

(1) If, before ATSIC abolition day, an agent or delegate of the Commission had refused to make a housing loan under section 14 of the ATSIC Act from the Housing Fund:

(a) that refusal is to be treated, on and after that day, as a refusal to make that loan by a delegate of Indigenous Business Australia; and

(b) the notice of that refusal given by the agent or delegate of the Commission is to be treated as if it were a notice given by a delegate of Indigenous Business Australia; and

(c) the person or body refused that loan may, within 30 days after being notified of the refusal, request that Indigenous Business Australia reconsider that refusal.

(2) If a request is made in the circumstances set out in subitem (1), Indigenous Business Australia must reconsider the refusal and decide whether to make the loan.

(3) If, before ATSIC abolition day:

(a) an agent or delegate of the Commission refused to make a housing loan to a person or body under section 14 of the ATSIC Act from the Housing Fund; and

(b) that person or body had requested the Commission to reconsider the refusal; and

(c) that reconsideration had not been completed;

Indigenous Business Australia must reconsider the refusal and decide whether to make the loan.

207 Saving provision—Rights of review of decisions made before ATSIC abolition day

(1) For the purpose of this item, and without limiting the effect of item 193 of this Schedule, each decision of a kind referred to in section 196 of the ATSIC Act that was made by the Aboriginal and Torres Strait Islander Commission before ATSIC abolition day has effect, on and after that day:

(a) unless paragraph (b) or (c) applies—as a decision of the Commonwealth; and

(b) if the decision related to a grant or loan that is, on ATSIC abolition day, declared to be a class A exempted asset, or to a guarantee in respect of a loan that is so declared—as a decision of Indigenous Business Australia; and

(c) if the decision related to a grant that is, on ATSIC abolition day, declared to be a class B exempted asset—as a decision of the Indigenous Land Corporation.

(2) Despite the amendment of section 196 of the ATSIC Act, that section continues in force, on and after ATSIC abolition day, for the purpose of enabling persons or bodies to seek review of decisions referred to in that section that were made before that day as if:

(a) the amendments made by those items had not been made; and

(b) each reference in that section, as so continued in force, to a decision of the Commission were a reference to a like decision made by the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation, as the case requires.

208 Rights of review of certain repayment decisions made on or after ATSIC abolition day

(1) An application may be made on or after ATSIC abolition day to the Administrative Appeals Tribunal for a review of:

(a) a decision to give notice to a person or body that is made by the Minister on or after that day under subitem 199(1) or (3); or

(b) a decision to give notice to a person or body that is made by Indigenous Business Australia on or after that day under subitem 199(6); or

(c) a decision to give notice to a person or body that is made by the Indigenous Land Corporation on or after that day under subitem 199(9).

(2) In this item:

decision made by the Minister means:

(a) a decision made by the Minister; or

(b) a decision made by a delegate of the Minister on a reconsideration of a decision made by another delegate of the Minister.

209 Offences in relation to guarantees given by Commission before ATSIC abolition day

A person must not, in or in connection with a claim under a guarantee given by the Commission under Part 2 of the ATSIC 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.

210 Transitional provision—Notices under section 124H or 124J of ATSIC Act

Any notice published by the Commission in the *Gazette* under section 124H or 124J of the ATSIC Act and in force immediately before ATSIC abolition day, has effect, on and after that day, as if it were a notice to the same effect published by the Minister under that section of that Act as amended by this Act.

211 Transitional provision—Determinations in force under subsection 127D(2) of ATSIC Act

Any determination of leave entitlements, other than recreation leave, made by the Commission and in force under subsection 127D(2) of the ATSIC Act as in force before ATSIC abolition day, has effect, on and after that day, as if it were a determination to the same effect made by the Minister under that subsection of that Act as amended by this Act.

212 Saving provision—Conferral of functions under subsection 142AA(1) of ATSIC Act

If the Prime Minister had conferred a departmental function on the TSRA under subsection 142AA(1) of the ATSIC Act as in force before ATSIC abolition day, that conferral continues to have effect, on and after that day, as if it were a conferral of that function under that subsection of that Act as amended by this Act.

213 Delegation of powers and functions conferred under this Part

(1) The Minister may, by written instrument, delegate to:

(a) the Secretary or any other agency head within the meaning of the *Public Service Act 1999*; or

(b) an SES employee or acting SES employee; or

(c) the Chief Executive Officer of a Commonwealth authority or an employee of a Commonwealth authority of equivalent rank to an SES employee;

all or any of the powers and functions conferred on or acquired by the Minister under this Part, other than the power to declare a program of expenditure to be a business loans program, or the power to make a declaration under subitem 192(5) or 193(5).

(2) The Secretary may, by written instrument, delegate to:

(a) an SES employee or acting SES employee; or

(b) an employee of a Commonwealth authority of equivalent rank to an SES employee;

the powers and functions of the Secretary under this Part.

(3) An agency head, within the meaning of the *Public Service Act 1999*, to whom a power or function is delegated under subitem (1) may, by written instrument, delegate that power to:

(a) an SES employee or acting SES employee; or

(b) an employee of a Commonwealth authority of equivalent rank to an SES employee.

Note 1: The expressions ***SES employee***, and ***acting SES employee*** are defined in section 17AA of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Schedule 2—Amendments and transitional and saving arrangements relating to the Office of Evaluation and Audit

Part 1—Amendment relating to Office of Evaluation and Audit

Aboriginal and Torres Strait Islander Commission Act 1989

1 After Part 4A

Insert:

Part 4B—Office of Evaluation and Audit (Indigenous Programs)

193V Definitions

(1) In this Part:

activities of any individual or organisation includes the operations of any individual or organisation.

