



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

**Act No. 150 of 1989 as amended**

This compilation was prepared on 1 July 2007  
taking into account amendments up to Act No. 125 of 2006

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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



---

# Contents

<b>Part 1—Preliminary</b>	3
1 Short title [see Note 1].....	3
2 Commencement [see Note 1].....	3
3 Objects.....	3
4 Interpretation .....	4
4A Minister may make determinations about what constitutes misbehaviour .....	8
4B Indigenous-held land .....	9
5 Act binds the Crown.....	10
5A Application of the <i>Criminal Code</i> .....	10
<b>Part 3A—Torres Strait Regional Authority</b>	11
<b>Division 1—Torres Strait Regional Authority</b>	11
142 Torres Strait Regional Authority .....	11
<b>Division 2—Functions of TSRA</b>	12
142A Functions of TSRA.....	12
142AA Conferring functions on TSRA.....	14
142B Minister may approve performance of functions under State or Territory laws .....	14
142C Powers of TSRA.....	15
142D Torres Strait Development Plan.....	15
142E Directions by Minister.....	16
<b>Division 3—General funding powers of TSRA</b>	17
142F TSRA may make grants and loans.....	17
142G TSRA may give guarantees .....	17
142GA TSRA may make grants and loans to Queensland government etc. ....	18
142H Grants and loans to be repayable if conditions breached etc. ....	18
142J Restriction on right to dispose of interest in land .....	19
142JA TSRA’s interest in land .....	19
142K TSRA to formulate decision-making principles about grants, loans and guarantees.....	20
142L Review of operation of Part etc. ....	20
142M Advisory committees.....	21
142N Advisory committee—disclosure of interests at meetings .....	21
142P Advisory committee—member’s appointment to be terminated for non-disclosure of interests.....	21
142Q Advisory committee—resignation.....	22
<b>Division 4—Constitution of TSRA</b>	23
142R Constitution of TSRA.....	23
142S Minister may determine manner of representation on TSRA .....	24

---

<b>Division 5—TSRA elections</b>	25
142T	TSRA elections.....25
142TA	TSRA wards .....25
142U	People entitled to vote at TSRA elections .....26
142V	People qualified to be elected to the TSRA .....26
142W	Term of office of members of TSRA.....27
142X	Errors in Commonwealth Electoral Roll not to affect entitlements .....28
142Y	Timing of TSRA elections.....28
142Z	Polling places .....29
143	Fixing of election days, and location of polling places, to be notified in <i>Gazette</i> .....29
143A	Effect of nominations .....30
143B	Voting not compulsory .....30
143C	Voting by secret ballot.....30
143D	Voting.....30
143E	Counting of votes and election of candidates .....31
143F	General obligation to inform people about elections .....31
143G	Rules for conduct of elections .....32
143H	Authorised electoral officer .....34
143I	Disputed elections .....35
<b>Division 6—Administrative provisions</b>	36
143J	Part-time basis of holding office.....36
143K	Remuneration and allowances .....36
143L	Chairperson and Deputy Chairperson.....36
143M	Acting appointments.....36
143P	Disclosure of interests .....37
143Q	Resignation.....37
143R	Members taken to have resigned from TSRA in certain circumstances .....38
143S	Suspension and removal from office of members of the TSRA.....39
143T	Recall of member of the TSRA .....41
143U	Members of TSRA, and TSRA Administrators, not personally liable .....41
143V	Other terms and conditions .....42
143W	Provisions relating to Chairperson.....42
143X	Resignation of Chairperson .....42
143Y	Suspension and removal from office of Chairperson.....43
143Z	Leave of absence for Chairpersons .....44
144	Provisions relating to Deputy Chairpersons .....44
144A	Resignation of Deputy Chairpersons .....45
144B	Suspension and removal from office of Deputy Chairperson .....45

---

---

144C	Deputy Chairperson to act as Chairperson.....	46
144D	Alternate Deputy Chairperson .....	47
144E	Meetings of TSRA.....	48
144F	Delegation to TSRA General Manager or staff member of TSRA.....	51
<b>Division 7—General Manager of TSRA</b>		<b>53</b>
144G	TSRA General Manager .....	53
144H	Period of appointment .....	53
144J	Remuneration and allowances .....	53
144K	Leave of absence .....	53
144L	Acting TSRA General Manager .....	54
144M	Disclosure of interests .....	54
144N	Resignation.....	55
144P	Termination of appointment .....	55
144Q	Other terms and conditions.....	55
<b>Division 8—Staff</b>		<b>56</b>
144R	Staff.....	56
144T	Consultants.....	56
<b>Division 9—Finances</b>		<b>58</b>
144TA	Money payable to TSRA .....	58
144U	Application of money of the TSRA.....	58
144V	TSRA Housing Fund .....	58
144W	TSRA Land and Natural Resources Fund.....	59
144X	Borrowing on overdraft to meet temporary deficit .....	60
144Y	Limits on TSRA’s powers to raise money .....	60
144Z	Exemption from taxation .....	60
144ZA	Estimates .....	61
144ZB	Annual report.....	61
144ZD	TSRA Finance Directions.....	62
<b>Division 10—Minister may ask TSRA for information</b>		<b>64</b>
144ZE	Minister may ask TSRA for information .....	64
<b>Division 11—TSRA Administrators</b>		<b>65</b>
144ZF	Powers of TSRA Administrator.....	65
144ZG	Remuneration and allowances .....	65
144ZH	TSRA Administrator holds office on a full-time basis .....	65
144ZJ	Resignation of TSRA Administrator .....	65
144ZK	Leave of absence .....	65
144ZL	Other terms and conditions.....	65
144ZM	Disclosure of interests .....	66
144ZN	Termination of appointment .....	66
144ZP	Acting TSRA Administrator.....	67

---

---

144ZQ	Minister may appoint replacement TSRA Administrator if there is a vacancy in an office of TSRA Administrator .....	68
<b>Part 4—Indigenous Business Australia</b>		<b>69</b>
<b>Division 1—Indigenous Business Australia</b>		<b>69</b>
145	Indigenous Business Australia.....	69
146	Purposes of Indigenous Business Australia .....	69
<b>Division 2—Functions of Indigenous Business Australia</b>		<b>71</b>
147	Functions of Indigenous Business Australia.....	71
148	Performance of functions.....	71
149	Corporate plan .....	72
150	Consideration of corporate plan by Minister .....	72
151	Directions by Minister .....	73
152	Powers of Indigenous Business Australia.....	73
153	Guarantees .....	74
154	Minister may ask for information .....	75
<b>Division 3—Board of Directors of Indigenous Business Australia</b>		<b>76</b>
155	Board of Directors of Indigenous Business Australia.....	76
156	Responsibilities of Indigenous Business Australia Board.....	76
157	Appointment of Indigenous Business Australia Directors .....	76
158	Selection of Indigenous Business Australia Directors .....	77
<b>Division 4—Administrative provisions</b>		<b>78</b>
159	Period of appointment .....	78
160	Remuneration and allowances .....	78
161	Leave of absence .....	78
162	Acting appointments.....	79
164	Resignation.....	80
165	Termination of appointment .....	80
166	Other terms and conditions.....	80
<b>Division 5—Operations of Indigenous Business Australia and Indigenous Business Australia Board</b>		<b>81</b>
167	Meetings of Indigenous Business Australia Board .....	81
<b>Division 6—Indigenous Business Australia General Manager</b>		<b>83</b>
168	Indigenous Business Australia General Manager .....	83
169	Term of appointment .....	83
170	Holding of office .....	83
171	Remuneration and allowances .....	83
172	Acting Indigenous Business Australia General Manager .....	84
172A	Disclosure of interests .....	84
173	Resignation.....	85
174	Other terms and conditions.....	85

---

---

<b>Division 7—Staff</b>	86
175 Staff .....	86
177 Arrangements relating to staff .....	86
178 Consultants .....	86
<b>Division 8—Finances</b>	87
179 Capital of Indigenous Business Australia .....	87
181 Application of money held by Indigenous Business Australia .....	87
181A New Housing Fund.....	87
181B Review of decisions to refuse loans from New Housing Fund .....	89
182 Restriction on spending by Indigenous Business Australia .....	89
183 Borrowing for temporary purposes.....	90
184 Limit on Indigenous Business Australia’s powers.....	90
185 Giving of security over assets.....	90
187 Powers of companies in which Indigenous Business Australia has an interest.....	91
188 Exemption from taxation .....	91
189 Annual report and financial statements.....	91
<b>Division 9—Miscellaneous</b>	93
190 Delegation to Indigenous Business Australia General Manager or member of staff .....	93
191 Secrecy .....	93
<b>Part 4A—Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Account</b>	96
<b>Division 1—Indigenous Land Corporation</b>	96
191A Indigenous Land Corporation .....	96
191B Purposes of Indigenous Land Corporation .....	97
<b>Division 2—Functions and powers of Indigenous Land     Corporation</b>	98
191C Functions of Indigenous Land Corporation .....	98
191D Land acquisition functions of Indigenous Land Corporation.....	98
191E Land management functions of Indigenous Land Corporation.....	100
191EA Indigenous Land Corporation may make money available to Indigenous Business Australia.....	103
191F Performance of functions of Indigenous Land Corporation— general .....	103
191G Subsidiaries of Indigenous Land Corporation may perform functions corresponding to the Indigenous Land Corporation’s functions .....	104
191H Powers of Indigenous Land Corporation .....	106
191I Guidelines about certain land acquisition and land management functions.....	107
191J Disposal of surplus land .....	107

---

---

191L	Powers of Minister .....	108
<b>Division 3—National indigenous land strategy and regional indigenous land strategies</b>		
191N	National indigenous land strategy.....	110
191P	Regional indigenous land strategies .....	111
191Q	Indigenous Land Corporation to have regard to strategies .....	112
191R	Indigenous Land Corporation to make strategies available .....	113
<b>Division 4—Dealings in land granted by Indigenous Land Corporation</b>		
191S	Restriction on right to dispose of, or charge, property.....	114
191SA	Indigenous Land Corporation’s interest in land.....	115
191SB	Interest in land of subsidiary of Indigenous Land Corporation.....	115
191T	Surrender of land to Indigenous Land Corporation .....	116
191U	Land granted by Indigenous Land Corporation must not be claimed under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> .....	117
<b>Division 5—Board of Directors of Indigenous Land Corporation</b>		
191V	Board of Directors of Indigenous Land Corporation .....	118
191W	Responsibilities of Indigenous Land Corporation Board.....	119
191X	Appointment of Indigenous Land Corporation Directors .....	119
191Y	Automatic re-appointment of incumbent pending appointment of successor.....	120
<b>Division 6—Administrative provisions</b>		
191Z	Period of appointment .....	121
192	Basis on which Indigenous Land Corporation Directors hold office .....	121
192A	Remuneration and allowances .....	121
192B	Outside employment—full-time Indigenous Land Corporation Chairperson .....	121
192C	Leave of absence—part-time Indigenous Land Corporation Directors.....	122
192D	Leave of absence—full-time Indigenous Land Corporation Chairperson .....	122
192E	Acting appointments.....	123
192F	Disclosure of interests .....	124
192G	Resignation.....	124
192H	Termination of appointment .....	124
192I	Other terms and conditions.....	125
<b>Division 7—Operations of Indigenous Land Corporation Board</b>		
192J	Meetings of Indigenous Land Corporation Board .....	126

---



---

<b>Division 8—Indigenous Land Corporation General Manager</b>	128
192K Indigenous Land Corporation General Manager .....	128
192L Term of appointment .....	128
192M Holding of office .....	128
192N Remuneration and allowances of Indigenous Land Corporation General Manager .....	129
192P Acting Indigenous Land Corporation General Manager.....	129
192Q Resignation.....	129
192R Other terms and conditions.....	130
<b>Division 9—Staff</b>	131
192S Staff .....	131
192T Arrangements for Indigenous Business Australia staff to perform duties on behalf of Indigenous Land Corporation.....	131
192U Arrangements relating to staff .....	131
192V Consultants .....	132
<b>Division 10—Aboriginal and Torres Strait Islander Land Account</b>	133
192W Aboriginal and Torres Strait Islander Land Account .....	133
192X Purpose of Land Account .....	133
192Y Business day .....	133
192Z Transfer of money etc. from the fund established under repealed Part 10 of the <i>Native Title Act 1993</i> .....	133
193 Credits to Land Account in category A years .....	134
193AA Credit to Land Account in first category B year.....	135
193A Payments out of Land Account to Indigenous Land Corporation—category A years .....	136
193C Payments out of Land Account to Indigenous Land Corporation—category B years .....	138
193D Indexation factor.....	139
193E Advances on account of payments.....	140
193G Consultative forum on investment policy of the Land Account .....	141
193H Accounts and financial statements.....	142
193I Annual report about Land Account .....	142
<b>Division 11—Finances</b>	144
193J Application of money held by Indigenous Land Corporation.....	144
193K Modifications of Commonwealth Authorities and Companies Act .....	144
193L Borrowing.....	145
193M Giving of security over assets.....	147
193N Limit on guarantees .....	147
193P Exemption from taxation .....	149
193Q Foreign subsidiaries.....	150

---

---

<b>Division 12—Exemption from stamp duty etc.</b>	151
193R Exemption from stamp duty etc.....	151
<b>Division 13—Secrecy</b>	153
193S Secrecy .....	153
<b>Division 14—Delegation</b>	157
193T Delegation to Indigenous Land Corporation General Manager or member of staff .....	157
<b>Part 4B—Office of Evaluation and Audit (Indigenous Programs)</b>	158
193V Definitions .....	158
193W Office of Evaluation and Audit (Indigenous Programs) .....	159
193X Functions of the Office .....	159
193Y Programs of evaluation and audit .....	161
193Z Minister may table reports in the Parliament .....	162
193ZA Director of Evaluation and Audit .....	162
193ZB Period of appointment .....	163
193ZC Acting Director.....	163
193ZD Resignation.....	163
193ZE Termination of appointment .....	163
193ZF Director not personally liable .....	164
193ZG Examination of documents etc.....	164
<b>Part 5—Miscellaneous</b>	167
194 Remuneration and allowances .....	167
195A Review by TSRA of delegates' decisions.....	167
196A Review by Administrative Appeals Tribunal.....	167
197 Offences—guarantees, grants and loans .....	168
198 Offences—elections .....	169
199 Conduct of directors, servants and agents.....	170
200 Aboriginal Hostels Limited .....	172
200A Secrecy .....	173
200B Delegation by Finance Minister.....	175
200C Delegations.....	175
201 Regulations.....	176
<b>Part 6—Transitional provisions</b>	177
<b>Division 1—Preliminary</b>	177
202 Interpretation .....	177
<b>Division 3—Transitional provisions relating to Aboriginal         Development Commission and Department of         Aboriginal Affairs</b>	179
206 Transfer of assets and liabilities of old Department.....	179

---

---

211	Old Commission instruments .....	179
215	Certificates relating to assets, liabilities and instruments .....	180
216	Exemption from taxation .....	181
<b>Division 4—General transitional provisions</b>		<b>182</b>
219	Transfer of staff to Australian Public Service.....	182
220	Operation of Superannuation Benefit (Interim Arrangement) Act .....	182
222	State or Territory officer may act on certificate.....	183
<b>Schedule 1—List of places for inclusion in regions whose boundaries are determined by the Minister</b>		<b>184</b>
<b>Schedule 2—Method of counting votes and determining successful candidates at elections for 2 or more members for a TSRA ward</b>		<b>186</b>
<b>Schedule 2A—Method of determining the successful candidate at an election for a single member for a TSRA ward</b>		<b>194</b>
1	Absolute majority required for election.....	194
2	Candidate with absolute majority of first preference votes elected .....	194
3	Distribution of preferences .....	194
<b>Schedule 4—Disputes about electoral matters</b>		<b>196</b>
<b>Part 1—Interpretation</b>		<b>196</b>
1	Interpretation .....	196
<b>Part 2—Disputed elections</b>		<b>197</b>
2	Method of disputing elections .....	197
3	Requisites of election petitions.....	197
3A	Deadline for filing a petition.....	197
4	Deposit as security for costs .....	198
5	Petition by Electoral Commission .....	198
6	No proceedings unless requisites complied with .....	198
7	Right of Electoral Commission to be represented.....	198
8	Right of Minister to be represented .....	198
9	Election petitions to be tried in open court .....	199
10	Powers of Court.....	199
11	Inquiries by Court.....	200
12	Voiding election for illegal practices.....	200
13	Court to report cases of illegal practices.....	201
14	Immaterial errors not to vitiate election.....	201
15	Evidence that person not permitted to vote.....	201
16	Deposit applicable for costs.....	202

---

---

<b>Part 3—Qualifications and vacancies</b>	203
17 Reference of question as to qualification or vacancy.....	203
18 Minister to state case .....	203
19 Parties to the reference .....	203
20 References to be heard in open court.....	203
21 Powers of Court.....	204
22 Order etc. to be sent to Minister and TSRA.....	204
<b>Part 4—General</b>	205
23 Real justice to be observed .....	205
24 Decisions to be final .....	205
25 Counsel or solicitor.....	205
26 Costs .....	205
27 Effect of declarations etc. ....	205
28 Power to make Rules of Court.....	206
<b>Notes</b>	207

---

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

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

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

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

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

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

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

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

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

## Preamble

---

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

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

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

## **Part 1—Preliminary**

### **1 Short title** [see Note 1]

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

### **2 Commencement** [see Note 1]

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

### **3 Objects**

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

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

## 4 Interpretation

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

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

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

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

**Ailan Kastom** means the body of customs, traditions, observances and beliefs of some or all of the Torres Strait Islanders living in the Torres Strait area, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

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

**category A year** means:

- (a) the period:
  - (i) beginning at the commencement of section 1 of the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*; and
  - (ii) ending at the end of 30 June 1995; or
- (b) the financial year beginning on 1 July 1995; or
- (c) any of the next 8 succeeding financial years.

**category B year** means a financial year later than the last category A year.

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



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

**designated number:**

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

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

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

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

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

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

**Finance Minister** means the Minister who administers the *Financial Management and Accountability Act 1997*.

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

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

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

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

---

Section 4

---

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

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

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

***Indigenous Business Australia General Manager*** means the General Manager of Indigenous Business Australia referred to in section 168.

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

***Indigenous Land Corporation*** means the Indigenous Land Corporation established by section 191A.

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

***Indigenous Land Corporation Chairperson*** means the Chairperson of the Indigenous Land Corporation Board referred to in section 191V.

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

***Indigenous Land Corporation General Manager*** means the General Manager of the Indigenous Land Corporation referred to in section 192K.

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

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in connection with, the land.

***Land Account*** means the Aboriginal and Torres Strait Islander Land Account continued in existence by section 192W.

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

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

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

***Queensland Act*** means the *Community Services (Torres Strait) Act 1984* of Queensland as amended and in force from time to time, and includes any law of Queensland that replaces that Act.

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

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

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

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

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

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

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

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

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

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

to administer the affairs of the TSRA.

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

Section 4A

---

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

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

**TSRA General Manager** means the General Manager of the TSRA referred to in section 144G.

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

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

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

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

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

**ward:**

- (b) in relation to the TSRA—means a ward referred to in section 142TA.
- (2) The question whether a company is a subsidiary of the Indigenous Land Corporation or of Indigenous Business Australia shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the *Corporations Act 2001*.
- (3) A declaration by the Minister for the purposes of the definition of **Torres Strait area** is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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

- (1) The Minister may make a written determination providing that specified behaviour is taken to be misbehaviour for the purposes of this Act.

- (2) The Minister may make a written determination providing that specified behaviour is taken not to be misbehaviour for the purposes of this Act.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **4B Indigenous-held land**

##### *Indigenous-held land*

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

##### *Exception—minority interest in tenancy in common*

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

##### *Exception—minority interest in partnership property*

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

Section 5

---

*Exception—interest of a mortgagee*

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

**5 Act binds the Crown**

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

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

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

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

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

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

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

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

- (1) A Torres Strait Regional Authority is established.
- (2) The TSRA:
  - (a) is a body corporate, with perpetual succession; and
  - (b) is to have a common seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the TSRA. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

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

## Division 2—Functions of TSRA

### 142A Functions of TSRA

#### *Functions*

- (1) The TSRA has the following functions:
  - (a) to recognise and maintain the special and unique Ailan Kastom of Torres Strait Islanders living in the Torres Strait area;
  - (b) to formulate and implement programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
  - (c) to monitor the effectiveness of programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area, including programs conducted by other bodies;
  - (d) to develop policy proposals to meet national, State and regional needs and priorities of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
  - (e) to assist, advise and co-operate with Torres Strait Islander and Aboriginal communities, organisations and individuals at national, State, Territory and regional levels;
  - (f) to advise the Minister on:
    - (i) matters relating to Torres Strait Islander affairs, and Aboriginal affairs, in the Torres Strait area, including the administration of legislation;
    - (ii) the co-ordination of the activities of other Commonwealth bodies that affect Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area;
  - (g) when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister;
  - (h) to take such reasonable action as it considers necessary to protect Torres Strait Islander and Aboriginal cultural material and information relating to the Torres Strait area if the material or information is considered sacred or otherwise significant by Torres Strait Islanders or Aboriginal persons;



Section 142A

---

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

*TSRA not to disregard Aboriginal tradition and custom*

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

*Minister may require information about expenditure*

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

*Minister must not specify content of information*

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

*TSRA must not disclose certain material or information*

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

Section 142AA

---

*TSRA must ensure that privacy is not infringed*

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

*Limitations on TSRA's function to acquire land*

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

**142AA Conferring functions on TSRA**

- (1) For the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area, the Prime Minister may confer a departmental function on the TSRA.
- (1A) An instrument conferring a function under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (2) The power under subsection (1) must be exercised by notice in the *Gazette*.
- (3) In this section:

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

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

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

### **142C Powers of TSRA**

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

### **142D Torres Strait Development Plan**

- (1) The TSRA must formulate, and revise from time to time, a plan to be known as the Torres Strait Development Plan (the *Plan*).
- (2) The aim of the Plan is to improve the economic, social and cultural status of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area.
- (3) The Plan must outline the strategies and policies that the TSRA intends to adopt in order to implement the Plan, including, but not limited to, a marine strategy for the Torres Strait area.
- (4) Each Plan must relate to a period of at least 3 years and not more than 5 years.
- (5) The TSRA must review the Plan regularly.

Section 142E

---

- (6) The TSRA must perform its functions under this section in consultation with the Minister.
- (7) Without limiting the operation of the *Freedom of Information Act 1982*, the TSRA General Manager must ensure that copies of the Plan as in force from time to time are available for inspection and purchase at each office of the TSRA.
- (8) The TSRA General Manager must cause notice of the publication of the Plan to be published in the *Gazette*.

**142E Directions by Minister**

- (1) The TSRA must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.
- (2) The Minister must not give directions about the content of any advice, information or recommendation that may be given by the TSRA to a Minister, Department of State or authority of the Commonwealth.
- (3) The Minister must not give directions about the content of any advice, information or recommendation that may be given by the TSRA to:
  - (a) a Minister of a State or Territory; or
  - (b) a Department of State of a State or Territory; or
  - (c) an authority of a State or Territory;except for the purpose of protecting the confidentiality of information given to the TSRA by the Commonwealth or an authority of the Commonwealth.
- (4) Subject to subsection (5), the Minister must cause a copy of a direction to be laid before each House of the Parliament within 15 sitting days of that House after that direction was given.
- (5) The rule in subsection (4) does not apply if the laying of a copy of a direction before each House of the Parliament would result in the disclosure of a matter in a manner that would be inconsistent with the views or sensitivities of Torres Strait Islanders or Aboriginal persons.

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

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

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

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

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

Section 142GA

---

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

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

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

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

- (1) The TSRA may give written notice to an individual or body to whom a grant has been made under this Part, stating that the TSRA is satisfied that the individual or body has failed to fulfil a term or condition of the grant.
- (2) An individual or body who is given notice under subsection (1) is liable to pay to the TSRA an amount equal to:
  - (a) the amount of the grant; or
  - (b) so much of the grant as the TSRA specifies in the notice.

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

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

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

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

- (1) Any liability or obligation of an individual, a body corporate or an unincorporated body to the TSRA arising:
  - (a) under the terms and conditions of a grant or loan referred to in subsection 142F(2); or

Section 142K

---

- (b) under section 142H or 142J;  
is taken to be an interest of the TSRA in the land to which it relates.
- (2) The land is charged with the payment of all costs and expenses incurred by the TSRA in respect of its enforcement of the liability or obligation.

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

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

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

- (1) The TSRA may, from time to time:
- (a) review such aspects of the operation of:
- (i) this Part; and
- (ii) the remaining provisions of this Act, in so far as they relate to the TSRA;
- as the TSRA determines in writing; and
- (b) report to the Minister accordingly.
- (2) The TSRA must not review a matter mentioned in section 141.



- (3) The report to the Minister may include suggestions for amendments of this Act to solve problems identified in the report.
- (4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

#### **142M Advisory committees**

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

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

- (1) A member of an advisory committee established under section 142M who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the committee.

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

- (1) This section applies to an advisory committee established under section 142M.
- (2) The TSRA must terminate the appointment of a member of a committee if the member fails, without reasonable excuse, to comply with section 142N.

Section 142Q

---

- (3) Subsection (2) does not, by implication, limit the TSRA's power to terminate the appointment of a member of a committee.

**142Q Advisory committee—resignation**

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

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

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

- (1) Subject to any notice in force under section 142S, the TSRA consists of the eligible number of members elected in accordance with Division 5 of this Part.
- (1A) The Minister may fix the eligible number for the TSRA by notice in the *Gazette*.
- (1B) The number fixed must be at least 20 and not more than 23.
- (1C) The notice is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (2) The performance of the functions or the exercise of the powers of the TSRA is not affected by reason only that there are fewer than the eligible number of members of the TSRA.
- (3) If there are fewer than 7 members of the TSRA, the Minister may, subject to subsection (4), by notice in the *Gazette*:
  - (a) remove the remaining members (if any) of the TSRA from office; and
  - (b) appoint a TSRA Administrator to administer the affairs of the TSRA.
- (4) Subsection (3) does not apply if:
  - (a) there are casual vacancies in the membership of the TSRA; and
  - (b) some or all of those vacancies will be able to be filled in accordance with the TSRA election rules; and
  - (c) when those casual vacancies are filled, the TSRA will have at least 7 members.

Section 142S

---

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

- (1) The Minister may, by notice in the *Gazette*, declare that he or she is satisfied that the TSRA would best be able to represent the Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area if it consisted of, or included, persons elected to represent particular communities in that area under the Queensland Act.
- (2) The notice must also set out details of how the TSRA is to be constituted and, without limiting the generality of the foregoing, may make any of the following provisions:
  - (a) provision for some or all of the members of the TSRA to be persons elected under the Queensland Act to represent particular communities in the Torres Strait area;
  - (b) provision for some of the members of the TSRA to be elected under this Act to represent particular communities in the Torres Strait area;
  - (c) provision for the method and timing of election of members of the TSRA to whom provisions under paragraph (b) apply;
  - (d) provision for the term of office of members of the TSRA holding office under this section.
- (3) The notice may make such other provisions in relation to the constitution and operation of the TSRA as the Minister thinks necessary.
- (3A) If the eligible number has changed, the Minister may amend a notice to change the membership of the TSRA so that the number of members equals the eligible number.
- (3B) Subsection (3A) does not limit the Minister's power to revoke, amend or vary a notice.
- (4) A notice under this section has effect according to its terms.
- (5) A notice under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Division 5—TSRA elections**

### **142T TSRA elections**

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

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

### **142TA TSRA wards**

*Rules may divide Torres Strait area into wards*

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

*Significance of fixing designated number for a ward*

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

*Total of designated numbers for wards*

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

Section 142U

---

*When rules about wards take effect*

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

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

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

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

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

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

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

- (1) A person is not qualified to stand for election, or to be elected, as a member of the TSRA for a ward if:
- (a) the person is not entitled to vote at the TSRA ward election concerned; or
  - (b) the person is a member of the staff of, or a consultant to, the TSRA; or
  - (c) the person is bankrupt; or

Section 142W

---

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

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

- (1) Persons elected, or declared to have been elected, as members of the TSRA for a TSRA ward otherwise than at a by-election to fill a casual vacancy:
- (a) take office as members at the end of the election period concerned; and
  - (b) hold office, subject to this Part, until the end of the election period for the next TSRA election (other than a by-election or an election held for another ward in place of an election in relation to which the Federal Court of Australia has made an order under Schedule 4).

Section 142X

---

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

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

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

**142Y Timing of TSRA elections**

- (1) Subject to this section, TSRA elections must be held every 3 years during periods determined under the TSRA election rules having regard to the day or days fixed for the polling in accordance with this section.



- (2) The Minister must, by written notice, fix a day or days for the polling in each TSRA election.
- (3) The polling day or days for each TSRA election must be not later than the anniversary in the third calendar year, and each later third calendar year, of the day in 1994 on which the triennial election for an Island Council is held under the Queensland Act.

### **142Z Polling places**

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

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

- (1) The Minister must cause a copy of the notice under subsection 142Y(2) fixing a polling day or polling days for a TSRA election to be published in the *Gazette* at least 90 days before the day, or the first of the days, so fixed.
- (2) The Minister must cause to be published, together with the copy referred to in subsection (1):
  - (a) a copy of the most recent notice appointing polling places under section 142Z; and
  - (b) a notice setting out an estimate by the Minister, in relation to the Torres Strait area, of:
    - (i) the number of persons who will be entitled to vote at the forthcoming TSRA election; and
    - (ii) the number of persons living in that area who are Torres Strait Islanders or Aboriginal persons; and
  - (c) if the Torres Strait area is divided into wards—a notice setting out an estimate by the Minister, in relation to each ward, of:

**Section 143A**

---

- (i) the number of persons who will be entitled to vote at the forthcoming election for that ward; and
  - (ii) the number of persons living in that ward who are Torres Strait Islanders or Aboriginal persons.
- (3) A failure by the Minister to comply with this section does not invalidate the fixing of the day or days, or the appointing of the polling places, as the case requires.

**143A Effect of nominations**

- (1) If the number of candidates nominated for election as the member or members for a TSRA ward is equal to or less than the designated number for the ward, an authorised electoral officer must declare the candidate or candidates, as the case requires, to be duly elected. Subsection (3) may require deferral of the declaration.
- (2) If the number of candidates nominated for election as the member or members for a TSRA ward is more than the designated number for the ward, a poll must be held.
- (3) If subsection (1) applies to some, but not all, of the TSRA wards, all declarations (whether made under this section or otherwise) must be made on the same day for all the wards for which elections are being held.

**143B Voting not compulsory**

Voting at TSRA elections is not compulsory.

**143C Voting by secret ballot**

Voting at TSRA elections must be by secret ballot.

**143D Voting**

- (1) A voter must cast a vote at a TSRA election by marking the ballot paper to show the order of the voter's preference for the candidates.

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

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

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

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

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

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

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

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

Section 143G

---

**143G Rules for conduct of elections**

*Minister may make rules*

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

*Matters that may be dealt with in rules*

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

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

- (3) The rules may make provision entitling Torres Strait Islanders and Aboriginal persons to vote at TSRA elections even if they would not be entitled so to vote under subparagraph 142U(b)(i) and, without limiting the generality of the foregoing, may make provision about the following matters:
- (a) the determination of whether a person is entitled to vote if:
    - (i) the person's name is on the Commonwealth Electoral Roll; but
    - (ii) because of the *Commonwealth Electoral Act 1918*, the person's place of living or address is not shown on the Commonwealth Electoral Roll;
  - (aa) the determination of the ward in relation to which a person described in paragraph (a) may vote (if he or she is entitled to vote);
  - (b) how a vote cast by a person is to be dealt with if:
    - (i) the person was entitled to have his or her name on the Commonwealth Electoral Roll; but
    - (ii) the person's name was not on that Roll because of a mistake by a person exercising powers or performing functions under the *Commonwealth Electoral Act 1918*;
  - (c) the casting of a provisional vote by a person whose name does not, on the polling day, appear to be on the Commonwealth Electoral Roll;
  - (d) the circumstances in which a provisional vote cast under rules made under paragraph (c) is to be accepted.

*Penalties for breach of rules*

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

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

- (5) If:
- (a) the rules create an offence in relation to TSRA elections (***TSRA election offence***) that corresponds to an offence

Section 143H

---

under the *Commonwealth Electoral Act 1918*  
(*Commonwealth election offence*); and

- (b) the maximum pecuniary penalty for the Commonwealth election offence is more than the penalty that, by subsection (4), could be imposed for a breach of the rules; the rules may provide a maximum penalty for the TSRA election offence not exceeding the maximum pecuniary penalty for the corresponding Commonwealth election offence. However, nothing in this subsection enables the rules to provide penalties of imprisonment.

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

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

*Rules may take account of special circumstances*

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

*Rules are a disallowable instrument*

- (8) Rules are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**143H Authorised electoral officer**

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

**143I Disputed elections**

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

## **Division 6—Administrative provisions**

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

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

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

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

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

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

### **143M Acting appointments**

- (1) The Minister may, after consulting the TSRA, appoint a person to act in the office of a member of the TSRA during any period, or during all periods, when the member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) The Minister must not appoint a person to act in the office of a member of the TSRA unless, having regard to section 142V, the person is qualified to be elected as a member.



- (3) The appointment of a person to act in the office of a member of the TSRA who is also the Chairperson of the TSRA does not constitute an appointment of the person to act as the Chairperson.
- (4) The appointment of a person to act in the office of a member of the TSRA who is also the Deputy Chairperson of the TSRA does not constitute an appointment of the person to act as the Deputy Chairperson.
- (5) 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.

#### **143P Disclosure of interests**

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

*member* includes an acting member.

#### **143Q Resignation**

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

Section 143R

---

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

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

- (1) If the TSRA is satisfied that a member of the TSRA holding office under a notice under paragraph 142S(2)(a) or (b):
- (a) does not live in the Torres Strait area; and
  - (b) has not lived in the Torres Strait area at all during the immediately preceding period of 6 months;
- the TSRA may, in writing, declare that it is so satisfied.

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

- (1A) If the TSRA is satisfied that a member of the TSRA for a TSRA ward:
- (a) does not live in the ward; and
  - (b) has not lived in the ward at all during the immediately preceding 6 months;
- the TSRA may declare in writing that it is so satisfied.

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

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

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

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

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

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

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

*Minister may suspend member of the TSRA*

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

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

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

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

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

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

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

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

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

Section 143S

---

*Minister must remove member from office*

- (6) If a member of the TSRA:
- (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
  - (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
  - (c) who is the Chairperson of the TSRA, is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
  - (d) who is a part-time member, has been absent from 3 consecutive meetings of the TSRA without leave of the Minister and without reasonable excuse; or
  - (e) fails, without reasonable excuse, to comply with section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*; or
  - (f) becomes bankrupt; or
  - (g) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (h) compounds with his or her creditors; or
  - (i) makes an assignment of his or her remuneration for the benefit of his or her creditors;

the Minister must remove the member from office.

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

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

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

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

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

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

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

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

*valid petition* means a petition:

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

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

- (1) A member of the TSRA is not personally liable to an action or other proceeding for damages for or in relation to anything done or omitted to be done in good faith:

Section 143V

---

- (a) by the TSRA; or
  - (b) by the member in the capacity of member.
- (2) A TSRA Administrator is not personally liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done:
- (a) by the Torres Strait Regional Council before the TSRA Administrator was appointed; or
  - (b) by the TSRA before the TSRA Administrator was appointed; or
  - (c) in good faith by the TSRA Administrator in the capacity of TSRA Administrator.
- (3) This section does not apply to a liability that arises under the *Commonwealth Authorities and Companies Act 1997*.

**143V Other terms and conditions**

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

**143W Provisions relating to Chairperson**

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

**143X Resignation of Chairperson**

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

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

*Minister may suspend Chairperson*

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

*Minister must give Chairperson notice before suspension*

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

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

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

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

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

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

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

**Section 143Z**

---

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

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

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

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

**143Z Leave of absence for Chairpersons**

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

**144 Provisions relating to Deputy Chairpersons**

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



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

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

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

*Minister may suspend Deputy Chairperson*

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

*Minister must give Deputy Chairperson notice before suspension*

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

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

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

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

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

Section 144C

---

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

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

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

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

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

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

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

- (1) The Deputy Chairperson of the TSRA is to act as the Chairperson of the TSRA:
- (a) during a vacancy in the office of Chairperson of the TSRA, whether or not an election has previously been conducted for the office; or
  - (b) during any period, or during all periods, when the Chairperson of the TSRA is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because the occasion to act had not arisen or had ceased.

## **144D Alternate Deputy Chairperson**

### *Election of alternate*

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

### *Term of office*

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

### *Alternate to act as Deputy Chairperson*

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

### *Alternate to act as Chairperson*

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

Section 144E

---

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

*Validation of acts of alternate*

- (7) Anything done by or in relation to a person purporting to act under subsection (5) or (6) is not invalid merely because the occasion to act had not arisen or had ceased.

*Removal of alternate from office*

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

*Resignation of alternate*

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

**144E Meetings of TSRA**

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

- (1) The Chairperson of the TSRA:
  - (a) must convene at least 4 meetings of the TSRA in each financial year; and

- (b) may convene other meetings of the TSRA if, in the Chairperson's opinion, the meetings are necessary for the efficient performance of the TSRA's functions.

*Minister may convene meeting at any time*

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

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

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

*Quorum*

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

*Reduced quorum—disclosure of interest requirement*

- (5) If:
- (a) a member of the TSRA is required by section 27J of the *Commonwealth Authorities and Companies Act 1997* not to be present during the deliberations, or to take part in any decision, of the TSRA with respect to a particular matter; and
  - (b) when the member leaves the meeting concerned there is no longer a quorum present; and
  - (c) there are at least 8 members remaining at the meeting;
- those remaining members constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

*Chairperson of the TSRA to preside at meetings*

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

Section 144E

---

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

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

*Questions determined by majority*

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

*Person presiding may vote*

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

*TSRA may regulate conduct of proceedings*

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

*TSRA must keep minutes*

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

*TSRA may meet by telephone etc.*

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

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

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

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

- (14) A member of the TSRA who participates in a meeting as provided by subsection (12) is taken for the purposes of this section and section 27J of the *Commonwealth Authorities and Companies Act 1997* to be present at the meeting.

#### **144F Delegation to TSRA General Manager or staff member of TSRA**

*Delegation of certain functions and powers*

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

Section 144F

---

*TSRA General Manager may sub-delegate function or power*

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

*Delegation may prohibit sub-delegation*

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

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

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

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

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



## **Division 7—General Manager of TSRA**

### **144G TSRA General Manager**

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

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

- (1) The TSRA General Manager holds office for such period as is specified in the instrument of appointment.
- (2) The period must not be longer than:
  - (a) in the case of the first TSRA General Manager—2 years; and
  - (b) in any other case—5 years.

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

The TSRA General Manager is entitled to remuneration and allowances in accordance with section 194.

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

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

Section 144L

---

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

**144L Acting TSRA General Manager**

- (1) The Minister may, after consulting the TSRA, appoint a person to act as the TSRA General Manager:
- (a) during a vacancy in the office of TSRA General Manager, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the TSRA General Manager 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.

**144M Disclosure of interests**

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

### **144N Resignation**

The TSRA General Manager may resign by writing signed by him or her and sent to the Minister and the TSRA.

### **144P Termination of appointment**

- (1) The Minister may, with the TSRA's agreement, terminate the appointment of the TSRA General Manager because of incompetence, misbehaviour or physical or mental incapacity.
- (2) If the TSRA General Manager:
  - (a) is absent from duty, except on leave granted under section 144K for 14 consecutive days or for 28 days in any period of 12 months; or
  - (b) becomes bankrupt; or
  - (c) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (d) compounds with his or her creditors; or
  - (e) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (f) fails, without reasonable excuse, to comply with section 144M; or
  - (g) engages in paid employment outside the duties of the office of TSRA General Manager without the written consent of the Minister given after consulting the TSRA;the Minister must terminate the appointment of the TSRA General Manager.

### **144Q Other terms and conditions**

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

## **Division 8—Staff**

### **144R Staff**

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

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

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

### **144T Consultants**

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

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

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

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

## Division 9—Finances

### 144TA Money payable to TSRA

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

### 144U Application of money of the TSRA

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

*money of the TSRA* does not include:

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

### 144V TSRA Housing Fund

- (1) There is established by this subsection a fund to be known as the TSRA Housing Fund.
- (2) The following amounts are to be paid into the TSRA Housing Fund:
  - (a) such amounts as are paid to the TSRA as repayment of, or otherwise in respect of, housing loans made by the TSRA under section 142F or 142GA;

Section 144W

---

- (b) such amounts as are paid to the TSRA by any other person for the purposes of the TSRA Housing Fund;
  - (c) such amounts of the TSRA's money as the TSRA determines in writing.
- (3) Money in the TSRA Housing Fund may only be applied:
- (a) in making housing loans to individuals or bodies; or
  - (b) in making loans to individuals or bodies to enable the individuals or bodies to provide housing for Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; or
  - (c) in making grants of money for the purposes of enabling Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area to obtain housing loans from lenders operating on a commercial basis.
- (3A) Subsection (3) does not prevent the investment of money under section 18 of the *Commonwealth Authorities and Companies Act 1997*.
- (4) The TSRA must prepare estimates of the receipts of, and expenditure from, the TSRA Housing Fund for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the TSRA must submit estimates so prepared to the Minister not later than such date as the Minister directs.
- (5) Money in the TSRA Housing Fund must not be spent otherwise than in accordance with estimates of expenditure approved by the Minister.