Australian Government body means:

(a) a Department of State, a Department of the Parliament or a prescribed Agency within the meaning of the *Financial Management and Accountability Act 1997*; and

(b) a Commonwealth authority within the meaning of the *Commonwealth Authorities and Companies Act 1997*; and

(c) a Commonwealth company within the meaning of the *Commonwealth Authorities and Companies Act 1997*; and

(d) a body established for a public purpose by or under a law of the Commonwealth.

Director means the Director of Evaluation and Audit appointed, or taken to have been appointed, under section 193ZA.

evaluate or audit includes evaluate and audit.

individual or organisation includes any person, body corporate or unincorporated body.

Office means the Office of Evaluation and Audit (Indigenous Programs) referred to in section 193W.

relevant program means a program, or a program component, under which money is provided, including on loan, or a guarantee is given, or an interest in land or other property is transferred, for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.

(2) A reference in this Part to a person engaged under the *Public Service Act 1999* is to be read as a reference to a person so engaged whose Agency Head, within the meaning of that Act, is the Secretary of the Department.

193W Office of Evaluation and Audit (Indigenous Programs)

(1) An Office of Evaluation and Audit (Indigenous Programs) is established within the Department.

(2) The purposes of the Office are:
  (a) to evaluate or audit relevant programs administered by Australian Government bodies; and
  (b) to evaluate or audit the activities of any individual or organisation that has received funding under any relevant program; and
  (c) to report to the Minister on those evaluations or audits and to report to other Ministers in accordance with the directions of the Minister.

193X Functions of the Office

(1) The Office has the following functions:
  (a) in accordance with a program developed by the Director under section 193Y, or, in the circumstances referred to in subsection (2), at the request of the Minister—to evaluate or audit:
    (i) relevant programs administered by an Australian Government body; or

(ii) particular aspects of the operations of Australian Government bodies, but only to the extent that the evaluation or audit concerns relevant programs administered by such a body; and

(b) when requested to do so by the Minister—to evaluate or audit the activities of any individual or organisation:

(i) who has received money, including money on loan, or an interest in land or other property, from an Australian Government body under a relevant program; or

(ii) who has had a loan guaranteed by an Australian Government body under such a program; or

(iii) who has derived income or other benefit, directly or indirectly, from money (including money on loan), or a guarantee, provided by an Australian Government body under such a program or from a transfer of an interest in land or other property from such a body under such a program;

but only to the extent that the evaluation or audit concerns the money, land or other property, or the guarantee, provided under that program or concerns the income or other benefit derived from such money, land or other property or from such a guarantee; and

(c) when a funding or loan agreement entered into with any individual or organisation under a relevant program provides that the Office can evaluate or audit the activities of the individual or organisation:

(i) that directly or indirectly relate to the use of money provided under the agreement; or

(ii) that relate to any matter facilitated by income derived from the use of money so provided;

with the consent of the Minister—to evaluate or audit those activities in accordance with that agreement; and

(d) to report on evaluations or audits conducted under this section in a manner required by the Minister; and

(e) to inform the Minister about any significant issues that have arisen, or may arise, in relation to audits or evaluations conducted under this section; and

(f) to inform the Minister about any issues affecting the independence of the Office.

(2) In any circumstance where the Minister considers that there is a need for the Office of Evaluation and Audit to evaluate or audit:

(a) relevant programs administered by an Australian Government body; or

(b) particular aspects of the operations of an Australian Government body, to the extent that the evaluation or audit concerns relevant programs administered by such a body;

the Minister may request the Office to conduct such an evaluation or audit whether or not an evaluation or audit would ordinarily be conducted at that time under a program developed under section 193Y.

(3) The functions conferred on the Office under this section are in addition to, and not in substitution for, any functions conferred on the Auditor-General or any other person by or under any other law of the Commonwealth.

193Y Programs of evaluation and audit

(1) As soon as practicable after the commencement of this section, and before the start of each succeeding year commencing on a 1 July, the Director must develop a program for the evaluation or audit of Australian Government bodies by the Office in the performance of the function referred to in paragraph 193X(1)(a).

(2) The first program must cover the period ending on 30 June 2007 and each subsequent program must cover a period of 3 years from the 1 July on which it commences.

(3) The Director may, from time to time, vary a program in force under subsection (1).

(4) In developing a program under subsection (1) and in making any variation to that program, the Director must have regard to the audit priorities of the Minister and also of the Minister having primary responsibility for indigenous affairs.

(5) A program for the evaluation or audit of Australian Government bodies developed in accordance with subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

193Z Minister may table reports in the Parliament

The Minister may, in his or her discretion, lay before each House of the Parliament, a copy of any report that is given to the Minister by the Office under this Act.

193ZA Director of Evaluation and Audit

(1) There is to be a Director of Evaluation and Audit.

(2) The Director is to be a person engaged under the *Public Service Act 1999* who is appointed as Director of Evaluation and Audit by the Minister.

(3) The Director is the head of the Office.

(4) The Director must, as soon as practicable after 30 June in each year, give the Secretary of the Department a report of the operations of the Office during that year for inclusion in the annual report of the Department.

(5) The office of Director of Evaluation and Audit is not a public office for the purposes of the *Remuneration Tribunal Act 1973*.

193ZB Period of appointment

(1) The Director holds office for the period specified in, or worked out under, the instrument of appointment.

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

193ZC Acting Director

(1) The Minister may appoint a person engaged under the *Public Service Act 1999* to act as the Director of Evaluation and Audit:

(a) during a vacancy in the office of Director; or

(b) during any period, or during all periods, when the 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.

(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

(a) the occasion for the appointment had not arisen; or
(b) there was a defect or irregularity in connection with the appointment; or
(c) the appointment had ceased to have effect; or
(d) the occasion to act had not arisen or had ceased.

(3) Any reference in section 193ZD, 193ZE, 193ZF or 193ZG to the Director or to the Director of Evaluation and Audit is taken to include a reference to the acting Director.

193ZD Resignation

The Director may resign by writing signed by him or her and sent to the Minister.