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

- (1) There is established by this subsection a fund to be known as the TSRA Land and Natural Resources Fund.
- (2) There is to be paid into the TSRA Land and Natural Resources Fund such amounts of the TSRA's money as the TSRA determines in writing.
- (3) Money in the TSRA Land and Natural Resources Fund may be spent only:
  - (a) in developing and implementing the marine strategy referred to in subsection 142D(3); or

**Section 144X**

---

- (b) in developing or maintaining real estate; or
  - (c) in acquiring an interest in land under subsection 142F(3); or
  - (d) in making a grant of money under section 142F or 142GA on condition that the money be spent for a purpose described in paragraph (a) or (b) or in acquiring an interest in land.
- (4) Subsection (3) does not prevent the investment of money under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

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

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

*bank* has the same meaning as it has in the *Commonwealth Authorities and Companies Act 1997*.

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

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

**144Z Exemption from taxation**

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



### **144ZA Estimates**

- (1) The TSRA must:
  - (a) prepare estimates, in such form as the Minister directs, of the expenditure of the TSRA for each financial year and, if the Minister so directs, for any other period specified by the Minister; and
  - (b) give those estimates to the Minister not later than such date as the Minister directs.
- (2) Money paid to the TSRA under section 144TA must not be expended by the TSRA otherwise than in accordance with estimates of expenditure approved by the Minister.
- (3) Despite subsection (2), the amount spent by the TSRA in relation to a matter covered by a particular item in approved estimates may differ from the amount allocated to that item in those estimates by not more than 10% of the amount so allocated.
- (4) Subsection (3) does not empower the TSRA to spend or pay amounts that exceed in total the total amount covered by approved estimates.
- (5) Section 14 of the *Commonwealth Authorities and Companies Act 1997* does not apply to the TSRA.

### **144ZB Annual report**

*TSRA must prepare report*

- (1) In this section, **annual report** means the annual report of the TSRA prepared under section 9 of the *Commonwealth Authorities and Companies Act 1997*.

*Certain matters must be included in report*

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

Section 144ZD

---

*Report must include details of grants*

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

*Report must not disclose sacred matters*

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

*Report must include certain details about consultants*

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

**144ZD TSRA Finance Directions**

*Minister must give directions to TSRA*

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

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

- (1A) Directions under subsection (1) must not be inconsistent with:
- (a) this Act or the regulations under this Act; or
  - (b) the *Commonwealth Authorities and Companies Act 1997*, or regulations or Finance Minister's Orders made under that Act.

*TSRA must comply with directions*

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

*TSRA must make directions available*

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

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

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

## **Division 10—Minister may ask TSRA for information**

### **144ZE Minister may ask TSRA for information**

- (1) The Minister may from time to time ask the TSRA for information about the TSRA's activities.
- (2) The TSRA must give the Minister the information he or she asks for.

## **Division 11—TSRA Administrators**

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

A TSRA Administrator appointed to administer the affairs of the TSRA:

- (a) must do so until the new members of the TSRA take office; and
- (b) has all the functions and powers of the TSRA; and
- (c) has all powers necessary to rectify any problems in the affairs of the TSRA.

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

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

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

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

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

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

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

- (1) A TSRA Administrator is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant a TSRA Administrator leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister determines in writing.

### **144ZL Other terms and conditions**

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

Section 144ZM

---

**144ZM Disclosure of interests**

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

*TSRA Administrator* includes an acting TSRA Administrator.

**144ZN Termination of appointment**

*Minister may terminate TSRA Administrator's appointment*

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

*Minister must terminate TSRA Administrator's appointment*

- (2) If a TSRA Administrator:
  - (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or

Section 144ZP

---

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

the Minister must terminate the TSRA Administrator's appointment.

**144ZP Acting TSRA Administrator**

- (1) The Minister may appoint a person to act as a TSRA Administrator:
  - (a) during a vacancy in an office of TSRA Administrator; or
  - (b) during any period, or during all periods, when a TSRA Administrator is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;but a person appointed to act during a vacancy must not continue so to act for more than 6 months.
- (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.

Section 144ZQ

---

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

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



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

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

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

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

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

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

Note: The *Commonwealth Authorities and Companies Act 1997* applies to Indigenous Business Australia. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

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

#### **146 Purposes of Indigenous Business Australia**

Indigenous Business Australia is established:

- (a) to assist and enhance Aboriginal and Torres Strait Islander self-management and economic self-sufficiency; and

Section 146

---

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

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

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

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

### **148 Performance of functions**

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

Section 149

---

- (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.

**149 Corporate plan**

- (1) The Indigenous Business Australia Board must from time to time prepare a corporate plan:
- (a) setting out a statement of Indigenous Business Australia's objectives; and
  - (b) outlining the strategies and policies that the Board intends to adopt in order to achieve those objectives, with particular reference to the Board's intentions in relation to investments, loans, guarantees and other financial aspects of its operations.
- (2) Each corporate plan shall relate to a period of at least 3 years and not more than 5 years.
- (3) The corporation shall review the corporate plan regularly.

**150 Consideration of corporate plan by Minister**

- (2) Indigenous Business Australia shall give a copy of the corporate plan to the Minister.
- (3) The Minister may, by notice in writing to the Indigenous Business Australia Board, request the Board to change the corporate plan in specified respects.
- (4) The Minister shall cause a copy of the corporate plan to be laid before each House of the Parliament within 15 sitting days of that House after receipt by the Minister.
- (5) The Minister shall cause a copy of any notice given under subsection (3) to be laid before each House of the Parliament within 15 sitting days of that House after it is given.

### **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*.

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

- (1) Subject to section 153 and Division 8, Indigenous Business Australia has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of Indigenous Business Australia under subsection (1) include, but are not limited to, the following powers:
  - (a) to enter into contracts (including contracts for the provision of business or housing loans);
  - (aa) to make grants for purposes associated with business loans or housing loans;
  - (b) to invest money of Indigenous Business Australia;
  - (c) to appoint agents and attorneys, and act as an agent for other persons;
  - (d) to form, and participate in the formation of, companies;
  - (e) to subscribe for and purchase shares in, and debentures and other securities of, companies;
  - (f) to enter into partnerships;

**Section 153**

---

- (g) to participate in joint ventures and arrangements for the sharing of profits;
  - (h) to accept gifts, grants, bequests and devises made to it;
  - (j) to act as trustee of money and other property vested in it on trust;
  - (k) to charge for the provision of services by it.
- (2A) Despite any other provision of this Act, in making a housing loan or business loan, or in making a grant, or giving a guarantee in relation to such a loan, Indigenous Business Australia must be satisfied that the making of the grant or loan, or the giving of the guarantee, will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.
- (2B) A grant or loan made by Indigenous Business Australia is subject to such terms and conditions as Indigenous Business Australia determines.
- (3) In spite of anything contained in this Act, any money or other property held by Indigenous Business Australia on trust shall be dealt with in accordance with the powers and duties of Indigenous Business Australia as trustee.
- (4) The powers of Indigenous Business Australia may be exercised within or outside Australia.

**153 Guarantees**

- (1) If the Indigenous Business Australia Board is satisfied that money lent or to be lent to any person will be used in a way that furthers the commercial or economic development of Aboriginal persons or Torres Strait Islanders, Indigenous Business Australia may guarantee the due payment of all moneys (including interest) payable by the borrower in accordance with the terms and conditions of the loan concerned.
- (1A) If Indigenous Business Australia is satisfied that a housing loan or business loan made, or to be made, to any person will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders, Indigenous Business Australia may guarantee the due payment of all money (including interest) payable by the person in accordance with the terms and conditions of the loan.

- (2) The operation of this section is subject to such limits as the Finance Minister determines as to the total amount of money (other than interest) the payment of which may at any time be the subject of guarantees under this section.
- (3) Indigenous Business Australia shall not give guarantees except under this section.

**154 Minister may ask for information**

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

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

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

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

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

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

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

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



**158 Selection of Indigenous Business Australia Directors**

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

## **Division 4—Administrative provisions**

### **159 Period of appointment**

- (1) An Indigenous Business Australia Director holds office for such period as is specified in the instrument of appointment.
- (1A) The period must not be longer than 5 years.

### **160 Remuneration and allowances**

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

### **161 Leave of absence**

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

## **162 Acting appointments**

- (1) The Deputy Chairperson of the Indigenous Business Australia Board shall act as the Indigenous Business Australia Chairperson:
  - (a) during a vacancy in the office of Indigenous Business Australia Chairperson, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Indigenous Business Australia Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
  
- (2) The Minister may appoint an Indigenous Business Australia Director to act as the Deputy Chairperson of the Indigenous Business Australia Board:
  - (a) during a vacancy in the office of Deputy Chairperson of the Board, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Deputy Chairperson of the Board is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;but a person appointed to act during a vacancy must not continue so to act for more than 6 months.
  
- (3) The Minister may appoint a person to act as an Indigenous Business Australia Director (other than the Chairperson or Deputy Chairperson) of the Indigenous Business Australia Board:
  - (a) during a vacancy in an office of Indigenous Business Australia Director, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when an Indigenous Business Australia Director is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;but a person appointed to act during a vacancy must not continue so to act for more than 6 months.
  
- (4) The Minister shall not appoint a person to act in an office unless, having regard to section 157, the person could be appointed to that office.

Section 164

---

- (5) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen;
  - (b) there was a defect or irregularity in connection with the appointment;
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**164 Resignation**

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

**165 Termination of appointment**

- (1) The Minister may, after consulting Indigenous Business Australia, terminate the appointment of an Indigenous Business Australia Director because of misbehaviour or physical or mental incapacity.
- (2) If an Indigenous Business Australia Director:
- (a) is absent, except on leave granted under section 161, from 3 consecutive meetings of the Indigenous Business Australia Board; or
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (c) fails, without reasonable excuse, to comply with section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;
- the Minister must terminate the Director's appointment.

**166 Other terms and conditions**

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

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

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

- (1) The Indigenous Business Australia Chairperson shall convene such meetings of the Indigenous Business Australia Board as, in the Chairperson's opinion, are necessary for the efficient performance of the Indigenous Business Australia Board's responsibilities.
- (2) At a meeting of the Indigenous Business Australia Board a quorum is constituted by 5 Indigenous Business Australia Directors.
- (3) Where:
  - (a) an Indigenous Business Australia Director who is present at a meeting is required by section 27J of the *Commonwealth Authorities and Companies Act 1997* not to be present during the deliberations, or to take part in any decision, of Indigenous Business Australia Board with respect to a particular matter; and
  - (b) when Indigenous Business Australia Director leaves the meeting there is no longer a quorum present;  
Indigenous Business Australia Directors remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.
- (4) The Indigenous Business Australia Chairperson shall preside at all meetings of the Indigenous Business Australia Board at which he or she is present.
- (5) If the Indigenous Business Australia Chairperson is not present at a meeting of the Indigenous Business Australia Board:
  - (a) if the Deputy Chairperson of the Indigenous Business Australia Board is present, the Deputy Chairperson of the Indigenous Business Australia Board shall preside at the meeting; and
  - (b) in any other case, the Indigenous Business Australia Directors present shall elect one of their number to preside at the meeting.

**Part 4** Indigenous Business Australia

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

Section 167

---

- (6) Questions arising at a meeting of the Indigenous Business Australia Board shall be determined by a majority of the votes of the Indigenous Business Australia Directors present and voting.
- (7) The person presiding at a meeting of the Indigenous Business Australia Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (8) The Indigenous Business Australia Board may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.
- (9) If the Indigenous Business Australia Board so determines, an Indigenous Business Australia Director may participate in, and form part of a quorum at, a meeting of the Indigenous Business Australia Board by means of any of the following methods of communication:
  - (a) telephone;
  - (b) closed circuit television;
  - (c) another method of communication determined by the Indigenous Business Australia Board.
- (10) A determination of the Indigenous Business Australia Board under subsection (9) may be made in respect of a particular meeting, or in respect of all meetings, of the Indigenous Business Australia Board.
- (11) An Indigenous Business Australia Director who participates in a meeting as provided by subsection (9) shall be taken for the purposes of this section and section 27J of the *Commonwealth Authorities and Companies Act 1997* to be present at the meeting.

## **Division 6—Indigenous Business Australia General Manager**

### **168 Indigenous Business Australia General Manager**

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

### **169 Term of appointment**

- (1) The Indigenous Business Australia General Manager shall be appointed for a term not longer than 5 years from a day specified in the instrument of appointment.

### **170 Holding of office**

The Indigenous Business Australia General Manager holds office during the Indigenous Business Australia Board's pleasure.

### **171 Remuneration and allowances**

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

Section 172

---

**172 Acting Indigenous Business Australia General Manager**

- (1) The Indigenous Business Australia Board may appoint a person to act as the Indigenous Business Australia General Manager:
  - (a) during a vacancy in the office of Indigenous Business Australia General Manager, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Indigenous Business Australia General Manager is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;but a person appointed to act during a vacancy shall not continue so to act for more than 6 months.
- (2) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen;
  - (b) there was a defect or irregularity in connection with the appointment;
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**172A Disclosure of interests**

- (1) The Indigenous Business Australia General Manager must give written notice to the Minister and the Chairperson of the Indigenous Business Australia Board of all direct or indirect pecuniary interests that the General Manager has or acquires in any business or in any body corporate that carries on a business.
- (2) If the Indigenous Business Australia General Manager has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Indigenous Business Australia Board, the General Manager must, as soon as possible after becoming aware of the relevant facts, disclose the nature of the interest to the Chairperson of the Board in writing.



### **173 Resignation**

The Indigenous Business Australia General Manager may resign by writing signed by him or her and sent to the Indigenous Business Australia Board.

### **174 Other terms and conditions**

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

## **Division 7—Staff**

### **175 Staff**

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

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

The Indigenous Business Australia General Manager may, on behalf of Indigenous Business Australia, make arrangements for the services of officers or employees of:

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

### **178 Consultants**

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

## **Division 8—Finances**

### **179 Capital of Indigenous Business Australia**

The capital of Indigenous Business Australia consists of:

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

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

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

### **181A New Housing Fund**

- (1) There is established a fund to be known as the New Housing Fund.

Section 181A

---

- (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 ATSIIC 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.

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

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

- (a) prepared by a member of the staff of Indigenous Business Australia; and

Section 183

---

- (b) endorsed by or on behalf of the Indigenous Business Australia General Manager.

**183 Borrowing for temporary purposes**

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

*money of Indigenous Business Australia* does not include:

  - (a) money held in trust by Indigenous Business Australia; or
  - (b) money in the New Housing Fund.

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

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

**185 Giving of security over assets**

- (1) Indigenous Business Australia may give security over the whole or any part of its assets:
  - (a) for the repayment by Indigenous Business Australia of money borrowed under section 183 and the payment by Indigenous Business Australia of interest (including interest on interest) on money so borrowed; or
  - (b) in connection with a guarantee given by Indigenous Business Australia under section 153;and not otherwise.

- (2) In this section, the reference to assets of Indigenous Business Australia does not include a reference to:
- (a) money held in trust by Indigenous Business Australia; or
  - (b) money in the New Housing Fund; or
  - (c) any money owed to Indigenous Business Australia on a housing loan made, or treated as having been made, from the New Housing Fund.

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

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

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

### **188 Exemption from taxation**

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

### **189 Annual report and financial statements**

- (1) 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.

Section 189

---

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



## **Division 9—Miscellaneous**

### **190 Delegation to Indigenous Business Australia General Manager or member of staff**

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

### **191 Secrecy**

- (1) This section applies to a person:
  - (a) who is or has been an Indigenous Business Australia Director or acting Indigenous Business Australia Director;
  - (b) who is or has been the Indigenous Business Australia General Manager or an acting Indigenous Business Australia General Manager;
  - (c) who is or has been employed or engaged under section 175 or 178;
  - (d) who is performing, or who has performed, duties on behalf of Indigenous Business Australia pursuant to an arrangement under section 176; or
  - (e) whose services are being or have been made available to Indigenous Business Australia pursuant to an arrangement under section 177.

Section 191

---

- (2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act, or of a prosecution for an offence against this Act:
- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the first-mentioned person in the performance of duties for the purposes of this Act; or
  - (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: 50 penalty units.

- (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*).

- (3) A person to whom this section applies shall not be required to divulge or communicate to a court any information referred to in subsection (2) or to produce in a court any document referred to in that subsection, except when it is necessary to do so for the purposes of this Act, or of a prosecution for an offence against this Act.
- (4) A reference in this section to an *offence against this Act* includes a reference to:
- (a) an offence against section 6 of the *Crimes Act 1914*; or
  - (aa) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
  - (b) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the *Criminal Code*;
- where the offence relates to this Act.
- (5) In this section:
- court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.
- produce* includes permit access to.
- this Act* includes the regulations.

## **Part 4A—Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Account**

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

#### **191A Indigenous Land Corporation**

##### *Establishment*

- (1) An Indigenous Land Corporation is established.

##### *Body corporate*

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

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Indigenous Land Corporation. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

##### *Seal*

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

##### *Imprint of seal*

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

**191B Purposes of Indigenous Land Corporation**

The Indigenous Land Corporation is established:

- (a) to assist Aboriginal persons and Torres Strait Islanders to acquire land; and
- (b) to assist Aboriginal persons and Torres Strait Islanders to manage indigenous-held land;

so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders.

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

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

The Indigenous Land Corporation has the following functions:

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

### **191D Land acquisition functions of Indigenous Land Corporation**

#### *Functions*

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

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

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

#### *Grants may be subject to conditions*

- (1A) The grant of an interest in land 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*.

*Grants—terms and conditions*

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

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

*Guarantees—terms and conditions*

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

*Performance of functions*

- (3) For the purpose of the performance of the Indigenous Land Corporation's land acquisition functions, the Indigenous Land Corporation must give priority to the following:
- (a) pursuing a policy of:
    - (i) acquiring interests in land and granting the interests to Aboriginal or Torres Strait Islander corporations; or
    - (ii) in cases where the Indigenous Land Corporation grants money to Aboriginal or Torres Strait Islander corporations for the acquisition of interests in land—acting as the agent of the Aboriginal or Torres Strait Islander corporations in connection with those acquisitions;
- except where the circumstances make the pursuit of such a policy impracticable or inadvisable;

Section 191E

---

- (b) in a case where the Indigenous Land Corporation acquires an interest in land for the purpose of making a grant of the interest to an Aboriginal or Torres Strait Islander corporation—that grant being made within a reasonable time after that acquisition.

*Searches under Native Title Act*

- (4) In performing its land acquisition functions, the Indigenous Land Corporation must search any relevant Registers of the National Native Title Tribunal to ascertain whether any claims have been lodged or accepted or determined in relation to land under consideration for acquisition.

**191E Land management functions of Indigenous Land Corporation**

*Functions*

- (1) The **land management functions** of the Indigenous Land Corporation are as follows:
  - (a) to carry on, or arrange for the carrying on of, land management activities in relation to indigenous-held land under agreements with the holders of the land;
  - (b) to carry on, or arrange for the carrying on of, land management activities in relation to land held by the Indigenous Land Corporation;
  - (c) to carry on other land management activities in relation to indigenous-held land;
  - (d) to make grants of money for the carrying on of land management activities in relation to indigenous-held land;
  - (e) to make loans of money (whether secured or unsecured) for the purpose of carrying on land management activities in relation to indigenous-held land;
  - (f) to guarantee loans made for the purpose of carrying on land management activities in relation to indigenous-held land.

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

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

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



**Section 191E**

---

*Land management activities relating to particular indigenous-held land*

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

*Grants—terms and conditions*

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

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

*Loans—terms and conditions*

- (2A) The Indigenous Land Corporation may make a loan of money on terms and conditions that must relate to:
- (a) the purposes for which the money may be spent; or
  - (b) the period within which the money is to be spent; or
  - (c) the acquittal of money spent; or
  - (d) the giving of information relating to the loan; or
  - (e) the repayment of the loan; or
  - (f) the payment of interest (including interest on interest); or
  - (g) if the loan is secured—the loan security.