193ZE Termination of appointment

(1) The Minister may terminate, by writing signed by him or her, the appointment of the Director.

(2) The appointment of the Director is terminated if the Director ceases to be, for any reason, engaged under the *Public Service Act 1999*.

193ZF Director not personally liable

The Director is not personally liable in 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 Office; or
(b) by the Director in the capacity of Director.

193ZG Examination of documents etc.

(1) The Director may, by notice in the *Gazette*, authorise a person (the ***authorised person***) who is a member of the staff of, or an independent contractor engaged by, the Department to perform functions and exercise powers for the purposes of this section.

(2) For the purposes of an evaluation or audit relating to an Australian Government body, individual or organisation, the Director or an authorised person may examine documents relating to the

Australian Government body, individual or organisation concerned.

(3) An authorised person must report to the Director on the results of an examination conducted in accordance with subsection (2).

(4) For the purposes of performing the functions conferred by subsection (2) and section 193X, the Director or the authorised person:

(a) is entitled at all reasonable times to full and free access to documents relating to the body, individual or organisation; and

(b) may make copies, or take extracts from, any such document; and

(c) by notice in writing, may require a person:

(i) to answer such questions; and

(ii) to produce such documents in the person's possession or to which the person has access;

within such reasonable period, not being a period of less than 14 days, as is specified in the notice.

(5) For the purposes of exercising powers conferred by subsection (4), an Australian Government body must provide access to premises (including any land or place) occupied by the Australian Government body, at all reasonable times, to the Director or an authorised person.

(6) A person may only be required, under paragraph (4)(c), to provide information or to produce a document if the Director or authorised person has reason to believe that the person is capable of providing that information or producing that document.

(7) A person who fails to comply with a requirement under paragraph (4)(c) is guilty of an offence punishable upon conviction by a fine not exceeding 20 penalty units.

(8) Subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(9) Subsection (7) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

(10) For the purposes of subsection (9), it is not a reasonable excuse for a person to fail:

(a) to give information; or

(b) to produce a document;

in accordance with a requirement made of the person, on the ground that the information or production of the document might tend to incriminate the person or make the person liable to a penalty. However:

(c) evidence as to the giving of the information or the producing of the document; or

(d) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or the producing of the document;

is not admissible in evidence against the person in any proceedings in a court that may expose the person to a penalty, other than proceedings for an offence against, or arising out of, subsection (7) or (11).

(11) A person who, in purported compliance with a requirement under paragraph (4)(c), makes a statement that is, to the person's knowledge, false or misleading in a material particular, is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

(12) Before exercising powers under subsection (4), an authorised person must produce written authority given by the Director as notified in the *Gazette* under subsection (1). If the authorised person fails to do so, he or she has no powers under that subsection.

(13) The functions and powers conferred by this section are in addition to, and not in substitution for, any functions or powers conferred on the Auditor-General, or any other person, by or under any other law of the Commonwealth.

(14) A notice under subsection (1) or under paragraph (4)(c) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Part 2—Transitional and saving arrangements relating to Office of Evaluation and Audit

2 Transitional arrangement definitions

In this Part, unless the contrary intention appears:

ATSIC abolition day means the day on which Schedules 1 and 2 to this Act commence.

ATSIC Act means the *Aboriginal and Torres Strait Islander Commission Act 1989*.

Commission means the Aboriginal and Torres Strait Islander Commission that was established under section 6 of the ATSIC Act.

Indigenous Business Australia means the body of that name referred to in section 145 of the *Aboriginal and Torres Strait Islander Act 2005*.

Indigenous Land Corporation means the body of that name established under section 191A of the *Aboriginal and Torres Strait Islander Act 2005*.

Office of Evaluation and Audit (Indigenous Programs) means the office, referred to in section 193W of the *Aboriginal and Torres Strait Islander Act 2005*, that was originally established by section 75 of the ATSIC Act and that became, on ATSIC abolition day, the Office of Evaluation and Audit (Indigenous Programs).

Secretary means the Secretary of the Department.

TSRA means the Torres Strait Regional Authority established by section 142 of the ATSIC Act.

3 Office of Evaluation and Audit to continue under new name

The Office of Evaluation and Audit that was established within the Commission by section 75 of the ATSIC Act becomes, by force of this item, on ATSIC abolition day, for the purposes of section 193W of the *Aboriginal and Torres Strait Islander Act 2005*, the Office of Evaluation and Audit (Indigenous Programs) established in the Department.

4 Current Director of Evaluation and Audit

(1) The person holding office as Director of Evaluation and Audit under section 77 of the ATSIC Act immediately before ATSIC abolition day

continues, on and after that day, by force of this item and despite section 193ZA of the *Aboriginal and Torres Strait Islander Act 2005*, to hold office as the Director of Evaluation and Audit as if the person had been duly appointed by the Minister under section 193ZA of the *Aboriginal and Torres Strait Islander Act 2005*.

(2) The person referred to in subitem (1):

(a) is taken to have been so appointed under section 193ZA of the *Aboriginal and Torres Strait Islander Act 2005*, by instrument in writing, for the balance of the term of appointment under section 77 of the ATSIC Act; and

(b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before ATSIC abolition day.

(3) Despite section 193ZA of the *Aboriginal and Torres Strait Islander Act 2005*, the person referred to in subitem (1):

(a) is entitled to remuneration and allowances in accordance with section 194 of that Act; and

(b) is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.

(4) Section 193ZE of the *Aboriginal and Torres Strait Islander Act 2005* does not apply in relation to the deemed appointment of the person referred to in subitem (1).

(5) The Minister may grant the person referred to in subitem (1) leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister determines in writing.

(6) The Minister may terminate the appointment of the person referred to in subitem (1) as Director of Evaluation and Audit because of incompetence, misbehaviour or physical or mental incapacity.