*Guarantees—terms and conditions*

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

Section 191E

---

*Performance of functions*

- (3) For the purposes of the performance of the Indigenous Land Corporation's land management functions, the Indigenous Land Corporation must give priority to the following:
- (a) pursuing sound land and environmental management practices;
  - (b) pursuing a policy of granting money or making loans only where the Indigenous Land Corporation considers that alternative approaches (such as guaranteeing loans obtained from external sources or carrying on land management activities under an agreement with the holders of indigenous-held land) are impracticable;
  - (c) in a case where the Indigenous Land Corporation carries on, or arranges for the carrying on of, land management activities under agreements with holders of indigenous-held land—directly involving the holders of the land in those activities.

*Agreements may involve third parties*

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

*Definition*

- (5) In this section:

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

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

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

**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.

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

*Sound business principles*

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

*Relevant matters*

- (2) For the purpose of the performance of the Indigenous Land Corporation's functions, the Indigenous Land Corporation must give priority to the following:
  - (aa) ensuring that, as far as practicable, Aboriginal persons or Torres Strait Islanders derive social or cultural benefits as a result of the performance of those functions;

**Section 191G**

---

- (a) ensuring that the Indigenous Land Corporation has access to the skills and resources required to perform its functions;
- (b) maximising the employment of Aboriginal persons and Torres Strait Islanders;
- (c) maximising the use of goods and services provided by businesses owned or controlled (whether directly or indirectly) by Aboriginal persons or Torres Strait Islanders.

*Functions additional to functions of other bodies etc.*

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

*Sacred matters*

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

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

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

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

*Arrangements with subsidiaries*

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

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

*Matters covered by arrangements*

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

*Restrictions on performance of functions*

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

*Generality of arrangements*

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

*Indigenous Land Corporation may continue to perform functions*

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

*When subsidiary taken to perform a corresponding function*

- (6) For the purposes of this Act and any other law of the Commonwealth, a subsidiary of the Indigenous Land Corporation is taken to perform a function corresponding to a particular function of the Indigenous Land Corporation if, and only if, the

**Section 191H**

---

subsidiary performs the first-mentioned function under an arrangement under this section.

*Independent function*

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

**191H Powers of Indigenous Land Corporation**

*General powers*

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

*Specific powers*

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

*Trusts*

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

*Extra-territorial exercise of powers*

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

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

*When section applies*

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

*Guidelines to be made available*

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

**191J Disposal of surplus land**

*When section applies*

- (1) This section applies if:
- (a) either:
- (i) the Indigenous Land Corporation has acquired an interest in land:
- (A) under paragraph 191D(1)(b); or
- (B) by way of a gift, grant, bequest or devise made to it; or

**Section 191L**

---

- (ii) a subsidiary of the Indigenous Land Corporation has acquired an interest in land:
  - (A) as a result of the performance by it of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(b); or
  - (B) by way of a gift, grant, bequest or devise made to it for the purpose of the performance by it of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(a); and
- (b) the Indigenous Land Corporation or the subsidiary, as the case requires, considers that it no longer needs to hold the interest for the purpose of making a grant of the interest to an Aboriginal or Torres Strait Islander corporation within a reasonable time after that acquisition.

*Disposal of surplus land*

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

**191L Powers of Minister**

- (1) Except as expressly provided in this Act or the *Commonwealth Authorities and Companies Act 1997*, the Minister is not empowered to direct the Indigenous Land Corporation in relation to any of its activities.
- (2) In performing its functions and exercising its powers in relation to the expenditure, during the period starting on ATSIIC abolition day and ending immediately before Regional Councils abolition day, of money that, before ATSIIC 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.



**Section 191L**

---

- (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*.

### **Division 3—National indigenous land strategy and regional indigenous land strategies**

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

*Indigenous Land Corporation Board to prepare national strategy*

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

*Contents of national indigenous land strategy*

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

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

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

*Period to which national indigenous land strategy is to relate*

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

*Review of national indigenous land strategy*

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

*Copy to be given to Minister*

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

*Copy to be tabled in each House*

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

**191P Regional indigenous land strategies**

*Indigenous Land Corporation Board to prepare regional indigenous land strategies*

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

*Indigenous Land Corporation Board to determine regional areas*

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

Note: A regional area need not correspond to a region under section 91.

*Regional areas*

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

*Contents of regional indigenous land strategy*

- (4) A regional strategy relating to a regional area must cover, but is not limited to, the following matters:
- (a) the acquisition of interests in land in the regional area for the purpose of making grants of those interests to Aboriginal or Torres Strait Islander corporations;

**Section 191Q**

---

- (b) land management issues relating to indigenous-held land in the regional area;
- (c) environmental management issues relating to indigenous-held land in the regional area.

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

*Consultation on regional indigenous land strategies*

- (5) In performing functions under this section in connection with a regional area, the Indigenous Land Corporation Board:
  - (a) must, if any part of a region is included in the regional area, consult the Regional Council for the region; and
  - (b) may consult such other persons and bodies as the Board considers appropriate.

*Period to which regional indigenous land strategy is to relate*

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

*Review*

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

*Copy to Minister on request*

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

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

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

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

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

*Strategies to be made available*

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

*Fee may be charged*

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

## **Division 4—Dealings in land granted by Indigenous Land Corporation**

### **191S Restriction on right to dispose of, or charge, property**

*When section applies*

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

*Disposals and charges prohibited*

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

*Purported disposals to be of no effect*

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

*Purported charges to be of no effect*

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

*Definition*

- (5) In this section:
- charge** means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise.

**191SA Indigenous Land Corporation's interest in land**

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

**191SB Interest in land of subsidiary of Indigenous Land Corporation**

- (1) Any liability or obligation of a body corporate to a subsidiary of the Indigenous Land Corporation arising:
- (a) under the terms and conditions of a grant, loan or guarantee made or given by the subsidiary under an arrangement referred to in subsection 191G(1); or
  - (b) under section 191S;

**Section 191T**

---

is taken to be an interest of the subsidiary in the land to which the liability or obligation relates.

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

**191T Surrender of land to Indigenous Land Corporation**

*When this section applies*

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

*Surrender of interest to Indigenous Land Corporation*

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

*Effect of surrender of interest*

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



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

*When section applies*

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

*No claims*

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

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

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

#### *Board*

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

#### *Composition of Board*

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

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

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

### **191W Responsibilities of Indigenous Land Corporation Board**

It is the responsibility of the Indigenous Land Corporation Board, subject to any direction from the Minister under subsection 191L(2), to ensure the proper and efficient performance of the functions of the Indigenous Land Corporation and to determine the policy of the Corporation with respect to any matter.

### **191X Appointment of Indigenous Land Corporation Directors**

#### *Appointment by Minister*

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

#### *Aboriginal persons/Torres Strait Islanders*

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

#### *Consultation*

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

#### *Qualifications*

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

Section 191Y

---

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

*When section applies*

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

*Automatic re-appointment*

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

*Tenure*

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

## **Division 6—Administrative provisions**

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

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

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

*General rule—part-time basis*

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

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

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

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

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

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

*When section applies*

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

*No outside employment*

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

Section 192C

---

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

*When this section applies*

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

*Grant of leave*

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

*Delegation*

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

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

*Indigenous Land Corporation Chairperson to whom this section applies*

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

*Recreation leave*

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

*Other leave*

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

**192E Acting appointments**

*Acting Chairperson*

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

*Acting Deputy Chairperson*

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

*Acting Director*

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

**Section 192F**

---

*Eligibility for acting appointment*

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

*Validation*

- (5) 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.

**192F Disclosure of interests**

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

- (3) If the Indigenous Land Corporation Chairperson holds office on a full-time basis, the Chairperson must give written notice to the Minister of all direct or indirect pecuniary interests that the Chairperson has or acquires in any business, or in any body corporate carrying on a business.

**192G Resignation**

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

**192H Termination of appointment**

*Misbehaviour or incapacity*

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



*Bankruptcy, conflict of interest etc.*

- (2) If an Indigenous Land Corporation Director:
- (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with his or her creditors; or
  - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (e) fails, without reasonable excuse, to comply with section 192F of this Act or section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;
- the Minister must terminate the appointment of the Director.

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

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

*Part-time Directors—unauthorised absence*

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

### **192I Other terms and conditions**

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

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

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

#### *Chairperson to convene meetings*

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

#### *Quorum*

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

#### *Quorum if Director excluded under section 27J of the Commonwealth Authorities and Companies Act 1997*

- (3) If:
  - (a) an Indigenous Land Corporation Director who is present at a meeting is required by section 27J of the *Commonwealth Authorities and Companies Act 1997* not to be present during the deliberations, or to take part in any decision, of the Indigenous Land Corporation Board with respect to a particular matter; and
  - (b) when the Director leaves the meeting there is no longer a quorum present;

the Indigenous Land Corporation Directors remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

#### *Chairperson to preside at meetings*

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

*Arrangements if Chairperson not present at a meeting*

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

*Voting*

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

*Deliberative vote*

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

*Procedure and minutes*

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

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

## **Division 8—Indigenous Land Corporation General Manager**

### **192K Indigenous Land Corporation General Manager**

#### *Appointment*

- (1) There is to be a General Manager of the Indigenous Land Corporation, who is to be appointed by the Indigenous Land Corporation Board.

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

- (2) Subject to subsection (3), the Indigenous Land Corporation General Manager must manage the day-to-day administration of the Indigenous Land Corporation.

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

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

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

The Indigenous Land Corporation General Manager holds office for such period as is specified in the instrument of appointment. The period must not exceed 4 years.

### **192M Holding of office**

The Indigenous Land Corporation General Manager holds office during the pleasure of the Indigenous Land Corporation Board.

**192N Remuneration and allowances of Indigenous Land Corporation General Manager**

The Indigenous Land Corporation General Manager is to be paid such remuneration and allowances as are determined by the Indigenous Land Corporation Board in writing.

**192P Acting Indigenous Land Corporation General Manager**

*Acting appointment*

- (1) The Indigenous Land Corporation Board may appoint a person to act as the Indigenous Land Corporation General Manager:
- (a) during a vacancy in the office of General Manager, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the General Manager 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.

*Validation*

- (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.

**192Q Resignation**

The Indigenous Land Corporation General Manager may resign by writing signed by him or her and sent to the Indigenous Land Corporation Board.

**Part 4A** Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Account

**Division 8** Indigenous Land Corporation General Manager

Section 192R

---

**192R Other terms and conditions**

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

## **Division 9—Staff**

### **192S Staff**

#### *Engagement of staff*

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

#### *Terms and conditions*

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

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

#### *Indigenous Business Australia staff*

- (2) The Indigenous Land Corporation General Manager may make arrangements with the Indigenous Business Australia General Manager for the performance of duties by the staff of Indigenous Business Australia on behalf of the Indigenous Land Corporation.

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

The Indigenous Land Corporation General Manager may, on behalf of the Indigenous Land Corporation, make arrangements for the services of officers or employees of:

- (a) the Public Service of the Commonwealth or of a State or Territory; or
  - (b) an authority of the Commonwealth or of a State or Territory; or
  - (c) any other organisation or body;
- to be made available to the Indigenous Land Corporation.

Section 192V

---

**192V Consultants**

*Engagement of consultants*

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

*Terms and conditions*

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



## **Division 10—Aboriginal and Torres Strait Islander Land Account**

### **192W Aboriginal and Torres Strait Islander Land Account**

#### *Land Account*

- (1) There is continued in existence the Aboriginal and Torres Strait Islander Land Account.

Note: The Account was established by subsection 5(3) of the *Financial Management Legislation Amendment Act 1999*.

- (2) The Land Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.
- (3) So far as practicable, an amount standing to the credit of the Land Account that is not required for the purpose of making payments must be invested under section 39 of the *Financial Management and Accountability Act 1997*.
- (4) If income is received by the Commonwealth from the investment of an amount standing to the credit of the Land Account, an amount equal to the income must be credited to the Land Account.

### **192X Purpose of Land Account**

The purpose of the Land Account is the making of payments to the Indigenous Land Corporation under this Division.

### **192Y Business day**

For the purposes of this Division, a *business day* is a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

### **192Z Transfer of money etc. from the fund established under repealed Part 10 of the *Native Title Act 1993***

- (1) This section applies to the money and investments of the fund established under the repealed Part 10 of the *Native Title Act 1993* before the commencement of this section.

Section 193

---

- (2) On the commencement of this subsection, the money and investments become, by force of this subsection, money and investments of the Land Account.

**193 Credits to Land Account in category A years**

*Second category A year*

- (1) On the first business day in the second category A year, there is to be credited to the Land Account the amount worked out using the formula:

Indexation factor  $\times$  \$121 million

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

Note: **Business day** is defined by section 192Y.

*Later category A years*

- (2) On the first business day in each later category A year, there is to be credited to the Land Account the amount worked out using the formula:

Indexation factor  $\times$  Previous year's amount

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

**Previous year's amount** means the amount credited to the Land Account under this section in the previous financial year.

Note: **Business day** is defined by section 192Y.

*Rounding down*

- (3) If the result of applying the formula set out in subsection (1) or (2) is an amount of dollars and cents, the cents are to be disregarded.

**193AA Credit to Land Account in first category B year**

*Top-up payment—first category B year*

- (1) If the target amount for the tenth category A year exceeds the sum of:
- (a) the uninvested money standing to the credit of the Land Account immediately before the end of that year; and
  - (b) the amount that, in the opinion of the Finance Minister, represents the market value of investments of the Land Account (other than fixed-interest investments) immediately before the end of that year, having regard to the relevant audited financial statements; and
  - (c) the amount that, in the opinion of the Finance Minister, represents the book value of fixed-interest investments of the Land Account immediately before the end of that year, having regard to the relevant audited financial statements;
- then, on the first business day in October in the first category B year, there is to be credited to the Land Account an amount equal to the excess.

Note 1: **Target amount** is defined by subsections (2) and (3).

Note 2: **Designated funding amount** is defined by section 193A.

Note 3: **Business day** is defined by section 192Y.

*Target amount—second category A year*

- (2) For the purposes of this section, the **target amount** for the second category A year is the amount worked out using the formula:

Indexation factor × \$1,106 million

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

*Target amount—later category A years*

- (3) For the purposes of this section, the **target amount** for a later category A year is the amount worked out using the formula:

Indexation factor × Previous year's target amount

where:

Section 193A

---

**Indexation factor** means the indexation factor for the year worked out under section 193D.

**Previous year's target amount** means the target amount for the previous category A year.

**193A Payments out of Land Account to Indigenous Land Corporation—category A years**

*First category A year*

- (1) In the first category A year, there is to be paid to the Indigenous Land Corporation, out of the Land Account, \$25 million. The payment is to be made on a business day nominated by the Minister. The nominated day must be within 30 days after the beginning of the first category A year.

Note: **Business day** is defined by section 192Y.

*Later category A years*

- (2) On the second business day in the second category A year or a later category A year, there is to be paid to the Indigenous Land Corporation, out of the Land Account, an amount equal to the designated funding amount for the year.

Note 1: **Business day** is defined by section 192Y.

Note 2: **Designated funding amount** is defined by subsections (4), (5), (6) and (7).

*Designated funding amount—second category A year*

- (4) For the purposes of this Division, the **designated funding amount** for the second category A year is the amount worked out using the formula:

Indexation factor × \$24 million

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

*Designated funding amount—third category A year*

- (5) For the purposes of this Division, the **designated funding amount** for the third category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \frac{\text{Previous year's designated funding amount}}{\text{designated funding amount}}$$

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

**Previous year's designated funding amount** means the designated funding amount for the previous category A year.

*Designated funding amount—fourth category A year*

- (6) For the purposes of this Division, the **designated funding amount** for the fourth category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \frac{\text{Adjusted previous year's designated funding amount}}{\text{designated funding amount}}$$

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

**Adjusted previous year's designated funding amount** means the amount that would have been the designated funding amount for the previous category A year if the reference in subsection (4) to \$24 million were a reference to \$45 million.

*Designated funding amount—later category A years*

- (7) For the purposes of this Division, the designated funding amount for a later category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \frac{\text{Previous year's designated funding amount}}{\text{designated funding amount}}$$

where:

Section 193C

---

***Indexation factor*** means the indexation factor for the year worked out under section 193D.

***Previous year's designated funding amount*** means the designated funding amount for the previous category A year.

*Rounding down*

- (8) If the result of applying the formula set out in subsection (4), (5), (6) or (7) is an amount of dollars and cents, the cents are to be disregarded.

**193C Payments out of Land Account to Indigenous Land Corporation—category B years**

*Payments*

- (1) On the last business day in a category B year, there is to be paid to the Indigenous Land Corporation, out of the Land Account, an amount equal to the designated funding amount for the year.

Note 1: ***Business day*** is defined by section 192Y.

Note 2: ***Designated funding amount*** is defined by subsection (3).

*Designated funding amount*

- (3) For the purposes of this Division, the ***designated funding amount*** for a category B year is equal to the realised real return on the investments of the Land Account in respect of the previous financial year.

*Method of measuring inflation*

- (4) For the purposes of subsection (3), inflation for a financial year is to be measured using the indexation factor for the next financial year worked out under section 193D.

**193D Indexation factor***Indexation factor—category A year*

- (1) The indexation factor for a category A year is worked out using the following formula (and then rounded under subsection (3)):

$$\frac{\text{Sum of index numbers for quarters in first March year}}{\text{Sum of index numbers for quarters in second March year}}$$

where:

**first March year** means the period of 12 months ending on 31 March immediately before the category A year.

**index number**, for a quarter, means the implicit price deflator for gross non-farm product (trend) published by the Australian Statistician in respect of the quarter (ignoring any later number that may be published by the Australian Statistician in substitution for it).

**second March year** means the period of 12 months immediately before the first March year.

*Indexation factor—category B year*

- (2) The indexation factor for a category B year is worked out using the following formula (and then rounded under subsection (3)):

$$\frac{\text{Sum of index numbers for quarters in first June year}}{\text{Sum of index numbers for quarters in second June year}}$$

where:

**first June year** means the period of 12 months ending on 30 June immediately before the category B year.

**index number**, for a quarter, means the implicit price deflator for gross non-farm product (trend) published by the Australian Statistician in respect of the quarter (ignoring any later number that may be published by the Australian Statistician in substitution for it).

**second June year** means the period of 12 months immediately before the first June year.

**Section 193E**

---

*Rounding the indexation factor*

- (3) A result under subsection (1) or (2) must be rounded up or down to 3 decimal places (rounding up in the case exactly half-way between).

*Change in statistical reference base*

- (4) For the purposes of applying the formula component ***index number*** in subsection (1) or (2), if:
- (a) at any time, whether before or after the commencement of this subsection, the Australian Statistician has changed or changes the reference base for the implicit price deflator for gross non-farm product (trend);
- then:
- (b) after the change, only numbers published in terms of the new base are to be used.

**193E Advances on account of payments**

*Advances*

- (1) If the Minister is satisfied that, because of special circumstances, it is appropriate to do so, he or she may, on behalf of the Commonwealth, make an advance on account of payments that may become payable to the Indigenous Land Corporation under section 193A or 193C during a specified financial year.

*Advance to be paid out of amount standing to the credit of the Land Account*

- (2) An advance is to be debited and paid by the Commonwealth out of the amount standing to the credit of the Land Account.

*Repayment of excess advances*

- (3) If, at the end of the specified financial year, the Indigenous Land Corporation has received a total amount, by way of advances on account of payments that may become payable to the Corporation under section 193A or 193C during that financial year, that is greater than the total amount (if any) that became payable to the Corporation under section 193A or 193C during that financial year,



the Corporation is liable to pay to the Commonwealth the amount of the excess.

*Credits to Land Account*

- (4) If the Indigenous Land Corporation pays an amount under subsection (3), an amount equal to that amount is to be credited to the Land Account.

*Recovery of excess advances*

- (6) If the Indigenous Land Corporation is liable to pay an amount to the Commonwealth under subsection (3):
- (a) the amount may be recovered, as a debt due to the Commonwealth, by action in a court of competent jurisdiction; or
  - (b) the amount may be deducted from any other amount that is payable to the Corporation under this Division, and if the amount is so deducted, the other amount is taken to have been paid in full to the Corporation.

**193G Consultative forum on investment policy of the Land Account**

*Consultative forum to be convened by Minister*

- (1) The Minister must convene, at least twice each financial year, a meeting between:
- (a) 2 or more Indigenous Land Corporation Directors nominated by the Indigenous Land Corporation Board; and
  - (b) any person to whom the Finance Minister has delegated powers conferred on the Finance Minister by section 39 of the *Financial Management and Accountability Act 1997*, in so far as those powers relate to the Land Account; and
  - (c) such other persons (if any) as the Minister considers appropriate;

for the purpose of discussing the investment policy of the Land Account.

*Minister may attend meeting*

- (2) The Minister may attend a meeting convened under subsection (1).

**Section 193H**

---

*Minister to provide information*

- (2A) A person who is, or is to be, a participant in a meeting convened under subsection (1) may request the Minister to provide to each participant in the meeting such information as is specified in the request. The specified information must relate to the management and/or performance of the investments of the Land Account. The Minister must comply with the request.

*First category A year deemed to be a financial year*

- (3) For the purposes of this section, the first category A year is taken to be a financial year.

**193H Accounts and financial statements**

- (1) The Secretary of the Department must keep accounts, and prepare financial statements, in such form as the Finance Minister determines, in respect of the Land Account.
- (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 ATSIIC 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*.

**193I Annual report about Land Account**

*Annual report—general*

- (1) The Minister must, as soon as practicable after the end of 30 June in each year, cause to be prepared a report about the administration of the Land Account, and the operation of this Division, during the financial year ended on that date.

*Annual report—specific matters*

- (2) Without limiting subsection (1), a report relating to a financial year must include the following information:
- (a) particulars of amounts credited to the Land Account during the financial year;
  - (b) particulars of amounts paid out of the Land Account during the financial year;
  - (c) particulars of investments of the Land Account;
  - (d) the realised real return on investments of the Land Account in respect of the financial year;
  - (e) such other information (if any) as is specified in the regulations.
- (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).

*Tabling of annual report*

- (3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

*Reporting obligations are in addition to other obligations*

- (4) The obligations imposed by this section are in addition to, and not instead of, obligations imposed by any other law of the Commonwealth.

*Realised real return*

- (5) For the purposes of paragraph (2)(d), inflation for a financial year is to be measured using the indexation factor for the next financial year worked out under section 193D.

*First category A year deemed to be a financial year*

- (6) For the purposes of this section, the first category A year is taken to be a financial year.

## **Division 11—Finances**

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

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

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

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

### **193K Modifications of Commonwealth Authorities and Companies Act**

- (1) Subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* does not apply to the Indigenous Land Corporation.
- (2) The annual report of the Indigenous Land Corporation under section 9 of the *Commonwealth Authorities and Companies Act 1997* must include such additional information (if any) as is specified in the regulations under this Act.
- (3) Division 2 of Part 3 (except section 10) of the *Commonwealth Authorities and Companies Act 1997* applies as if the first category A year were a financial year.

## 193L Borrowing

### *Power to borrow*

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

### *Borrowing*

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

is more than the borrowing limit for the year. For this purpose, the first category A year is taken to be a financial year.

Note: **Borrowing limit** is defined by subsections (3), (4), (5), (6), (7) and (8).

### *Borrowing limit—first category A year*

- (3) For the purposes of this section, the **borrowing limit** for the first category A year is \$100 million.

### *Borrowing limit—second category A year*

- (4) For the purposes of this section, the **borrowing limit** for the second category A year is the amount worked out using the formula:

Indexation factor  $\times$  \$100

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

Section 193L

---

*Borrowing limit—third category A year*

- (5) For the purposes of this section, the ***borrowing limit*** for the third category A year is the amount worked out using the formula:

Indexation factor  $\times$  Previous year's borrowing limit

where:

***Indexation factor*** means the indexation factor for the year worked out under section 193D.

***Previous year's borrowing limit*** means the borrowing limit for the previous financial year.

*Borrowing limit—fourth category A year*

- (6) For the purposes of this section, the ***borrowing limit*** for the fourth category A year is \$200 million.

*Borrowing limit—fifth category A year*

- (7) For the purposes of this section, the ***borrowing limit*** for the fifth category A year is the amount worked out using the formula:

Indexation factor  $\times$  \$200 million

where:

***Indexation factor*** means the indexation factor for the year worked out under section 193D.

*Borrowing limit—later financial years*

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

Indexation factor  $\times$  Previous year's borrowing limit

where:

***Indexation factor*** means the indexation factor for the year worked out under section 193D.

***Previous year's borrowing limit*** means the borrowing limit for the previous financial year.

*Validity of transactions*

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

*Section to be sole source of power to borrow*

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

*Money not to be raised except by borrowing*

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

**193M Giving of security over assets**

- (1) The Indigenous Land Corporation may give security over the whole or any part of its assets:
- (a) for the repayment by the Indigenous Land Corporation of money borrowed under section 193L and the payment by the Indigenous Land Corporation of interest (including interest on interest) on money so borrowed; or
  - (b) in connection with a guarantee given by the Indigenous Land Corporation;
- and not otherwise.
- (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.

**193N Limit on guarantees**

*Limit*

- (1) The Indigenous Land Corporation must not guarantee a loan in a financial year if the sum of:
- (a) the contingent liabilities to which it would be subject if the proposed guarantee were to be given; and

Section 193N

---

- (b) its current borrowings; and
- (c) the total of its liabilities (whether actual or contingent) in respect of guarantees; and
- (d) the current borrowings of its subsidiaries; and
- (e) the total of the liabilities (whether actual or contingent) of its subsidiaries in respect of guarantees;

is more than the guarantee limit for the financial year. For this purpose, the first category A year is taken to be a financial year.

Note: *Guarantee limit* is defined by subsections (2), (3), (4), (5), (6) and (7).

*Guarantee limit—first category A year*

- (2) For the purposes of this section, the *guarantee limit* for the first category A year is \$100 million.

*Guarantee limit—second category A year*

- (3) For the purposes of this section, the *guarantee limit* for the second category A year is the amount worked out using the formula:

Indexation factor  $\times$  \$100 million

where:

*Indexation factor* means the indexation factor for the year worked out under section 193D.

*Guarantee limit—third category A year*

- (4) For the purposes of this section, the *guarantee limit* for the third category A year is the amount worked out using the formula:

Indexation factor  $\times$  Previous year's guarantee limit

where:

*Indexation factor* means the indexation factor for the year worked out under section 193D.

*Previous year's guarantee limit* means the guarantee limit for the previous financial year.



Section 193P

---

*Guarantee limit—fourth category A year*

- (5) For the purposes of this section, the **guarantee limit** for the fourth category A year is \$200 million.

*Guarantee limit—fifth category A year*

- (6) For the purposes of this section, the **guarantee limit** for the fifth category A year is the amount worked out using the formula:

Indexation factor × \$200 million

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

*Guarantee limit—later financial years*

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

Indexation factor × Previous year's guarantee limit

where:

**Indexation factor** means the indexation factor for the year worked out under section 193D.

**Previous year's guarantee limit** means the guarantee limit for the previous financial year.

*Validity of transactions*

- (8) A failure to comply with subsection (1) does not affect the validity of any transaction.

### 193P Exemption from taxation

The Indigenous Land Corporation is not subject to taxation under a law of the Commonwealth, a State or a Territory.

Section 193Q

---

**193Q Foreign subsidiaries**

*No foreign subsidiaries*

- (1) The Indigenous Land Corporation must take all reasonable steps to ensure that a company incorporated in a foreign country does not become a subsidiary of the Indigenous Land Corporation.

*Exception—Minister’s consent*

- (2) Subsection (1) does not apply if the Minister has given written consent to the company becoming or being a subsidiary of the Indigenous Land Corporation.

## Division 12—Exemption from stamp duty etc.

### 193R Exemption from stamp duty etc.

#### *Definition*

(1) In this section:

*exempt matter* means:

- (a) the grant of an interest in land by the Indigenous Land Corporation under paragraph 191D(1)(a), if the grant occurs within 12 months after the interest was acquired by the Indigenous Land Corporation; or
- (b) an agreement relating to such a grant; or
- (c) the grant of an interest in land by a subsidiary of the Indigenous Land Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(a), if the grant occurs within 12 months after the interest was acquired by the subsidiary; or
- (d) an agreement relating to a grant referred to in paragraph (c); or
- (f) an agreement relating to a grant referred to in paragraph (e); or
- (g) the disposal of an interest in land by a body corporate under section 191T; or
- (h) an agreement relating to a disposal referred to in paragraph (g); or
- (i) the receipt of money by a body corporate, or by a person acting on behalf of a body corporate, in respect of a disposal referred to in paragraph (g).

#### *Exemption*

- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
  - (a) an exempt matter; or

**Part 4A** Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Account

**Division 12** Exemption from stamp duty etc.

**Section 193R**

---

- (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

## Division 13—Secrecy

### 193S Secrecy

#### *Definitions*

- (1) In this section:

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

***ILC officer*** means a person:

- (a) who is or has been an Indigenous Land Corporation Director or an acting Indigenous Land Corporation Director; or
- (b) who is or has been the Indigenous Land Corporation General Manager or an acting Indigenous Land Corporation General Manager; or
- (c) who is or has been employed or engaged under section 192S or 192V; or
- (d) who is performing, or who has performed, duties on behalf of the Indigenous Land Corporation under an arrangement under section 192T; or
- (e) whose services are being, or have been, made available to the Indigenous Land Corporation under an arrangement under section 192U; or
- (f) who is or has been a director or employee of a subsidiary of the Indigenous Land Corporation.

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

#### *Information and documents to which this section applies*

- (2) This section applies to information acquired, or a document obtained, by an ILC officer:
- (a) in connection with the performance of a function, or the exercise of a power, of the Indigenous Land Corporation; or
  - (b) in connection with the performance by a subsidiary of the Indigenous Land Corporation of a function that corresponds to a function of the Indigenous Land Corporation; or

**Section 193S**

---

- (c) in connection with the exercise of a power by a subsidiary of the Indigenous Land Corporation, where the power relates to such a corresponding function.

*ILC officer not to disclose certain information*

- (3) Subject to this section, an ILC officer must not, either directly or indirectly:
  - (a) disclose to any person any information concerning the affairs of another person acquired by the ILC officer, where:
    - (i) the information was acquired by the ILC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
    - (ii) disclosure of the information could reasonably be expected to prejudice substantially the commercial interests of the other person; or
  - (b) disclose to any person information acquired by the ILC officer, where, to the knowledge of the ILC officer:
    - (i) the information is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
    - (ii) the disclosure would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders; or
  - (c) produce to any person a document relating to the affairs of another person, where:
    - (i) the document was obtained by the ILC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
    - (ii) the production of the document could reasonably be expected to prejudice substantially the commercial interests of the other person; or
  - (d) produce to any person a document obtained by the ILC officer, where, to the knowledge of the ILC officer:
    - (i) the document contains information that is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
    - (ii) the production of the document would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders.

*Offence*

- (4) A person who contravenes subsection (3) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

*ILC officer not required to disclose certain information to a court*

- (5) Subject to this section, an ILC officer must not be required to:
- (a) disclose to a court any information concerning the affairs of another person acquired by the ILC officer, where:
    - (i) the information was acquired by the ILC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
    - (ii) disclosure of the information could reasonably be expected to prejudice substantially the commercial interests of the other person; or
  - (b) disclose to a court information acquired by the ILC officer, where:
    - (i) the information is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
    - (ii) the disclosure would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders; or
  - (c) produce to a court a document relating to the affairs of another person, where:
    - (i) the document was obtained by the ILC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
    - (ii) the production of the document could reasonably be expected to prejudice substantially the commercial interests of the other person; or
  - (d) produce to a court a document obtained by the ILC officer, where:
    - (i) the document contains information that is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and

Section 193S

---

- (ii) the production of the document would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders.

*Exception—disclosure for the purposes of performance of functions etc.*

- (6) Subsections (3) and (5) do not apply to the disclosure of information, or the production of a document, if the disclosure or production, as the case requires, is for the purposes of:
  - (a) the performance of a function, or the exercise of a power, of the Indigenous Land Corporation; or
  - (b) the performance by a subsidiary of the Indigenous Land Corporation of a function that corresponds to a function of the Indigenous Land Corporation; or
  - (c) the exercise of a power by a subsidiary of the Indigenous Land Corporation, where the power relates to such a corresponding function.

*Exception—prosecutions*

- (7) Paragraphs (3)(a), (3)(c), (5)(a) and (5)(c) do not apply to the disclosure of information, or the production of a document, if the disclosure or production, as the case requires, is for the purposes of a criminal proceeding.



## **Division 14—Delegation**

### **193T Delegation to Indigenous Land Corporation General Manager or member of staff**

The Indigenous Land Corporation may, by writing under its seal, delegate any or all of its functions and powers to the Indigenous Land Corporation General Manager or to a member of the staff of the Corporation.

## 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

Section 193X

---

(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

(ca) when requested to do so by the Minister—to evaluate or audit the activities or operations of a Land Council (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); and

(cb) when requested to do so by the Minister—to evaluate or audit the activities or operations of any body corporate or other person that has received an amount:

(i) under a determination under subsection 35(2), (3) or (6) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; or

(ii) under subsection 35(3) of that Act in accordance with an agreement mentioned in that subsection; or

(iii) under subsection 35(4) of that Act that the Land Council concerned has advised, under subsection 35(4A) of that Act, is an accountable amount; or

(iv) under subsection 35(4B) of that Act; or

(v) under subsection 35(11) of that Act in relation to an amount covered by subparagraph (i), (ii), (iii) or (iv) of this paragraph; or

- (vi) under subsection 67B(6) of that Act that the Land Council concerned has advised, under subsection 67B(7) of that Act, is an accountable amount; but only to the extent that the evaluation or audit concerns that amount or the income or other benefit derived from that amount; and
  - (cc) when requested to do so by the Minister—to evaluate or audit the activities of any individual or organisation that has received an amount under subsection 64(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, but only to the extent that the evaluation or audit concerns that amount or the income or other benefit derived from that amount; 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,
-

**Section 193Z**

---

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.

Section 193ZF

---

- (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).

Section 193ZG

---

- (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 5—Miscellaneous**

### **194 Remuneration and allowances**

- (1) The following provisions apply in relation to the holder of an office who is, by a provision of this Act, entitled to remuneration and allowances in accordance with this section:
  - (a) the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal;
  - (b) if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined, in writing, by the Minister;
  - (c) the holder of the office shall be paid such allowances as are determined, in writing, by the Minister.
- (2) A determination by the Minister for the purposes of paragraph (1)(b) or (c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **195A Review by TSRA of delegates' decisions**

- (1) If a delegate of the TSRA:
  - (a) refuses a loan under section 142F to an individual; or
  - (b) refuses to give a guarantee under section 142G in respect of a loan made or to be made to an individual;the individual may, within 30 days after being notified of the refusal, request the TSRA to reconsider the matter.
- (2) If a request is made, the TSRA must reconsider the matter and must decide whether to make the loan or to give the guarantee.

### **196A Review by Administrative Appeals Tribunal**

- (1) An application may be made to the Administrative Appeals Tribunal for review of:

Section 197

---

- (a) a decision made by the TSRA to refuse a loan under section 142F to an individual; or
  - (b) a decision made by the TSRA to refuse to give a guarantee under section 142G in respect of a loan made or to be made to an individual; or
  - (c) a decision made by the TSRA to give notice to a person or body under subsection 142H(1) or (3); or
  - (d) a decision of the TSRA to make a declaration under subsection 143R(1) or (1A); or
  - (e) any other decision of the TSRA included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section; or
  - (f) any decision made under the TSRA election rules included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section.
- (2) If the TSRA notifies a person of a decision of a kind referred to in subsection (1), the notice must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision by or on behalf of a person whose interests are affected by the decision.
- (3) A failure to comply with subsection (2) in relation to a decision does not affect the validity of the decision.
- (4) In this section:

*decision made by the TSRA* does not include a decision made by a delegate of the TSRA.

**197 Offences—guarantees, grants and loans**

- (1) A person shall not, in or in connection with a claim under a guarantee given under this Act, make a statement that the person knows to be false or misleading in a material particular or present a document that, to the person's knowledge, contains information that is false or misleading in a material particular.

Penalty: Imprisonment for 5 years or 100 penalty units.

**198 Offences—elections**

- (1) A person shall not, in relation to an election under this Act, ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for the person or any other person, on an understanding that:
- (a) any vote of the first-mentioned person;
  - (b) any candidature of the first-mentioned person;
  - (c) any support of, or opposition to, a candidate or a group of candidates by the first-mentioned person; or
  - (d) the doing of any act or thing by the first-mentioned person:
    - (i) with the intention of influencing the preferences set out in the vote of an elector; or
    - (ii) with the likely result that the preferences set out in the vote of an elector are influenced;
- will, in any manner, be influenced or affected.

Penalty: 50 penalty units.

- (2) A person shall not, in relation to an election under this Act, with the intention of influencing or affecting:
- (a) any vote of another person;
  - (b) any candidature of another person;
  - (c) any support of, or opposition to, a candidate or a group of candidates by another person; or
  - (d) the doing of any act or thing by another person:
    - (i) with the intention of influencing the preferences set out in the vote of an elector; or
    - (ii) with the likely result that the preferences set out in the vote of an elector are influenced;
- give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.

Penalty: 50 penalty units.

- (3) A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act.

Penalty: 10 penalty units.

Section 199

---

- (3A) A person must not make a statement to another person, either orally or in writing, as to the other person's right to vote in an election under this Act if the person making the statement knows that the statement is false or misleading in a material particular.

Penalty: 25 penalty units.

- (3B) A person must not encourage another person to vote in an election under this Act if the first-mentioned person knows that the other person is not entitled to vote in the election.

Penalty: 25 penalty units.

- (4) This section does not apply in relation to a declaration of public policy or a promise of public action.

**199 Conduct of directors, servants and agents**

- (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercises due diligence to avoid the conduct.
- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the servant or agent had the state of mind.

- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to:
- (a) an offence created by the regulations, the Regional Council election rules or the TSRA election rules; and
  - (b) an offence created by:
    - (i) section 6 of the *Crimes Act 1914*; or
    - (ii) section 11.1, 11.2, 11.4 or 11.5 of the *Criminal Code*; or
    - (iii) section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the *Criminal Code*;

Section 200

---

being an offence that relates to this Act, the regulations, the Regional Council election rules or the TSRA election rules.

- (10) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

## 200 Aboriginal Hostels Limited

- (1) The staff required to assist Aboriginal Hostels Limited in the performance of its functions shall, in spite of anything in the constituent documents of Aboriginal Hostels Limited, be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
- (a) the General Manager of Aboriginal Hostels Limited, and the APS employees assisting Aboriginal Hostels Limited, together constitute a Statutory Agency; and
  - (b) the General Manager of Aboriginal Hostels Limited is the Head of that Statutory Agency.
- (6) For the purposes of the *Administrative Decisions (Judicial Review) Act 1977*, if Aboriginal Hostels Limited makes a decision relating to any of the following applications:
- (a) an application by an incorporated body for the provision of accommodation for one or more Aboriginal persons or Torres Strait Islanders;
  - (b) an application for a grant under the scheme known as the Community Support Hostel Grant Scheme, where the grant relates to expenditure associated with the establishment or operation of a hostel, or a residential care service within the meaning of the *Aged Care Act 1997*;
  - (c) an application for a grant under the scheme known as the Student Rent Subsidy Scheme;
- the decision is taken to be a decision of an administrative character made under an enactment.
- (7) The Minister may, on behalf of the Commonwealth, enter into an agreement with Aboriginal Hostels Limited.



- (8) The Minister must cause notice of the making of the agreement to be published in the *Gazette*.
- (9) An agreement between the Commonwealth and Aboriginal Hostels Limited that was in force immediately before the commencement of this subsection is taken to have been made under subsection (7).

**200A Secrecy**

- (1) This section applies to a person who:
  - (a) has been, at any time:
    - (i) a member of the Aboriginal and Torres Strait Islander Commission (the *former Commission*) before the abolition of Commission on ATSIC abolition day; or
    - (ii) a member of a committee that was established by the former Commission to advise it in relation to the performance of its functions; or
    - (iii) the Chief Executive Officer of the former Commission; or
    - (iv) a member of the staff of the former Commission; or
    - (v) engaged as a consultant by the former Commission; or
    - (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

Section 200A

---

- (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 Delegation by Finance Minister**

- (1) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under section 142G, 144X, 153 or 183 to an official (within the meaning of the *Financial Management and Accountability Act 1997*).
- (2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

### **200C Delegations**

- (1) Subject to subsection (2) the Minister may, by written instrument, delegate to:
- (a) the Secretary of the Department; or
  - (b) an SES employee or acting SES employee;
- all or any of the powers or functions conferred on the Minister under this Act.
- (2) Subsection (1) does not apply to:
- (c) the power to give directions to Indigenous Business Australia under section 151; or

Section 201

---

- (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*.