(7) The Minister must terminate the appointment of the person referred to in subitem (1) as Director of Evaluation and Audit if the person:

(a) is absent from duty, except on leave granted to that person, 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 make a disclosure of financial interests equivalent to the disclosure required to be made by an SES employee; or

(g) engages in paid employment outside the duties of the office of Director of Evaluation and Audit without the written consent of the Minister.

(8) The person referred to in subitem (1) holds office on such terms and conditions (if any) in respect of matters not provided for by operation of subitems (1) to (7) as are determined by the Minister by notice in the *Gazette*.

5 Transitional evaluation and audit functions

(1) The Office of Evaluation and Audit (Indigenous Programs) has, in addition to the functions imposed on it under section 193X of the *Aboriginal and Torres Strait Islander Act 2005*, the following functions:

(a) when requested to do so by the Minister—to evaluate or audit the activities of any individual or organisation who, before ATSIC abolition day, received one or more grants or loans from the Commission, but only to the extent that the evaluation or audit concerns those grants or loans;

(b) when requested to do so by the Minister—to evaluate or audit the activities of a borrower, being any individual or organisation, one or more of whose loans were guaranteed, before ATSIC abolition day, by the Commission, but only to the extent that the evaluation or audit concerns those guarantees;

(c) to report on evaluations or audits conducted in accordance with paragraph (a) or (b), in writing, to the Minister as required by the Minister.

(2) A requirement under paragraph (1)(c) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

(3) Subsection 193X(3) and section 193ZG of the *Aboriginal and Torres Strait Islander Act 2005* apply in relation to any evaluation or audit commenced at the request of the Minister under this item.

6 Evaluations or audits begun but not completed before ATSIC abolition day

(1) If:

(a) before ATSIC abolition day, the Office of Evaluation and Audit has begun an evaluation or audit in relation to a body corporate, an unincorporated body or an individual under section 76 of the ATSIC Act, whether at the request of the Minister, the Commission, Aboriginal Hostels Limited, Indigenous Business Australia, the TSRA, or the Indigenous Land Corporation; and

(b) that evaluation or audit has not been completed before that day;

the Office of Evaluation and Audit (Indigenous Programs) must continue that evaluation or audit and, subject to subitem (3), report on that evaluation or audit, as if the amendments of the ATSIC Act made by this Act had not been made.

(2) An instrument under subitem (1) reporting on an evaluation or audit is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(3) If the evaluation or audit is one in respect of which the Office of Evaluation and Audit would have been required to report in accordance with subitem (1) both to the Minister and to the Commission, the Office of Evaluation and Audit (Indigenous Programs) is required to report only to the Minister.

(4) For the avoidance of doubt, the Director of Evaluation and Audit must include in any report of the operations of the Office of Evaluation and Audit (Indigenous Programs) in a particular year that is given under subsection 193ZA(4) of the *Aboriginal and Torres Strait Islander Act 2005*, a report of the operations of the Office that are carried out during that year under item 5 and under this item.

(5) The Office of Evaluation and Audit must:

(a) under subsection 77(3) of the ATSIC Act, make a final report of its operations for the period commencing on 1 July 2004 and ending immediately before ATSIC abolition day as if that period were a financial year; and

(b) ensure that a copy of that report is included in the final annual report of the Commission.

Schedule 3—Abolition of Regional Councils, consequential amendments and transitional and saving arrangements

Part 1—Abolition of Regional Councils

Aboriginal and Torres Strait Islander Act 2005

1 Part 3

Repeal the Part.

Part 2—Consequential amendments relating to abolition of Regional Councils

Aboriginal and Torres Strait Islander Act 2005

2 Subsection 4(1) (definition of *Administrator*)

Repeal the definition.

3 Subsection 4(1) (paragraph (a) of the definition of *designated number*)

Repeal the paragraph.

4 Subsection 4(1) (definition of *election period*, in relation to a round of Regional Council elections)

Repeal the definition.

5 Subsection 4(1) (definition of *electorate notice*)

Repeal the definition.

6 Subsection 4(1) (definition of *electorate number*)

Repeal the definition.

7 Subsection 4(1) (definition of *estimated population*, in relation to a region)

Repeal the definition.

8 Subsection 4(1) (definition of *member for a Regional Council ward*)

Repeal the definition.

9 Subsection 4(1) (definition of *prescribed number*)

Repeal the definition.

10 Subsection 4(1) (definition of *region*)

Repeal the definition.

11 Subsection 4(1) (definition of *Regional Council*)

Repeal the definition.

12 Subsection 4(1) (definition of *Regional Council election*)

Repeal the definition.

13 Subsection 4(1) (definition of *Regional Council election rules*)

Repeal the definition.

14 Subsection 4(1) (definition of *Regional Council election year*)

Repeal the definition.

15 Subsection 4(1) (definition of *Regional Council ward*)

Repeal the definition.

16 Subsection 4(1) (definition of *Regional Council ward election*)

Repeal the definition.

17 Subsection 4(1) (definition of *Regional Councillor*)

Repeal the definition.

18 Subsection 4(1) (definition of *Torres Strait area*)

Repeal the definition, substitute:

> ***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.

19 Subsection 4(1) (paragraph (a) of the definition of *ward*)

Repeal the paragraph.

20 At the end of section 4

Add:

(3) A declaration by the Minister for the purposes of the definition of ***Torres Strait area*** is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

21 At the end of Division 5 of Part 3A

Add:

143I Disputed elections

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

22 Section 196

Repeal the section.

23 Subsection 200A(1)

Repeal the subsection, substitute:

(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

(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 General Manager; 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.

24 Paragraphs 200B(2)(a) and (b)

Repeal the paragraphs.

25 Paragraph 201(2)(b)

Omit "127, 127J,".

26 Schedule 2 (heading)

Repeal the heading, substitute:

Schedule 2—Method of counting votes and determining successful candidates at elections for 2 or more members for a TSRA ward

27 Clause 1 of Schedule 2

Omit "Regional Council ward election or".