**201 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, the Regional Council election rules or the TSRA election rules, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may:
  - (b) make provision in relation to the conduct of elections for the purposes of section 143L or 144D including, without limiting the generality of the foregoing, provision for a system of optional preferential voting to be used in such elections;
  - (c) make provision in relation to requests under subsection 195A(1) and the reconsideration of matters under subsection 195A(2);
  - (d) prescribe fees payable in respect of any matter under this Act; and
  - (e) provide penalties for breaches of the regulations not exceeding:
    - (i) in the case of a natural person—\$1,000; or
    - (ii) in the case of a body corporate—\$5,000.

## **Part 6—Transitional provisions**

### **Division 1—Preliminary**

#### **202 Interpretation**

In this Part, unless the contrary intention appears:

*ADC Act* means the *Aboriginal Development Commission Act 1980*.

*assets* means property of every kind, and, without limiting the generality of the foregoing, includes:

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

*authorised officer* means the Minister, the Chief Executive Officer or a member of the staff of the successor Commission authorised by the Minister in writing for the purposes of this Part.

*commencement* means the commencement of this Act.

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

*old Commission* means the Aboriginal Development Commission.

*old Commission instrument* means an instrument:

- (a) to which the old Commission was a party;
- (b) that was given to or in favour of the old Commission;
- (c) in which a reference is made to the old Commission; or

**Part 6** Transitional provisions

**Division 1** Preliminary

Section 202

---

(d) under which money is, or may become, payable, or any other property is to be, or may become liable to be, transferred to or by the old Commission;

being an instrument subsisting immediately before the commencement.

***old Department*** means the Department of Aboriginal Affairs.

***successor Commission*** means the Aboriginal and Torres Strait Islander Commission.

## **Division 3—Transitional provisions relating to Aboriginal Development Commission and Department of Aboriginal Affairs**

### **206 Transfer of assets and liabilities of old Department**

- (1) The Minister may, in writing, declare that a specified asset of the Commonwealth that was, before the commencement, used by the old Department is to be transferred to Indigenous Business Australia or to the Indigenous Land Corporation.
- (2) Where the Minister makes a declaration under subsection (1), the asset specified in the declaration becomes an asset of Indigenous Business Australia or of the Indigenous Land Corporation, as provided by the declaration.
- (3) The Minister may, in writing, declare that a specified liability of the Commonwealth incurred before the commencement in connection with the operation of the old Department is to become a liability of Indigenous Business Australia or of the Indigenous Land Corporation.
- (4) Where the Minister makes a declaration under subsection (3), the liability specified in the declaration becomes a liability of Indigenous Business Australia or of the Indigenous Land Corporation, as provided by the declaration.
- (5) Liabilities of the Commonwealth that have become liabilities of Indigenous Business Australia or of the Indigenous Land Corporation because of subsection (4) are, after the commencement, taken to be liabilities incurred by Indigenous Business Australia or by the Indigenous Land Corporation, as the case requires, in the performance of its functions and the exercise of its powers.

### **211 Old Commission instruments**

- (1) An old Commission instrument continues to have effect after the commencement but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring after that

**Part 6** Transitional provisions

**Division 3** Transitional provisions relating to Aboriginal Development Commission and Department of Aboriginal Affairs

**Section 215**

---

commencement, has effect as if a reference in the instrument to the old Commission were a reference to the appropriate new body.

- (2) For the purposes of the application of subsection (1) in relation to an old Commission instrument, the appropriate new body is:
- (a) in the case of an instrument relating to an asset or liability that has, because of section 208 of this Act as in force before 17 April 2001, or because of section 210 of this Act as in force before ATSIC abolition day, become an asset or liability of the body previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and now known as Indigenous Business Australia—Indigenous Business Australia; or
  - (b) in the case of an instrument relating to a liability that has, because of a declaration under subsection 209(1) of this Act as in force before ATSIC abolition day, become a liability of the Commonwealth—the Commonwealth; or
  - (c) in any other case—the successor Commission.

**215 Certificates relating to assets, liabilities and instruments**

- (1) An authorised officer may certify, in writing, that:
- (a) an asset or liability specified or described in the certificate became, because of section 207 of this Act as in force before ATSIC abolition day, an asset or liability of the successor Commission; or
  - (b) an asset or liability specified or described in the certificate became, because of section 208 of this Act as in force before 17 April 2001, an asset or liability of the body previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and now known as Indigenous Business Australia; or
  - (c) an instrument specified or described in the certificate is an old Commission instrument for the purposes of section 211 of this Act as in force before ATSIC abolition day.
- (2) A certificate under subsection (1) is, in all courts and for all purposes, evidence of the matter stated in the certificate.



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

### **216 Exemption from taxation**

An instrument is not subject to stamp duty or any other tax under a law of the Commonwealth or of a State or Territory if an authorised officer certifies, in writing, that the instrument was made or given because of, or for a purpose connected with, or arising out of, the operation of this Division.

## **Division 4—General transitional provisions**

### **219 Transfer of staff to Australian Public Service**

Section 81B of the *Public Service Act 1922* has effect in relation to any person who, immediately before the commencement:

- (a) was employed by the old Commission or Aboriginal Hostels Limited; and
- (b) was an unattached officer for the purposes of the *Public Service Act 1922*;

as if the person had ceased to be an officer of the Australian Public Service immediately before the commencement.

### **220 Operation of Superannuation Benefit (Interim Arrangement) Act**

- (1) The Superannuation Act and any related law apply in relation to any person who:

- (a) before the commencement, was employed by the old Commission; and
- (b) after the commencement, is employed under the *Public Service Act 1922* in the successor Commission;

as if:

- (c) the person's employer was in each case the same body; and
- (d) the continuity of the person's employment was not affected by the abolition of the old Commission and the establishment of the successor Commission.

- (2) The Superannuation Act and any related law apply in relation to any person who:

- (a) before the commencement, was employed by Aboriginal Hostels Limited; and
- (b) after the commencement, is employed under the *Public Service Act 1922* in Aboriginal Hostels Limited;

as if:

- (c) the person's employer was in each case the same body; and
- (d) the continuity of the person's employment was not affected by the changes made by this Act to the staffing arrangements in respect of Aboriginal Hostels Limited.

(3) In this section:

*related law* means any law of the Commonwealth to the extent that it relates to the superannuation benefits covered by the Superannuation Act.

*Superannuation Act* means the *Superannuation Benefit (Interim Arrangement) Act 1988*.

## **222 State or Territory officer may act on certificate**

Where:

- (a) under section 206 or 207, or under section 208 of this Act as previously in force, an estate or interest in land has become or becomes an asset of the new Commission, or of the body previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and now known as Indigenous Business Australia; and
- (b) a certificate that:
  - (i) identifies the land and the estate or interest;
  - (ii) states that the estate or interest has, because of that section, become an asset of the new Commission, or of the body previously known as the Aboriginal and Torres Strait Islander Commercial Development Corporation and now known as Indigenous Business Australia, as the case may be; and
  - (iii) is signed by an officer of the Attorney-General's Department authorised by the Secretary to that Department to give such certificates;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

the officer with whom the certificate is lodged may deal with and give effect to the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the estate or interest to the new Commission or Indigenous Business Australia, as the case may be, duly executed under the laws in force in that state or Territory.

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

---

## **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

---

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

Sections 111 and 143E

1. In a TSRA ward election for 2 or more members for the ward concerned, the scrutiny shall be conducted, and the several vacancies shall be filled, in the manner set out in this Schedule.
2. Where, for the purposes of this Schedule:
  - (a) the number of ballot papers or votes in any category is required to be ascertained;
  - (b) a quota, a transfer value or the order of standing of continuing candidates in a poll is required to be determined;
  - or
  - (c) a candidate is required to be identified;the authorised electoral officer shall ascertain the number, determine the quota, transfer value or order, or identify the candidate, as the case may be.
3. The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by one more than the designated number in relation to the ward and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.
4. Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this clause called *surplus votes*) of each elected candidate shall be transferred to the continuing candidates as follows:

- (a) the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by him or her and the resulting fraction shall be the transfer value;
- (b) the total number of ballot papers of the elected candidate that express the first preference vote for him or her and the next available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;

and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

- 5. Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under clause 4, or elected subsequently under this clause, shall be transferred to the continuing candidates in accordance with paragraphs 4(a) and (b), and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.
- 6. Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 4 or 5 of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate.
- 7. For the purposes of the application of paragraphs 4(a) and (b) in relation to a transfer under clause 5 or 12 of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by him or her on a transfer under this section shall be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly.

8. Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or fewer than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who stands lowest in the poll shall be excluded or, if a bulk exclusion can be effected in accordance with clause 9, the candidates who may be excluded in accordance with that clause shall be excluded, and:
- (a) the total number of ballot papers expressing a first preference vote for an excluded candidate and the next available preference for a particular continuing candidate shall be transferred, each ballot paper at a transfer value of 1 vote, to the continuing candidate and added to the number of votes of the continuing candidate; and
  - (b) the total number (if any) of other ballot papers obtained by an excluded candidate or candidates, as the case may be, shall be transferred beginning with the ballot papers received by that candidate or those candidates at the highest transfer value and ending with the ballot papers received at the lowest transfer value, as follows:
    - (i) the total number of ballot papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value and expressing the next available preference for a particular continuing candidate shall be multiplied by that transfer value;
    - (ii) the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;
    - (iii) all those ballot papers shall be transferred to the continuing candidate.
9. (1) The procedure for a bulk exclusion, and the circumstances in which such an exclusion may be made, are as provided by this clause.
- (2) A continuing candidate (in this clause called *Candidate A*) shall be identified, if possible, who, of the continuing candidates who each have a number of notional votes equal to or greater than the vacancy shortfall, stands lower or lowest in the poll.
-



- (3) A continuing candidate (in this clause called *Candidate B*) shall be identified, if possible, who:
- (a) stands lower in the poll than Candidate A, or if Candidate A cannot be identified, has a number of notional votes that is fewer than the vacancy shortfall;
  - (b) has a number of notional votes that is fewer than the number of votes of the candidate standing immediately higher than him or her in the poll; and
  - (c) if 2 or more candidates satisfy paragraphs (a) and (b)—is the candidate who of those candidates stands higher or highest in the poll.
- (4) In a case where Candidate B has been identified and has a number of notional votes fewer than the leading shortfall, Candidate B and any other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.
- (5) In a case where Candidate B has been identified and has a number of notional votes equal to or greater than the leading shortfall:
- (a) a continuing candidate (in this clause called *Candidate C*) shall be identified who:
    - (i) has a number of notional votes that is fewer than the leading shortfall; and
    - (ii) if 2 or more candidates satisfy subparagraph (i)—is the candidate who of those candidates stands higher or highest in the poll; and
  - (b) Candidate C and all other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.
10. Where, apart from this clause, the number of continuing candidates after a bulk exclusion under clause 9 would be fewer than the number of remaining unfilled vacancies, clause 9 shall operate to exclude only the number of candidates, beginning with the candidate who stands lowest in the poll, that would leave sufficient continuing candidates to fill the remaining unfilled vacancies.
-

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

---

11. Notwithstanding any other provision of this Schedule (other than clause 16), where a candidate or candidates has or have been elected and there are surplus votes as a result of that election, subclauses 9(2), (3), (4) and (5) may be applied as if references in those paragraphs to notional votes were references to adjusted notional votes.
  12. Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 8 or 13 of ballot papers of an excluded candidate or candidates, as the case may be, shall be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with paragraphs 4(a) and (b), except that, where the candidate so elected is elected before all the ballot papers of the excluded candidate or candidates, as the case may be, have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until the remaining ballot papers of the excluded candidate or candidates, as the case may be, have been transferred in accordance with paragraphs 8(a) and (b) to continuing candidates.
  13. Subject to clause 15, where, after the transfer of all of the ballot papers of an excluded candidate or candidates, as the case may be, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who stands lowest in the poll shall be excluded and his or her ballot papers transferred in accordance with paragraphs 8(a) and (b).
  14. Where a candidate is elected during a transfer of ballot papers under clause 8 or 13, no other ballot papers of an excluded candidate or candidates, as the case may be, shall be transferred to the candidate so elected.
  15. In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes shall be elected notwithstanding that that number is below the quota, and if those candidates have an equal number of votes the authorised electoral officer shall decide by lot which candidate shall be elected.
  16. Notwithstanding any other provision of this Schedule, where the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates shall be elected.
-

- 
17. Subject to clauses 18 and 19, where, after any count under this Schedule, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
  18. Subject to clause 19, where, after any count under this Schedule, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count being transferred first, but if there has been no such count the authorised electoral officer shall determine the order in which the surpluses shall be dealt with.
  19. Where, after any count under this section, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count.
  20. Where a candidate is elected by reason that the number of first preference votes received by him or her, or the aggregate of first preference votes received by him or her and all other votes obtained by him or her, on transfers under this Schedule, is equal to the quota, all the ballot papers expressing those votes shall be set aside as finally dealt with.
  21. A ballot paper shall be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate.
  22. Where a candidate dies before the scrutiny, a vote indicated on a ballot paper opposite the name of that candidate shall be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences shall be deemed to be altered accordingly.
  23. For the purposes of this Schedule, each of the following is a separate transfer:
    - (a) a transfer under clause 4, 5 or 12 of all the surplus votes of an elected candidate;
-

- (b) a transfer under paragraph 8(a) of all ballot papers expressing a first preference vote for an excluded candidate;
- (c) a transfer under paragraph 8(b) of all ballot papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value.

24. In this Schedule:

***adjusted notional vote***, in relation to a continuing candidate, means, in a case where a candidate or candidates has or have been elected, the sum of:

- (a) the number of notional votes of the continuing candidate; and
- (b) the number, before the transfer of any of the surplus votes, of those surplus votes.

***continuing candidate*** means a candidate not already elected or excluded from the count.

***leading shortfall***, in relation to a particular stage during the scrutiny in a TSRA ward election, means the shortfall of the continuing candidate standing highest in the poll at that stage.

***notional vote***, in relation to a continuing candidate, means the aggregate of the votes obtained by that candidate and the votes obtained by each other candidate who stands lower in the poll than him or her.

***shortfall***, in relation to a continuing candidate at a particular stage during the scrutiny in a TSRA ward election, means the number of votes that the candidate requires at that stage in order to reach the quota referred to in clause 3.

***vacancy shortfall***, in relation to a particular stage during the scrutiny in a TSRA ward election, means the aggregate of the shortfalls of that number of leading candidates equal to the number of remaining unfilled vacancies, the leading candidates being ascertained by taking the continuing candidate who stands highest in the poll, the continuing candidate who stands next highest in the poll, and so on in the order in which the continuing candidates stand in the poll.

25. In this Schedule, a reference to votes or ballot papers, as the case may be, of or obtained or received by a candidate includes votes or ballot papers, as the case may be, obtained or received by the candidate on any transfer under this Schedule.
26. For the purposes of this Schedule, at any time after the counting of first preference votes the order of standing of the continuing candidates in the poll shall be determined as follows:
- (a) subject to paragraph (b), the continuing candidates shall stand in the poll in the order of the relative number of votes of each continuing candidate, with the continuing candidate with the greatest number of votes standing highest in the poll and the continuing candidate with the fewest number of votes standing lowest in the poll;
  - (b) if 2 or more continuing candidates have the same number of votes, those candidates shall stand in the poll in the order of the relative number of votes of each of those candidates at the last count at which each of them had a different number of votes, with the continuing candidate with the greater or greatest number of votes at that count standing higher in the poll and the continuing candidate with the fewer or fewest number of votes at that count standing lower in the poll, but if there has been no such count the authorised electoral officer shall determine the order of standing of those candidates in the poll.

Clause 1

---

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

Sections 111 and 143E

**1 Absolute majority required for election**

A candidate needs an absolute majority of votes to be elected.

**2 Candidate with absolute majority of first preference votes elected**

A candidate who receives an absolute majority of first preference votes is elected.

**3 Distribution of preferences**

- (1) If there is no candidate who receives an absolute majority of first preference votes, the candidate who has received the fewest first preference votes must be excluded, and each of that candidate's ballot papers must be transferred to the unexcluded candidate for whom the next available preference is expressed.
- (2) If there is then no candidate who has an absolute majority of votes, the process of excluding the candidate who has the fewest votes, and transferring that candidate's ballot papers to the unexcluded candidates for whom the next available preferences are expressed, must be repeated as often as necessary until one candidate receives an absolute majority of votes.
- (3) A candidate who receives an absolute majority of votes at any stage of the process described in this clause is elected.
- (4) Without limiting the generality of section 143G, the rules made by the Minister under that section may include provisions about:
  - (a) the determination of an absolute majority of votes; and
  - (b) the method of choosing between 2 or more candidates, each of whom has the same number of votes, in order to work out which candidate to exclude; and

Clause 3

---

(c) determining when a ballot paper is exhausted.

## Schedule 4—Disputes about electoral matters

Section 140

### Part 1—Interpretation

#### 1 Interpretation

(1) In this Schedule:

*bribery* or *corruption* means a contravention of subsection 198(1) or (2).

*Court* means the Federal Court of Australia.

*election* means a TSRA election.

*election petition* means a petition addressed to the Court under subclause 2(1).

*Electoral Commission* means the Australian Electoral Commission.

*illegal practice* means a contravention of this Act or the TSRA election rules.

*reference* means a reference of a question to the Court under clause 17.

*returned* means declared to be elected at a poll for an election.

*undue influence* means a contravention of subsection 198(3) of this Act or section 28 of the *Crimes Act 1914*.

(2) For the purposes of this Schedule, a person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the contravention of a provision of this Act, the *Crimes Act 1914* or the TSRA election rules shall be deemed to have contravened that provision.



## **Part 2—Disputed elections**

### **2 Method of disputing elections**

- (1) The validity of any election, or of the declaration of a poll for an election, may be disputed by petition addressed to the Court and not otherwise.
- (2) The Court has jurisdiction to try election petitions.
- (3) The jurisdiction of the Court to try election petitions may be exercised by a single judge of the Court.

### **3 Requisites of election petitions**

Subject to clause 5, every election petition shall:

- (a) set out the facts relied on to invalidate the election or declaration;
- (b) contain a request for the relief the petitioner claims to be entitled to;
- (c) be signed by a candidate at the election in dispute or by a person who was, or who claimed to be, qualified to vote at that election;
- (d) be attested by 2 witnesses whose occupations and addresses are stated.

### **3A Deadline for filing a petition**

- (1) Any petition disputing an election held as part of a general election must be filed in a Registry of the Court within 40 days after the last day on which a poll is declared in relation to the general election.
- (2) Any petition disputing any other election must be filed in a Registry of the Court within 40 days after the poll is declared in relation to the election.
- (3) In this clause:  
*general election* means:
  - (c) a TSRA election for all wards.

Clause 4

---

**4 Deposit as security for costs**

At the time of filing an election petition the petitioner shall deposit with the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court the sum of \$100 as security for costs.

**5 Petition by Electoral Commission**

- (1) The Electoral Commission is entitled to file an election petition disputing an election.
- (2) Paragraphs 3(c) and (d) do not apply in relation to an election petition filed by the Electoral Commission disputing an election but such a petition shall be signed by the Electoral Commissioner for and on behalf of the Commission.

**6 No proceedings unless requisites complied with**

No proceedings shall be had on an election petition unless the requirements of clauses 3, 3A, 4 and 5 are complied with.

**7 Right of Electoral Commission to be represented**

- (1) The Electoral Commission shall be entitled by leave of the Court to enter an appearance in any proceedings in which the validity of any election or declaration of a poll is disputed.
- (2) Where the Electoral Commission enters an appearance in such proceedings the Electoral Commission:
  - (a) is entitled to be represented and heard in the proceedings; and
  - (b) shall be taken to be a party respondent to the proceedings.

**8 Right of Minister to be represented**

- (1) If the Minister thinks that it is in the public interest to do so, the Minister is entitled to enter an appearance in any proceedings in which the validity of any election or declaration of a poll is disputed.
- (2) When the Minister enters an appearance in such proceedings, the Minister:
  - (a) is entitled to be represented and heard in the proceedings; and

(b) shall be taken to be a party respondent to the proceedings.

## **9 Election petitions to be tried in open court**

When trying an election petition, the Court shall sit as an open court.