28 Clause 24 of Schedule 2 (definition of *leading shortfall*)

Omit "Regional Council ward election or".

29 Clause 24 of Schedule 2 (definition of *shortfall*)

Omit "Regional Council ward election or".

30 Clause 24 of Schedule 2 (definition of *vacancy shortfall*)

Omit "Regional Council ward election or".

31 Schedule 2A (heading)

Repeal the heading, substitute:

Schedule 2A—Method of determining the successful candidate at an election for a single member for a TSRA ward

32 Subclause 3(4) of Schedule 2A

Omit "113 or 143G, the rules made by the Minister under either of those sections", substitute "143G, the rules made by the Minister under that section".

33 Subclause 1(1) of Schedule 4 (definition of *election*)

Omit "a Regional Council election or".

34 Subclause 1(1) of Schedule 4 (definition of *illegal practice*)

Omit ", the Regional Council election rules".

35 Subclause 1(2) of Schedule 4

Omit ", the Regional Council election rules".

36 Subclause 3A(3) of Schedule 4 (paragraph (a) of the definition of *general election*)

Repeal the paragraph.

37 Paragraph 15(a) of Schedule 4

Omit ", the Regional Council election rules".

38 Paragraph 15(b) of Schedule 4

Omit ", and whichever of the Regional Council election rules and the TSRA election rules is applicable", substitute "and the TSRA election rules".

39 Paragraphs 17(1)(a) and (b) of Schedule 4

Repeal the paragraphs.

40 Paragraphs 21(1)(b) and (c) of Schedule 4

Repeal the paragraphs.

41 Paragraph 22(c) of Schedule 4

Repeal the paragraph.

Note: The heading to clause 22 of Schedule 4 is altered by omitting "**, TSRA and Regional Council affected**" and substituting "**and TSRA**".

42 Subclause 27(3) of Schedule 4

Repeal the subclause.

43 Subclause 28(1) of Schedule 4

Omit ", the Regional Council election rules".

Aboriginal Councils and Associations Act 1976

44 Paragraph 5(1)(c)

Omit "Council; and", substitute "Council.".

45 Paragraph 5(1)(d)

Repeal the paragraph.

46 Subsection 5(1A)

Repeal the subsection.

Part 3—Transitional and saving arrangements relating to Regional Councils

47 Transitional arrangement definitions

In this Part, unless the contrary intention appears:

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 an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

ATSIC abolition day means the day Schedules 1 and 2 to this Act commence.

authorised officer means the Minister, the Secretary of the Department or any other person authorised by the Minister for the purposes of this Part.

liabilities means liabilities of every kind and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

Regional Council means a Regional Council that was established under section 92 of the *Aboriginal and Torres Strait Islander Act 2005* and was in existence immediately before Regional Councils abolition day.

Regional Council instrument means an instrument subsisting immediately before Regional Councils abolition day:

(a) to which a Regional Council was a party; or

(b) that was given to, or in favour of, a Regional Council; or

(c) in which a reference is made to a Regional Council; or

(d) under which money is, or may become, payable to a Regional Council; or

(e) under which any other property is to be, or may become liable to be, transferred to or by a Regional Council.

Regional Councils abolition day means the day Schedule 3 to this Act commences.

Secretary means the Secretary of the Department.

48 Transfer of assets and liabilities of Regional Councils

On Regional Councils abolition day:

(a) any assets that, immediately before that day, were vested in a Regional Council are, by force of this item, vested in the Commonwealth; and

(b) the Commonwealth becomes, by force of this item, liable to pay and discharge liabilities or other obligations of a Regional Council that existed immediately before that day.

49 Regional Council instruments

A Regional Council instrument in force under the *Aboriginal and Torres Strait Islander Act 2005* immediately before Regional Councils abolition day has effect, on and after that day, in relation to everything occurring on or after that day, as if a reference in the instrument to a Regional Council were a reference to the Commonwealth.

50 Pending proceedings

If, immediately before Regional Councils abolition day, proceedings to which a Regional Council was a party were pending in any court or tribunal, the Commonwealth is, with effect from that day, substituted for the Regional Council as a party to the proceedings and has the same rights in the proceedings as the Regional Council had.

51 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 item 48, an asset or liability of the Commonwealth; or

(b) an instrument specified or described in the certificate is a Regional Council instrument.

(2) A certificate under subitem (1) is, in all courts and for all purposes, prima facie evidence of the matter stated in the certificate.

(3) If a document purports to be a certificate under subitem (1) signed by a person purporting to be an authorised officer, judicial notice must be taken of the signature of the person and of the fact that the person is or was an authorised officer.

52 Exemption from taxation

(1) Any transfer or other dealing under this Part, and any instrument facilitating or evidencing such a transfer or other dealing, is not subject to stamp duty or other tax under a law of the Commonwealth or of a State or Territory if an authorised officer certifies, in writing:

(a) that the transfer or dealing is a transfer or dealing for a purpose connected with, or arising out of, the operation of this Part; or

(b) that the instrument facilitating or evidencing a transfer or dealing is an instrument made or given because of, or for a purpose connected with, or arising out of, the operation of this Part.

(2) A certificate given by an authorised officer under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

53 Saving provision—Rights of review of certain decisions made before Regional Councils abolition day

Despite the repeal of section 196 of the *Aboriginal and Torres Strait Islander Act 2005* by this Schedule, that section as in force immediately before Regional Councils abolition day is to be treated as continuing in force, on and after that day, for the purpose of enabling persons or bodies to seek review of decisions referred to in that section that were made on or after ATSIC abolition day and before Regional Councils abolition day, as if that section had not been repealed.

Schedule 4—Amendment of other Acts and transitional and saving arrangements

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

1 Paragraphs 21B(1)(b) and (c)

Repeal the paragraphs, substitute:

or (b) an officer of the Department.

2 Saving provision

Despite the amendment of section 21B of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, any delegation by the Minister to an officer of the Department that was in force under that section immediately before the day Schedules 1 and 2 to this Act commence continues in force on and after that day as if it were a delegation made by the Minister under that section as amended by this Act.

Aboriginal Councils and Associations Act 1976

3 At the end of subsection 5(1)

Add:

; and (d) to formulate model rules, not inconsistent with the *Aboriginal and Torres Strait Islander Act 2005*, for the conduct of proceedings at meetings of Regional Councils elected under that Act.

4 After subsection 5(1)

Add:

(1A) Model rules formulated under paragraph (1)(d) are not legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

5 Paragraphs 5(1)(b) and (c)

Repeal the paragraphs, substitute:

or (b) an officer of the Department.

6 Saving provision

Despite the amendment of section 5 of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*, any delegation by the Minister to an officer of the Department that was in force under that section immediately before the day Schedules 1 and 2 to this Act commence continues in force on and after that day as if it were a delegation made by the Minister under that section as amended by this Act.

Aboriginal Land Rights (Northern Territory) Act 1976

7 At the end of paragraph 23E(3)(a)

Add "or".

8 At the end of paragraph of 23E(3)(b)

Add "or".

9 Paragraph 23E(3)(ba)

Repeal the paragraph.

10 Subsection 64B(1)

Omit "Commission", substitute "Department".

11 Subsection 64B(5)

Repeal the subsection.

Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989

12 At the end of section 2

Add:

Note: The *Aboriginal and Torres Strait Islander Commission Act 1989* was renamed the *Aboriginal and Torres Strait Islander Act 2005*. See item 3 of Schedule 1 to the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*.

13 Section 3 (definition of *Advisory Board*)

Repeal the definition.

14 Section 3 (definition of *Commission*)

Repeal the definition.

15 Section 3 (definition of *Commission Act*)

Repeal the definition.

16 Section 3 (definition of *TSRA*)

Omit "Commission Act", substitute "*Aboriginal and Torres Strait Islander Act 2005*".

17 Paragraph 12(1)(b)

Omit "and whose appointment has been recommended by the Advisory Board".

18 Saving provision

A person appointed by the Minister under paragraph 12(1)(b) of the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* as in force immediately before the day Schedules 1 and 2 to this Act commence continues to hold office, on and after that day, for the balance of the term of the person's appointment, as if the person had been appointed by the Minister under that paragraph of the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* as amended by this Act.

19 Subsection 42(2)

Omit "the Commission and".

20 Subsection 42(3)

Omit "the Commission or" (wherever occurring).

Note: The heading to section 42 is altered by omitting "**Commission and**".

21 Subsection 43(1)

Omit ", the Commission".

22 Paragraph 43(2)(b)

Omit "the Commission or".

Note: The heading to section 43 is altered by omitting "**or Commission**".

Environment Protection and Biodiversity Conservation Act 1999

23 Subsection 74(1A)

Repeal the subsection.

Human Rights and Equal Opportunity Commission Act 1986

24 Subsection 46C(3)

Omit "must, as appropriate, consult the Aboriginal and Torres Strait Islander Commission and".

National Health and Medical Research Council Act 1992

25 Section 4 (definition of *ATSIC member*)

Repeal the definition.

26 Paragraph 20(f)

Repeal the paragraph, substitute:

(f) a person having knowledge of the health needs of Aboriginal persons or Torres Strait Islanders;

27 Saving provision

A person who was appointed by the Minister under section 21 of the *National Health and Medical Research Council Act 1992*, as in force immediately before the day Schedules 1 and 2 to this Act commence, continues to hold office, on and after that day, for the balance of the term of the person's appointment, as if the person had been duly appointed by the Minister as a person having knowledge of the health needs of Aboriginal persons or Torres Strait Islanders in accordance with the requirements of that Act as amended by this Act.

28 Subsection 28(3)

Repeal the subsection, substitute:

(3) The Minister must terminate the appointment of a person appointed under paragraph 20(d) on the nomination of the Minister (the

nominator) having administrative responsibility for a State or Territory health instrumentality if the nominator asks the Minister to terminate that person's appointment.

29 Subsection 31(3)

Repeal the subsection, substitute:

(3) If the Commonwealth member or a State or Territory member is unable to attend a Council meeting, attendance at the meeting by another nominee of the Minister, or of the Minister having administrative responsibility for the State or Territory health instrumentality concerned, as the case requires, is to be treated as attendance by the member.

Native Title Act 1993

30 Section 201A (definition of *ATSIC*)

Repeal the definition.

31 Paragraphs 203AG(4)(b), (c) and (d)

Repeal the paragraphs, substitute:

(b) any reports under section 193X of the *Aboriginal and Torres Strait Islander Act 2005* in relation to funding provided to the body under section 203C or 203FE of this Act;

(c) any notices that the Secretary of the Department has given to the Minister under section 203F in relation to the body.

32 Paragraphs 203AH(4)(b), (c) and (d)

Repeal the paragraphs, substitute:

(b) any reports under section 193X of the *Aboriginal and Torres Strait Islander Act 2005* in relation to funding provided to the body under section 203C or 203FE of this Act;

(c) any notices that the Secretary of the Department has given to the Minister under section 203F in relation to the body.

33 Subsection 203C(1)

Omit "ATSIC for a grant of money", substitute "the Secretary of the Department for funding".

Note: The heading to subsection 203C(1) is altered by omitting "*grant*" and substituting "*funding*".

34 Subsection 203C(2)

Repeal the subsection, substitute:

Provision of funds

(2) The Secretary of the Department may, on behalf of the Commonwealth, provide funds to a representative body, by making a grant to the representative body or in any other way the Secretary considers appropriate, from money appropriated by the Parliament.

35 Subsection 203C(3)

Omit "grant of money", substitute "provision of funding".

Note: The heading to section 203C is altered by omitting "**Grants to**" and substituting "**Funding of**".