## **10 Powers of Court**

- (1) The powers of the Court in trying an election petition, include, but are not limited to, the following powers:
- (a) to adjourn the proceedings;
  - (b) to compel the attendance of witnesses and the production of documents;
  - (c) to grant to any party to the petition leave to inspect, in the presence of a person who was an authorised electoral officer for the purposes of Division 4 or 7 of Part 3 in relation to the election concerned, the documents (except ballot papers) used at or in connection with the election and to take, in the presence of the prescribed officer, extracts from those documents;
  - (ca) to grant to any party to the petition leave to inspect, in the presence of a person who was an authorised electoral officer for the purposes of Division 5 of Part 3A in relation to the election concerned, the documents (except ballot papers) used at or in connection with the election and to take, in the presence of the prescribed officer, extracts from those documents;
  - (d) to examine witnesses on oath;
  - (e) to declare that any person who was returned was not duly elected;
  - (f) to declare any candidate duly elected who was not returned;
  - (g) to declare the election absolutely void;
  - (h) to dismiss or uphold the petition in whole or in part;
  - (j) to make any order, or give any direction, that the Court thinks is necessary or convenient for the purpose of giving effect to any declaration or other decision of the Court in the proceedings;
  - (k) to award costs;

**Clause 11**

---

- (m) to punish any contempt of its authority by fine or imprisonment.
- (2) The Court may exercise all or any of its powers under this clause on such grounds as the Court in its discretion thinks just and sufficient.
- (3) Without limiting the powers conferred by this clause, it is hereby declared that the power of the Court to declare that any person who was returned was not duly elected, or to declare an election absolutely void, may be exercised on the ground that illegal practices were committed in connection with the election.
- (4) The power of the Court under paragraph (1)(k) to award costs includes the power to order costs to be paid by the Commonwealth where the Court considers it appropriate to do so.

**11 Inquiries by Court**

The Court shall inquire whether or not an election petition is duly signed, and so far as rolls and voting are concerned may inquire into the identity of persons, and whether their votes were improperly admitted or rejected, assuming the Commonwealth Electoral Roll to be correct, but the Court shall not inquire into the correctness of the Commonwealth Electoral Roll.

**12 Voiding election for illegal practices**

- (1) If the Court finds that a candidate at an election has committed or has attempted to commit bribery or undue influence, the candidate's election, if he or she is a successful candidate, shall be declared void.
- (2) No finding by the Court shall bar or prejudice any prosecution for any illegal practice.
- (3) The Court shall not declare that any person returned was not duly elected, or declare any election void:
  - (a) on the ground of any illegal practice committed by any person other than the candidate and without his or her knowledge or authority; or

(b) on the ground of any illegal practice other than bribery or corruption or attempted bribery or corruption;  
unless the Court is satisfied that the result of the election was likely to be affected, and that it is just that the candidate should be declared not to be duly elected or that the election should be declared void.

### **13 Court to report cases of illegal practices**

When the Court finds that any person has committed an illegal practice, the Registrar of the Court shall forthwith report the finding to the Minister.

### **14 Immaterial errors not to vitiate election**

- (1) No election shall be avoided on account of any delay in the declaration of nominations, the polling, or the declaration of the poll, or on account of the absence or error of or omission by any officer which did not affect the result of the election.
- (2) Where any elector was, on account of the absence or error of, or omission by, any officer, prevented from voting in any election, the Court shall not, for the purpose of determining whether the absence or error of, or omission by, the officer did or did not affect the result of the election, admit any evidence of the way in which the elector intended to vote in the election.

### **15 Evidence that person not permitted to vote**

On the trial of any election petition the Court shall not admit the evidence of any witness that he or she was not permitted to vote in the election during the hours of polling on a polling day unless the witness satisfies the Court:

- (a) that he or she claimed to vote, in the election, pursuant to that provision of this Act or the TSRA election rules under which he or she was entitled or might be permitted to vote; and
- (b) that he or she complied with the requirements of this Act and the TSRA election rules, relative to voting by electors in so far as he or she was permitted so to do.

Clause 16

---

**16 Deposit applicable for costs**

If costs are awarded to any party against a petitioner, the deposit shall be applicable in payment of the sum ordered, but otherwise the deposit shall be repaid to the petitioner.

## **Part 3—Qualifications and vacancies**

### **17 Reference of question as to qualification or vacancy**

- (1) Any question respecting:
  - (c) the qualifications of a member of the TSRA; or
  - (d) a vacancy in the TSRA;may be referred to the Court by the Minister.
- (2) The Court has jurisdiction to hear and determine the question.
- (3) The jurisdiction of the Court to hear and determine questions may be exercised by a single Judge of the Court.

### **18 Minister to state case**

Where the Minister refers a question to the Court under this Part, the Minister shall also give to the Court a statement of the question upon which the determination of the Court is desired, and any documents relating to the question that are in the Minister's possession.

### **19 Parties to the reference**

- (1) The Court may:
  - (a) allow any person who, in the Court's opinion, is interested in the determination of a question to be heard on the hearing of the reference; or
  - (b) direct notice of a reference to be served on any person.
- (2) A person who is:
  - (a) allowed to be heard under paragraph (1)(a); or
  - (b) directed to be served under paragraph (1)(b);is a party to the reference.

### **20 References to be heard in open court**

When hearing a reference, the Court shall sit as an open court.

Clause 21

---

**21 Powers of Court**

The powers of the Court in hearing a reference include, but are not limited to, the following powers:

- (a) the powers conferred on the Court under clause 10, so far as they are applicable;
- (d) the power to declare that any person was not qualified to be a member of the TSRA;
- (e) the power to declare that there is a vacancy in the TSRA.

**22 Order etc. to be sent to Minister and TSRA**

After the hearing and determination of a reference, the Registrar of the Court shall send a copy of the declaration or other decision of the Court to:

- (a) the Minister; and
- (d) if the reference relates to the TSRA—the TSRA.



## **Part 4—General**

### **23 Real justice to be observed**

The Court shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in accordance with the law of evidence or not.

### **24 Decisions to be final**

All decisions of the Court shall be final and conclusive and without appeal, and shall not be questioned in any way.

### **25 Counsel or solicitor**

- (1) No party to an election petition or a reference shall, except by consent of all parties, or by leave of the Court, be represented by counsel or solicitor.
- (2) In no case shall more than one counsel or one solicitor appear on behalf of any party.

### **26 Costs**

The Court may award costs against an unsuccessful party to a petition or reference.

### **27 Effect of declarations etc.**

- (1) A declaration made by the Court in proceedings under this Schedule has effect according to its terms.
- (4) The validity of anything done by the TSRA is not affected by the fact that a person has since ceased to be a member of the TSRA because of a declaration of the Court under this Schedule.

Clause 28

---

**28 Power to make Rules of Court**

- (1) The judges of the Court or a majority of them may make Rules of Court not inconsistent with this Act and the TSRA election rules for carrying this Schedule into effect and in particular for regulating the practice and procedure of the Court and the forms to be used.

Note: Section 59 of the *Federal Court of Australia Act 1976* provides that certain provisions of the *Legislative Instruments Act 2003* apply, with modification, to rules of court made by the Court. Section 59A of the *Federal Court of Australia Act 1976* provides that regulations may be made modifying or adapting certain provisions of the *Legislative Instruments Act 2003* in their application to the Court.

**Table of Acts****Notes to the *Aboriginal and Torres Strait Islander Act 2005*****Note 1**

The *Aboriginal and Torres Strait Islander Act 2005* as shown in this compilation comprises Act No. 150, 1989 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 12 September 1996 is not included in this compilation. For subsequent information see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	150, 1989	27 Nov 1989	5 Mar 1990 (see <i>Gazette</i> 1990, No. S48)	
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 1993</i>	26, 1993	9 June 1993	S. 6: 2 Aug 1993 (see <i>Gazette</i> 1993, No. S231) Remainder: Royal Assent	Ss. 4(2), 6(2), (3), 8(2), 19(2), 20(2) and 24
<i>Aboriginal and Torres Strait Islander Commission Amendment Act (No. 2) 1993</i>	37, 1993	20 Sept 1993	20 Sept 1993	Ss. 6, 20, 32, 38 and Part 10 (ss. 39–42)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993</i>	1, 1994	14 Jan 1994	Ss. 1–43, 53–68, 73–75, 81–83, 105–112 and 116–118: Royal Assent Part 25 (ss. 69–72): 15 Jan 1994 Part 31 (ss. 113–115): 1 July 1996 Remainder: 1 July 1994	Ss. 4, 16, 21, 22, 24, 28, 31, 35–40, 42, 47–52, 59, 63, 66, 68, 75, 79(2), 81–104, 111, 112, 115 and 117
<b>as amended by</b>				
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 1994</i>	100, 1994	30 June 1994	S. 32: (see 100, 1994 below)	—
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 1994</i>	100, 1994	30 June 1994	Ss. 1, 2, 4 and 32: Royal Assent Remainder: (a)	S. 4(2)
<i>Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995</i>	20, 1995	29 Mar 1995	1 June 1995 (see <i>Gazette</i> 1995, No. GN18)	—
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 1996</i>	35, 1996	12 Sept 1996	Schedule 1 (item 68): 10 Oct 1996 Schedule 2: 7 Dec 1999 (b) Remainder: Royal Assent	Sch. 1 (items 5, 37, 39, 69) [see Table A]
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (items 1–5): (c) Schedule 4 (item 2): Royal Assent (c)	—
<i>Aboriginal and Torres Strait Islander Commission Amendment (TSRA) Act 1997</i>	98, 1997	30 June 1997	30 June 1997	Sch. 1 (item 8) [see Table A]
<i>Aged Care (Consequential Provisions) Act 1997</i>	114, 1997	7 July 1997	Schedule 5 (item 1): (d)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 1–70): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (e)	Sch. 4 (item 4) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 1998</i>	20, 1998	17 Apr 1998	Schedule 1 (items 4, 8): (f) Schedule 1 (item 10): (f) Schedule 1 (item 11): (f) Remainder: Royal Assent	Sch. 1 (items 12, 13) [see Table A]
<i>Aboriginal and Torres Strait Islander Commission Amendment Act (No. 1) 1999</i>	120, 1999	1 Oct 1999	Schedule 1: (g) Remainder: Royal Assent	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 1–19): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (h)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 1–11): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (i)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 2001</i>	4, 2001	20 Mar 2001	17 Apr 2001	Sch. 1 (items 61, 74, 77, 89) [see Table A]
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (item 1): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (j)	Ss. 4–14 [see Note 1]
<i>Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Act 2001</i>	112, 2001	17 Sept 2001	15 Oct 2001	S. 4 [see Table A]
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 2002</i>	40, 2002	27 June 2002	27 June 2002	S. 4 [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003</i>	140, 2003	17 Dec 2003	Schedule 1 (items 1, 2): (k)	—
<i>Law and Justice Legislation Amendment Act 2004</i>	62, 2004	26 May 2004	Schedule 1 (item 1): 26 Nov 2004	—
<i>Bankruptcy Legislation Amendment Act 2004</i>	80, 2004	23 June 2004	Schedule 1 (items 188, 189, 212, 213, 215): 1 Dec 2004 (see <i>Gazette</i> 2004, No. GN34)	Sch. 1 (items 212, 213, 215) [see Table A]
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	Schedule 2 (items 1–10) (l) Schedule 2 (item 174): Royal Assent	Sch. 2 (item 174) [see Table A]
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 2005</i>	32, 2005	22 Mar 2005	Schedules 1 and 2: 24 Mar 2005 (see F2005L00768) Schedule 3: 1 July 2005 Schedule 4: 24 Mar 2005 Remainder: Royal Assent	Sch. 1 (items 191–213), Sch. 2 (items 2–6) and Sch. 3 (items 47–53) [see Table A]
<i>Financial Framework Legislation Amendment Act (No. 1) 2006</i>	30, 2006	6 Apr 2006	Schedule 1 (items 1–19) and Schedule 3 (item 1): 7 Apr 2006	—
<i>Aboriginal Land Rights (Northern Territory) Amendment Act 2006</i>	93, 2006	5 Sept 2006	Schedule 1 (items 1, 206): 1 Oct 2006 (see F2006L03153)	Sch. 1 (item 206) [see Table A]
<i>Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006</i>	125, 2006	4 Nov 2006	Schedules 1–3: 1 July 2007 (see s. 2(1)) Remainder: Royal Assent	—

**Act Notes**

- 
- (a) Subsection 2(2) of the *Aboriginal and Torres Strait Islander Commission Amendment Act 1994* provides as follows:
- (2) The remainder of this Act commences immediately after the commencement of Division 1 of Part 28 of the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993*.
- Division 1 of Part 28 commenced on 1 July 1994.
- (b) Subsection 2(5) of the *Aboriginal and Torres Strait Islander Commission Amendment Act 1996* provides as follows:
- (5) Schedule 2 commences on the day, or the earliest day, on which the Minister appoints a person as a Commissioner after the person has been elected in the 1999 round of Regional Council elections.
- (c) The *Aboriginal and Torres Strait Islander Act 2005* was amended by Schedule 2 (items 1–5) and Schedule 4 (item 2) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Schedule 2 (items 1 and 3–5) are taken to have commenced immediately after the commencement of the *Aboriginal and Torres Strait Islander Act 2005*.
- Schedule 2 (item 2) is taken to have commenced immediately after the commencement of the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*.
- The *Aboriginal and Torres Strait Islander Act 2005* came into operation on 5 March 1990 (see *Gazette* 1990, No. S48).
- The *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* came into operation on 1 June 1995 (see *Gazette* 1995, No. GN18).
- (d) The *Aboriginal and Torres Strait Islander Act 2005* was amended by Schedule 5 (item 1) only of the *Aged Care (Consequential Provisions) Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences immediately after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).
- The *Aged Care Act 1997* other than Division 1 commenced on 1 October 1997.
- (e) The *Aboriginal and Torres Strait Islander Commission Amendment Act 1998* was amended by Schedule 2 (items 1–70) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (f) Subsections 2(2)–(4) of the *Aboriginal and Torres Strait Islander Commission Amendment Act 1998* provide as follows:
- (2) Items 4 and 8 of Schedule 1 are taken to have commenced immediately after the *Aboriginal and Torres Strait Islander Commission Amendment Act 1996* received the Royal Assent.
- (3) Item 10 of Schedule 1 is taken to have commenced immediately after the *Aboriginal and Torres Strait Islander Commission Act 1989* received the Royal Assent.
- (4) Item 11 of Schedule 1 is taken to have commenced immediately after the commencement of section 79 of the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 3) 1993*.
- The *Aboriginal and Torres Strait Islander Commission Amendment Act 1996* received the Royal Assent on 12 September 1996.
- The *Aboriginal and Torres Strait Islander Act 2005* received the Royal Assent on 27 November 1989.
- Section 79 commenced on 1 July 1994.
-

## Act Notes

- (g) Subsection 2(2) of the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 1) 1999* provides as follows:
- (2) If Schedule 2 to the *Aboriginal and Torres Strait Islander Commission Amendment Act 1996* commences on or after the day on which this Act receives the Royal Assent, then the amendments made by Schedule 1 to this Act commence immediately after the commencement of Schedule 2 to the *Aboriginal and Torres Strait Islander Commission Amendment Act 1996*.
- Schedule 2 commenced on 7 December 1999.
- (h) The *Aboriginal and Torres Strait Islander Act 2005* was amended by Schedule 1 (items 1–19) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (i) The *Aboriginal and Torres Strait Islander Act 2005* was amended by Schedule 10 (items 1–11) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.
- (j) The *Aboriginal and Torres Strait Islander Act 2005* was amended by Schedule 3 (item 1) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (k) Subsection 2(1) (item 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005



**Act Notes**

- (f) Subsection 2(1) (item 11) of the *Financial Framework Legislation Amendment Act 2005* provides as follows:
- (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.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
11. Schedule 2, items 1 to 10	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1 to the <i>Aboriginal and Torres Strait Islander Commission Amendment Act 2005</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	24 March 2005 (paragraph (b) applies)



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 1, 1994; No. 20, 1995; No. 4, 2001; No. 32, 2005
Preamble.....	ad. No. 1, 1994
<b>Part 1</b>	
S. 1.....	am. No. 32, 2005
S. 4.....	am. Nos. 26 and 37, 1993; Nos. 1 and 100, 1994; No. 20, 1995; No. 35, 1996; No. 152, 1997; Nos. 4 and 55, 2001; Nos. 8 and 32, 2005; Nos. 30 and 125, 2006
S. 4A .....	ad. No. 37, 1993
S. 4B .....	ad. No. 20, 1995
S. 5A .....	ad. No. 112, 2001
Part 2.....	rep. No. 32, 2005
S. 6.....	rep. No. 32, 2005
Note to s. 6(2) .....	ad. No. 152, 1997 rep. No. 32, 2005
S. 7.....	am. No. 4, 2001 rep. No. 32, 2005
Ss. 8, 9.....	rep. No. 32, 2005
S. 10.....	am. No. 1, 1994; No. 4, 2001 rep. No. 32, 2005
S. 11.....	am. No. 1, 1994 (as am. by No. 100, 1994) rep. No. 32, 2005
S. 12.....	am. No. 43, 1996 rep. No. 32, 2005
S. 13.....	am. No. 1, 1994 rep. No. 32, 2005
Ss. 13A–13C .....	ad. No. 1, 1994 rep. No. 32, 2005
Ss. 14–17 .....	rs. No. 1, 1994 rep. No. 32, 2005
Ss. 18, 19.....	rep. No. 1, 1994
S. 20.....	am. No. 1, 1994; No. 20, 1998 rep. No. 32, 2005
Subhead. to s. 21(1) .....	ad. No. 20, 1998 rep. No. 32, 2005
S. 21.....	am. No. 1, 1994; No. 20, 1998 rep. No. 32, 2005
S. 21A .....	ad. No. 35, 1996 am. No. 20, 1998 rep. No. 32, 2005
S. 22.....	rs. No. 1, 1994 rep. No. 32, 2005
Ss. 23–25.....	rep. No. 1, 1994