36 Subsection 203CA(1)

Omit all the words from and including "A grant of money" to and including "thinks fit.", substitute "Funds provided to a representative body under this Division, whether provided by grant or otherwise, may be so provided on whatever conditions the Secretary considers appropriate.".

37 Subsection 203CA(1)

Omit "ATSIC must", substitute "the Secretary must".

38 Paragraph 203CA(1)(e)

Repeal the paragraph, substitute:

(e) the appointment of a person, in cases where the Secretary considers that money from funds provided has not been spent in accordance with the conditions of the funding, with the power to prevent expenditure of further money from funds provided, otherwise than in accordance with the conditions of the funding; and

Note: The heading to subsection 203CA(1) is altered by omitting "*grants*" and substituting "*funding*".

39 Subsection 203CA(1A)

Repeal the subsection, substitute:

Repayment of part of funding provided on withdrawal of recognition

(1A) The provision of funding, however achieved, is also subject to a condition that if:

(a) the representative body's recognition as a representative body is withdrawn under section 203AH; and

(b) the withdrawal takes effect during the period for which funding is provided;

the representative body must repay to the Commonwealth an amount equal to so much (if any) of the funding provided as is uncommitted at the time the recognition is withdrawn.

40 Transitional provision

Subsection 203CA(1A) of the *Native Title Act 1993* as amended by this Act applies in relation to the repayment, on or after the day Schedules 1 and 2 to this Act commence, of a part of a grant made to a representative body before that day as if:

(a) the amendment of that subsection made by this Act had been in force at the time the grant was made; and

(b) the grant had been made on behalf of the Commonwealth.

41 Subsection 203CA(1B)

Omit "the grant" (first and second occurring), substitute "funding provided".

42 Paragraph 203CA(1B)(a)

Omit "by ATSIC", substitute "by the Commonwealth".

43 Subsection 203CA(1B)

Omit "the grant" (third and fourth occurring), substitute "funding provided".

Note: The heading to subsection 203CA(1B) is altered by omitting "*the grant*" and substituting "*funding provided*".

44 Transitional provision

Subsection 203CA(1B) of the *Native Title Act 1993* as amended by this Act applies in relation to the repayment, on or after the day Schedules 1 and 2 to this Act commence, of a part of a grant made to a representative body before that day as if:

(a) the amendment of that subsection made by this Act had been in force at the time the grant was made; and

(b) the grant had been made on behalf of the Commonwealth.

45 Subsection 203CA(2)

Repeal the subsection, substitute:

Strategic plan to be considered in providing funds

(2) In providing funds and deciding on the conditions to be imposed under subsection (1), the Secretary of the Department must have regard to the matters set out in the strategic plan (see section 203D) of the representative body concerned. The conditions on which money is provided must be consistent with the strategic plan.

46 Subsection 203CA(3)

Omit "the grant", substitute "funding".

Note: The heading to subsection 203CA(3) is altered by omitting "*grants*" and substituting "*funding*".

47 Subsections 203CA(4) and (5)

Repeal the subsections, substitute:

Serious or repeated breaches of conditions

(5) If the Secretary of the Department considers that the representative body:

(a) has committed, or is committing, serious breaches of conditions to which the provision of funding has been made subject under this Division; or

(b) has repeatedly breached, or is repeatedly breaching, such conditions;

the Secretary must give to the Commonwealth Minister a written notice informing the Minister of the breaches and stating what measures the Secretary is taking, or proposes to take, as a result of the breaches.

Certain instruments not to be legislative instruments

(6) An instrument that:

(a) determines conditions of funding for the purposes of subsection (1); or

(b) informs the Minister of a breach under subsection (5);

is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Note: The heading to section 203CA is replaced by the heading "**Conditions of funding**".

48 Saving provision

Despite the repeal of subsection 203CA(4) of the *Native Title Act 1993* by this Act, sections 20, 21 and 21A of the *Aboriginal and Torres Strait Islander Commission Act 1989* (the ***ATSIC Act***) as in force before the day Schedules 1 and 2 to this Act commence continue to apply on and after that day in relation to any grants to representative bodies made under Division 4 of Part 11 of the *Native Title Act 1993* as if:

(a) the grants had been made on behalf of the Commonwealth; and

(b) the grants had been made under section 14 of the ATSIC Act as in force before that day; and

(c) references to the Commission in sections 20, 21 and 21A of the ATSIC Act as in force before that day were references to the Commonwealth.

49 Subsection 203D(3)

Repeal the subsection, substitute:

Strategic plan to be prepared in consultation with Department

(3) The representative body must prepare the strategic plan in consultation with the Department.

50 Subsection 203D(4)

Omit "ATSIC", substitute "the Department".

51 Paragraph 203DC(1)(b)

Omit "ATSIC", substitute "the Department".

52 Subsection 203DC(2)

Omit "ATSIC", substitute "The Secretary of the Department".

53 Subsection 203DC(6)

Omit "ATSIC", substitute "the Secretary of the Department".

54 Subsection 203DF(1) (note)

Repeal the note, substitute:

Note: A representative body may also be audited under Part 4B of the *Aboriginal and Torres Strait Islander Act 2005*, which enables the Office of Evaluation and Audit, when requested to do so by the Commonwealth Minister or a Commonwealth authority that has made a grant to a representative body, or when the funding agreement in relation to a grant made to a representative body so provides, to evaluate and audit the operations of the body that has received the grant.

55 Section 203F

Omit "ATSIC" (first occurring), substitute "the Secretary of the Department".

56 Section 203F

Omit "ATSIC" (second occurring), substitute "the Secretary".

57 Section 203F (note)

Repeal the note, substitute:

Note: The Secretary must also give written notice of breaches of grant conditions to the Commonwealth Minister—see subsection 203CA(5).

Note: The heading to section 203F is altered by omitting "**ATSIC**" and substituting "**Secretary**".

58 Section 203FA

Repeal the section.

59 Subsection 203FB(1)

Omit "ATSIC", substitute "the Secretary of the Department".

60 Subsection 203FB(2)

Omit "ATSIC", substitute "the Secretary".

61 Subsection 203FB(2)

Omit "ATSIC's", substitute "the Secretary's".

62 Subsections 203FB(3) and (5)

Omit "ATSIC" (wherever occurring), substitute "the Secretary".

63 Subsections 203FB(7) and (8)

Omit "ATSIC", substitute "The Secretary".

Note: The heading to subsection 203FB(7) is altered by omitting "*ATSIC*" and substituting "*the Secretary*".

64 Transitional provision—Secretary to complete applications for review of assistance decisions

If:

(a) before the day Schedules 1 and 2 to this Act commence, an Aboriginal person or Torres Strait Islander has applied to ATSIC for review of a decision of a representative body not to assist the person; and

(b) that review has not been completed before that day;

section 203FB of the *Native Title Act 1993* as amended by this Act applies in relation to that application to review, as if that section as so amended had been force at the time when the application was made and the application had been made to the Secretary.

65 Subsection 203FE(1)

Omit "ATSIC may make one or more grants of money to a person or body", substitute "The Secretary of the Department may make funding available to a person or body, by way of a grant or in any other way the Secretary considers appropriate,".

Note: The heading to subsection 203FE(1) is altered by omitting "*Grants*" and substituting "*Funding*".

66 Subsection 203FE(2)

Omit "ATSIC may make one or more grants of money to a person or body", substitute "The Secretary of the Department may make funding available to a person or body, by way of a grant or in any other way the Secretary considers appropriate,".

Note: The heading to subsection 203FE(2) is altered by omitting "*Grants*" and substituting "*Funding*".

67 Subsection 203FE(3)

Omit all the words from and including "A grant of money" to and including "thinks fit.", substitute "Funds provided to a person or body under this section, whether provided by grant or otherwise, may be so provided on whatever conditions the Secretary considers appropriate.".

68 Subsection 203FE(3)

Omit "ATSIC must", substitute "the Secretary of the Department must".

69 Paragraph 203FE(3)(e)

Repeal the paragraph, substitute:

(e) the appointment of a person, in cases where the Secretary considers that money from funds provided has not been spent in accordance with the conditions of the funding, with the power to prevent expenditure of further money from funds provided otherwise than in accordance with the conditions of the funding; and

Note: The heading to subsection 203FE(3) is altered by omitting "*grants*" and substituting "*funding*".

70 After subsection 203FE(3)

Insert:

Certain instruments not to be legislative instruments

(3A) An instrument that determines conditions of funding for the purposes of subsection (3) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

71 Subsection 203FE(4)

Omit "ATSIC", substitute "The Secretary of the Department".

Note: The heading to subsection 203FE(4) is altered by omitting "*Grant*" and substituting "*Funding*".

72 Subsection 203FE(5)

Omit "ATSIC considers it appropriate, ATSIC", substitute "the Secretary of the Department considers it appropriate, the Secretary".

Note: The heading to subsection 203FE(5) is altered by omitting "*Grant*" and substituting "*Funding*".

73 Subsection 203FE(6)

Omit "the grant", substitute "funding".

74 Subsection 203FE(7)

Repeal the subsection.

Note: The heading to section 203FE is replaced by the heading "**Provision of funding by the Commonwealth**".

75 Saving provision

Despite the repeal of subsection 203FE(7) of the *Native Title Act 1993* by this Act, sections 20, 21 and 21A of the *Aboriginal and Torres Strait Islander Commission Act 1989* (the ***ATSIC Act***) as in force before the day Schedules 1 and 2 to this Act commence continue to apply on and after that day in relation to any funding by way of grant made before that day under section 203FE of the *Native Title Act 1993* as if:

(a) the grants had been made on behalf of the Commonwealth; and

(b) the grants had been made under section 14 of the ATSIC Act as in force before that day; and

(c) references to the Commission in sections 20, 21 and 21A of the ATSIC Act as in force before that day were references to the Commonwealth.

76 Section 203FG

Omit "ATSIC for a grant", substitute "the Secretary of the Department for funding".

77 At the end of Division 7 of Part 11

Add:

203FI Delegation

The Secretary of the Department may, by written instrument, delegate to an SES employee, to an acting SES employee or to another person of equivalent rank, all or any of the Secretary's powers under sections 203C, 203CA, 203DC, 203F, 203FB, 203FE and 203FG.

Note 1: The expressions ***SES employee***, and ***acting SES employee*** are defined in section 17AA of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

78 Paragraphs 206(a) and (c)

Omit "*Aboriginal and Torres Strait Islander Commission Act 1989*", substitute "*Aboriginal and Torres Strait Islander Act 2005*".

79 Subparagraph 206(d)(vii)

Omit "*Aboriginal and Torres Strait Islander Commission Act 1989*", substitute "*Aboriginal and Torres Strait Islander Act 2005*".

Remuneration Tribunal Act 1973

80 Paragraph 7(9)(ac)

Repeal the paragraph.

81 Paragraphs 7(9)(acaa), (aca) and (acaaa)

Omit "*Aboriginal and Torres Strait Islander Commission Act 1989*", substitute "*Aboriginal and Torres Strait Islander Act 2005*".

Social Security Act 1991

82 Subsection 1188B(3) (definition of *ATSIC*)

Repeal the definition.

83 Subsection 1188B(3) (definition of *authorised officer*)

Omit "Chief Executive Officer of ATSIC", substitute "Secretary of the Department whose Minister is responsible for administration of the CDEP Scheme".

84 Subsection 1188B(3) (definition of *CDEP Scheme Participant Schedule*)

Omit "ATSIC", substitute "the Secretary of the Department whose Minister is responsible for administration of the CDEP Scheme".