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 26.....	rs. No. 1, 1994 rep. No. 32, 2005
S. 27.....	rs. No. 26, 1993 am. No. 1, 1994 rs. No. 35, 1996; No. 120, 1999 rep. No. 32, 2005
S. 28.....	rep. No. 26, 1993
S. 29.....	rep. No. 32, 2005
S. 30.....	rs. No. 26, 1993 rep. No. 32, 2005
S. 31A .....	ad. No. 1, 1994 rs. No. 35, 1996 am. No. 120, 1999 rep. No. 32, 2005
S. 31.....	am. No. 40, 2002 rep. No. 32, 2005
S. 32.....	am. No. 26, 1993; No. 1, 1994; No. 35, 1996 rep. No. 32, 2005
S. 32A .....	ad. No. 35, 1996 rep. No. 32, 2005
S. 33.....	am. No. 26, 1993; No. 1, 1994; No. 35, 1996; No. 40, 2002 rep. No. 32, 2005
S. 34.....	rep. No. 32, 2005
S. 35.....	am. No. 122, 1991; No. 26, 1993; No. 35, 1996; No. 146, 1999 rep. No. 32, 2005
S. 36.....	am. No. 26, 1993; No. 1, 1994; No. 35, 1996; No. 20, 1998 rep. No. 32, 2005
S. 37 .....	rep. No. 152, 1997
S. 38.....	rs. No. 35, 1996 rep. No. 32, 2005
S. 39.....	am. No. 26, 1993; No. 1, 1994; No. 35, 1996; No. 120, 1999 rep. No. 32, 2005
S. 40.....	am. No. 122, 1991; No. 26, 1993; No. 1, 1994; No. 35, 1996; No. 152, 1997; No. 156, 1999; No. 40, 2002 rep. No. 32, 2005
S. 41.....	am. No. 1, 1994 rep. No. 32, 2005
S. 41A .....	ad. No. 1, 1994 rep. No. 32, 2005
S. 42.....	am. No. 152, 1997 rep. No. 32, 2005
S. 43.....	rep. No. 32, 2005
S. 44.....	am. No. 1, 1994; No. 35, 1996; No. 152, 1997; No. 156, 1999; No. 40, 2002 rep. No. 32, 2005
S. 45.....	am. No. 1, 1994; No. 20, 1998; No. 40, 2002 rep. No. 32, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 45A .....	ad. No. 1, 1994 am. No. 20, 1998 rep. No. 32, 2005
S. 45B .....	ad. No. 4, 2001 rep. No. 32, 2005
S. 46 .....	rep. No. 32, 2005
S. 47 .....	am. No. 1, 1994; No. 159, 2001 rep. No. 32, 2005
S. 48 .....	rep. No. 32, 2005
S. 49 .....	rs. No. 122, 1991 am. No. 146, 1999 rep. No. 32, 2005
S. 50 .....	rep. No. 32, 2005
S. 51 .....	am. No. 1, 1994 rep. No. 32, 2005
Ss. 52–54 .....	rep. No. 32, 2005
S. 55 .....	am. No. 1, 1994; No. 146, 1999 rep. No. 32, 2005
S. 56 .....	am. No. 1, 1994 rep. No. 32, 2005
S. 57 .....	rep. No. 32, 2005
S. 58 .....	am. No. 1, 1994; No. 20, 1995; No. 98, 1997; No. 4, 2001 rep. No. 40, 2002
S. 59 .....	am. No. 20, 1995; No. 4, 2001 rep. No. 40, 2002
S. 60 .....	rep. No. 32, 2005
S. 61 .....	am. No. 1, 1994; No. 20, 1995; Nos. 98 and 152, 1997; No. 4, 2001; No. 40, 2002 rep. No. 32, 2005
S. 62 .....	am. No. 1, 1994; No. 40, 2002 rep. No. 32, 2005
S. 63 .....	am. No. 1, 1994; No. 20, 1995; No. 98, 1997; No. 4, 2001 rep. No. 32, 2005
Ss. 64, 65 .....	rep. No. 32, 2005
S. 66 .....	am. No. 1, 1994; No. 20, 1995; No. 98, 1997; No. 4, 2001; No. 40, 2002 rep. No. 32, 2005
S. 67 .....	am. No. 1, 1994; No. 152, 1997; No. 40, 2002 rep. No. 32, 2005
S. 68 .....	am. No. 1, 1994; No. 20, 1995; Nos. 35 and 43, 1996; No. 152, 1997 rep. No. 32, 2005
S. 69 .....	am. No. 152, 1997 rep. No. 32, 2005
S. 70 .....	rep. No. 32, 2005
S. 71 .....	am. No. 1, 1994 rep. No. 32, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 72.....	am. No. 1, 1994; No. 20, 1995; No. 152, 1997 rep. No. 32, 2005
S. 73.....	rep. No. 152, 1997
S. 74.....	am. No. 1, 1994; No. 152, 1997 rep. No. 32, 2005
S. 75.....	rep. No. 32, 2005
S. 76.....	rs. No. 1, 1994 am. No. 1, 1994; No. 20, 1995; No. 35, 1996; No. 4, 2001 rep. No. 32, 2005
S. 77.....	rep. No. 32, 2005
S. 77A.....	ad. No. 1, 1994 am. No. 159, 2001 rep. No. 32, 2005
S. 77B.....	ad. No. 1, 1994 rep. No. 32, 2005
S. 77C.....	ad. No. 1, 1994 am. No. 146, 1999 rep. No. 32, 2005
S. 77D.....	ad. No. 1, 1994 rep. No. 32, 2005
S. 77E.....	ad. No. 1, 1994 am. No. 146, 1999 rep. No. 32, 2005
Ss. 77F–77H.....	ad. No. 1, 1994 rep. No. 32, 2005
S. 77J.....	ad. No. 1, 1994 rep. No. 32, 2005
S. 78.....	am. No. 1, 1994 rep. No. 32, 2005
S. 78A.....	ad. No. 1, 1994 am. No. 1, 1994; No. 20, 1995; No. 35, 1996; No. 20, 1998; No. 112, 2001 rep. No. 32, 2005
Heading to Div. 10 of Part 2.....	am. No. 1, 1994 rep. No. 32, 2005
S. 79.....	rep. No. 1, 1994
S. 80.....	rep. No. 32, 2005
S. 81.....	am. No. 1, 1994; No. 35, 1996 rep. No. 32, 2005
S. 82.....	rep. No. 32, 2005
Ss. 83, 84.....	am. No. 1, 1994 rep. No. 32, 2005
Ss. 85, 86.....	rep. No. 32, 2005
Ss. 86A–86C.....	ad. No. 1, 1994 rep. No. 32, 2005
S. 87.....	rep. No. 32, 2005
Ss. 88, 89.....	rep. No. 1, 1994

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 90.....	am. No. 1, 1994; No. 35, 1996; No. 137, 2000; No. 112, 2001 rep. No. 32, 2005
Part 3.....	rep. No. 32, 2005
Heading to Part 3.....	rs. No. 32, 2005 rep. No. 32, 2005
S. 91.....	am. No. 26, 1993; No. 1, 1994; No. 20, 1995; No. 35, 1996; No. 32, 2005 rep. No. 32, 2005
S. 92.....	rep. No. 32, 2005
S. 93.....	am. No. 32, 2005 rep. No. 32, 2005
S. 94.....	am. No. 1, 1994; No. 20, 1998; No. 40, 2002; No. 32, 2005 rep. No. 32, 2005
S. 95.....	am. No. 32, 2005 rep. No. 32, 2005
S. 96.....	am. No. 37, 1993; No. 32, 2005 rep. No. 32, 2005
Ss. 96A–96C.....	ad. No. 37, 1993 rep. No. 32, 2005
S. 97.....	am. No. 1, 1994; No. 20, 1995 rep. No. 32, 2005
S. 98.....	rep. No. 32, 2005
S. 99.....	am. No. 1, 1994; No. 152, 1997; No. 32, 2005 rep. No. 32, 2005
S. 100.....	rep. No. 32, 2005
S. 100A.....	ad. No. 37, 1993 am. No. 1, 1994; No. 35, 1996; No. 32, 2005 rep. No. 32, 2005
S. 101.....	am. No. 37, 1993 rep. No. 32, 2005
S. 102.....	am. Nos. 26 and 37, 1993; No. 1, 1994; No. 35, 1996; No. 40, 2002; No. 80, 2004; No. 32, 2005 rep. No. 32, 2005
S. 103.....	am. No. 1, 1994; No. 32, 2005 rep. No. 32, 2005
S. 104.....	rep. No. 32, 2005
S. 104A.....	ad. No. 37, 1993 rep. No. 1, 1994
S. 105.....	am. Nos. 26 and 37, 1993; No. 1, 1994; No. 32, 2005 rep. No. 32, 2005
S. 106.....	am. Nos. 26 and 37, 1993 rep. No. 32, 2005
S. 107.....	rs. No. 37, 1993 rep. No. 32, 2005
Ss. 108–110.....	rep. No. 32, 2005
S. 111.....	am. No. 37, 1993 rep. No. 32, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 112.....	rep. No. 32, 2005
S. 113.....	am. Nos. 26 and 37, 1993; No. 1, 1994; No. 40, 2002; No. 32, 2005 rep. No. 32, 2005
S. 114.....	rep. No. 32, 2005
S. 115.....	am. No. 37, 1993; No. 1, 1994; No. 35, 1996; No. 40, 2002; No. 32, 2005 rep. No. 32, 2005
S. 115A .....	ad. No. 40, 2002 rep. No. 32, 2005
S. 116.....	am. No. 1, 1994 rep. No. 1, 1994 ad. No. 35, 1996 am. No. 32, 2005 rep. No. 32, 2005
S. 117.....	am. No. 1, 1994 rep. No. 32, 2005
S. 118.....	rep. No. 32, 2005
S. 119.....	am. No. 37, 1993; No. 35, 1996; No. 32, 2005 rep. No. 32, 2005
S. 119A .....	ad. No. 35, 1996 am. No. 32, 2005 rep. No. 32, 2005
S. 120.....	rep. No. 32, 2005
S. 121.....	am. Nos. 26 and 37, 1993; No. 1, 1994; Nos. 35 and 43, 1996; No. 32, 2005 rep. No. 32, 2005
S. 122.....	am. No. 37, 1993; No. 35, 1996; No. 32, 2005 rep. No. 32, 2005
Subheads. to s. 122A(1), (2), (5) .....	am. No. 32, 2005 rep. No. 32, 2005
Ss. 122A, 122B .....	ad. No. 37, 1993 am. No. 32, 2005 rep. No. 32, 2005
S. 123.....	am. No. 1, 1994; No. 32, 2005 rep. No. 32, 2005
S. 123A .....	ad. No. 1, 1994 am. No. 1, 1994; No. 32, 2005 rep. No. 32, 2005
S. 124.....	am. No. 1, 1994; No. 32, 2005 rep. No. 32, 2005
Ss. 124A, 124B .....	ad. No. 1, 1994 rep. No. 32, 2005
S. 124C .....	ad. No. 1, 1994 am. No. 146, 1999; No. 32, 2005 rep. No. 32, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 124D .....	ad. No. 1, 1994 am. No. 32, 2005 rep. No. 32, 2005
S. 124E .....	ad. No. 1, 1994 am. No. 146, 1999; No. 32, 2005 rep. No. 32, 2005
Subheads. to s. 124F(1), (2) .....	am. No. 32, 2005 rep. No. 32, 2005
Ss. 124F–124H .....	ad. No. 1, 1994 am. No. 32, 2005 rep. No. 32, 2005
Heading to s. 124J .....	am. No. 32, 2005 rep. No. 32, 2005
S. 124J .....	ad. No. 1, 1994 am. No. 32, 2005 rep. No. 32, 2005
S. 125 .....	am. No. 1, 1994 rep. No. 32, 2005
S. 126 .....	rep. No. 32, 2005
S. 127 .....	am. Nos. 26 and 37, 1993; No. 40, 2002; No. 32, 2005 rep. No. 32, 2005
S. 127A .....	ad. No. 26, 1993 am. No. 40, 2002; No. 32, 2005 rep. No. 32, 2005
S. 127B .....	ad. No. 26, 1993 rep. No. 32, 2005
S. 127C .....	ad. No. 26, 1993 am. No. 37, 1993; No. 35, 1996; No. 40, 2002; No. 32, 2005 rep. No. 32, 2005
S. 127D .....	ad. No. 26, 1993 am. No. 146, 1999; No. 32, 2005 rep. No. 32, 2005
S. 127E .....	ad. No. 37, 1993 am. No. 35, 1996; No. 32, 2005 rep. No. 32, 2005
S. 127F .....	ad. No. 37, 1993 rep. No. 32, 2005
S. 127G .....	ad. No. 37, 1993 am. No. 35, 1996; No. 32, 2005 rep. No. 32, 2005
S. 127H .....	ad. No. 37, 1993 rep. No. 32, 2005
S. 127J .....	ad. No. 37, 1993 am. No. 35, 1996; No. 32, 2005 rep. No. 32, 2005
S. 128 .....	am. No. 37, 1993; No. 35, 1996; No. 40, 2002; No. 32, 2005 rep. No. 32, 2005
Ss. 128A–128C .....	ad. No. 35, 1996 rep. No. 32, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 129.....	rep. No. 32, 2005
Div. 7 of Part 3 .....	rep. No. 32, 2005
Ss. 130, 131 .....	am. No. 1, 1994 rep. No. 32, 2005
S. 132.....	am. No. 26, 1993 rs. No. 100, 1994 am. No. 100, 1994 rep. No. 32, 2005
S. 133.....	am. Nos. 1 and 100, 1994 rep. No. 32, 2005
Ss. 134–137 .....	rep. No. 32, 2005
S. 138.....	am. No. 26, 1993; No. 1, 1994; No. 35, 1996 rep. No. 32, 2005
S. 139.....	rep. No. 32, 2005
S. 139A .....	ad. No. 35, 1996 rep. No. 32, 2005
S. 140.....	am. No. 1, 1994; No. 32, 2005 rep. No. 32, 2005
Div. 9 of Part 3 .....	rs. No. 1, 1994 rep. No. 32, 2005
S. 141.....	rs. No. 1, 1994 am. No. 1, 1994; No. 35, 1996 rep. No. 32, 2005
S. 141A .....	ad. No. 1, 1994 am. No. 1, 1994; No. 40, 2002 rep. No. 32, 2005
S. 141B .....	ad. No. 1, 1994 rep. No. 40, 2002
Ss. 141C–141H.....	ad. No. 1, 1994 rep. No. 32, 2005
Ss. 141J–141N.....	ad. No. 1, 1994 rep. No. 32, 2005
Ss. 141P–141R .....	ad. No. 1, 1994 rep. No. 32, 2005
S. 141S .....	ad. No. 1, 1994 am. No. 1, 1994; No. 40, 2002 rep. No. 32, 2005
S. 141T.....	ad. No. 1, 1994 rep. No. 40, 2002
Ss. 141U–141Z .....	ad. No. 1, 1994 rep. No. 32, 2005
Ss. 141ZA–141ZE.....	ad. No. 1, 1994 rep. No. 32, 2005
<b>Part 3A</b>	
Part 3A .....	ad. No. 1, 1994
<b>Division 1</b>	
S. 142.....	rs. No. 1, 1994

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 142(2) .....	ad. No. 152, 1997
<b>Division 2</b>	
S. 142A .....	ad. No. 1, 1994
S. 142AA .....	ad. No. 100, 1994 am. No. 32, 2005
S. 142B .....	ad. No. 1, 1994
S. 142C .....	ad. No. 1, 1994 am. No. 100, 1994
Ss. 142D, 142E .....	ad. No. 1, 1994
<b>Division 3</b>	
S. 142F .....	ad. No. 1, 1994
S. 142G .....	ad. No. 1, 1994 am. No. 8, 2005
S. 142GA .....	ad. No. 100, 1994
S. 142H .....	ad. No. 1, 1994
S. 142J .....	ad. No. 1, 1994 am. No. 100, 1994
S. 142JA .....	ad. No. 35, 1996
S. 142K .....	ad. No. 1, 1994 am. No. 100, 1994
S. 142L .....	ad. No. 1, 1994 am. No. 32, 2005
Ss. 142M, 142N .....	ad. No. 1, 1994
Ss. 142P, 142Q .....	ad. No. 1, 1994
<b>Division 4</b>	
Ss. 142R, 142S .....	ad. No. 1, 1994 am. No. 100, 1994
<b>Division 5</b>	
S. 142T .....	ad. No. 1, 1994
S. 142TA .....	ad. No. 100, 1994
S. 142U .....	ad. No. 1, 1994 am. No. 100, 1994
S. 142V .....	ad. No. 1, 1994 am. No. 100, 1994; No. 80, 2004; No. 32, 2005
S. 142W .....	ad. No. 1, 1994 am. No. 100, 1994
Ss. 142X, 142Y .....	ad. No. 1, 1994
S. 142Z .....	ad. No. 1, 1994 am. No. 100, 1994
S. 143 .....	rs. No. 1, 1994 am. No. 100, 1994
S. 143A .....	ad. No. 1, 1994 rs. No. 100, 1994
Ss. 143B–143D .....	ad. No. 1, 1994

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 143E .....	ad. No. 1, 1994 rs. No. 100, 1994
S. 143F.....	ad. No. 1, 1994
Ss. 143G, 143H.....	ad. No. 1, 1994 am. No. 100, 1994
S. 143I.....	ad. No. 32, 2005
<b>Division 6</b>	
Ss. 143J, 143K.....	ad. No. 1, 1994
S. 143L.....	ad. No. 1, 1994 am. No. 32, 2005
S. 143M.....	ad. No. 1, 1994
S. 143N .....	ad. No. 1, 1994 rep. No. 152, 1997
S. 143P .....	ad. No. 1, 1994 am. No. 146, 1999
S. 143Q .....	ad. No. 1, 1994
Subhead. to s. 143R(3).....	am. No. 32, 2005
S. 143R .....	ad. No. 1, 1994 am. No. 100, 1994; No. 32, 2005
S. 143S .....	ad. No. 1, 1994 am. No. 152, 1997; No. 156, 1999
S. 143T.....	ad. No. 1, 1994
S. 143U .....	ad. No. 1, 1994 am. No. 152, 1997
S. 143V .....	ad. No. 1, 1994
S. 143W .....	ad. No. 1, 1994 am. No. 32, 2005
Ss. 143X, 143Y .....	ad. No. 1, 1994
S. 143Z.....	ad. No. 1, 1994 am. No. 146, 1999
S. 144.....	rs. No. 1, 1994 am. No. 32, 2005
Ss. 144A–144C .....	ad. No. 1, 1994
S. 144D .....	ad. No. 1, 1994 am. No. 32, 2005
S. 144E .....	ad. No. 1, 1994 am. No. 152, 1997; No. 156, 1999
S. 144F.....	ad. No. 1, 1994 am. No. 32, 2005
<b>Division 7</b>	
S. 144G.....	ad. No. 1, 1994
S. 144H .....	ad. No. 1, 1994 am. No. 159, 2001
S. 144J.....	ad. No. 1, 1994
S. 144K .....	ad. No. 1, 1994 am. No. 146, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 144L.....	ad. No. 1, 1994 am. No. 32, 2005
Ss. 144M, 144N .....	ad. No. 1, 1994
Ss. 144P, 144Q .....	ad. No. 1, 1994
<b>Division 8</b>	
S. 144R .....	ad. No. 1, 1994 am. No. 146, 1999
Notes 1, 2 to s. 144R .....	am. No. 32, 2005
S. 144S .....	ad. No. 1, 1994 rep. No. 32, 2005
S. 144T.....	ad. No. 1, 1994
Notes 1, 2 to s. 144T.....	am. No. 32, 2005
<b>Division 9</b>	
S. 144TA .....	ad. No. 98, 1997 am. No. 8, 2005
S. 144U .....	ad. No. 1, 1994
Ss. 144V, 144W .....	ad. No. 1, 1994 am. No. 100, 1994; No. 152, 1997
S. 144X .....	ad. No. 1, 1994 am. No. 152, 1997; No. 8, 2005
Ss. 144Y, 144Z .....	ad. No. 1, 1994
S. 144ZA .....	ad. No. 1, 1994 am. Nos. 98 and 152, 1997
Heading to s. 144ZB .....	am. No. 152, 1997
S. 144ZB .....	ad. No. 1, 1994 am. No. 152, 1997
S. 144ZC .....	ad. No. 1, 1994 rep. No. 152, 1997
S. 144ZD.....	ad. No. 1, 1994 am. No. 152, 1997
<b>Division 10</b>	
Heading to Div. 10 of..... Part 3A	rs. No. 32, 2005
Heading to s. 144ZE .....	am. No. 32, 2005
S. 144ZE .....	ad. No. 1, 1994 am. No. 32, 2005
<b>Division 11</b>	
S. 144ZF .....	ad. No. 1, 1994 am. No. 32, 2005
Ss. 144ZG, 144ZH .....	ad. No. 1, 1994
S. 144ZJ.....	ad. No. 1, 1994
S. 144ZK .....	ad. No. 1, 1994 am. No. 146, 1999
S. 144ZL.....	ad. No. 1, 1994
S. 144ZM.....	ad. No. 1, 1994 am. No. 146, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 144ZN.....	ad. No. 1, 1994
Ss. 144ZP, 144ZQ .....	ad. No. 1, 1994
<b>Part 4</b>	
Heading to Part 4 .....	rs. No. 4, 2001
<b>Division 1</b>	
Heading to Div. 1 of Part 4 .....	rs. No. 4, 2001
Heading to s. 145 .....	rs. No. 4, 2001
S. 145.....	am. No. 20, 1995; No. 4, 2001
Note to s. 145(2) .....	ad. No. 152, 1997 am. No. 4, 2001
Heading to s. 146 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 146.....	am. No. 20, 1995; No. 4, 2001
<b>Division 2</b>	
Heading to Div. 2 of Part 4 .....	am. No. 20, 1995 rs. No. 4, 2001
Heading to s. 147 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 147.....	am. No. 20, 1995 rs. No. 4, 2001 am. No. 32, 2005
S. 148.....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005
S. 149.....	am. No. 20, 1995; No. 4, 2001
S. 150.....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005
S. 151.....	am. No. 20, 1995; No. 152, 1997; No. 4, 2001 rs. No. 32, 2005
Heading to s. 152 .....	am. No. 20, 1995; No. 4, 2001
S. 152.....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005
S. 153.....	am. No. 20, 1995; No. 4, 2001; Nos. 8 and 32, 2005
Heading to s. 154 .....	am. No. 32, 2005
S. 154.....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005
<b>Division 3</b>	
Heading to Div. 3 of Part 4 .....	am. No. 20, 1995 rs. No. 4, 2001
Heading to s. 155 .....	am. No. 4, 2001
S. 155.....	am. No. 20, 1995; No. 4, 2001
Heading to s. 156 .....	am. No. 20, 1995
S. 156.....	am. No. 20, 1995 rs. No. 4, 2001 am. No. 32, 2005
Heading to s. 157 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 157.....	am. No. 1, 1994; No. 20, 1995 rs. No. 4, 2001 am. No. 32, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 158 .....	am. No. 20, 1995 rs. No. 4, 2001; No. 32, 2005
S. 158.....	am. No. 1, 1994; No. 20, 1995 rs. No. 4, 2001; No. 32, 2005
<b>Division 4</b>	
S. 159.....	am. No. 1, 1994; No. 20, 1995; Nos. 4 and 159, 2001
S. 160.....	am. No. 20, 1995; No. 4, 2001
S. 161.....	am. No. 20, 1995 rs. No. 4, 2001
S. 162.....	am. No. 20, 1995; No. 4, 2001
S. 163.....	am. No. 20, 1995 rep. No. 152, 1997
S. 164.....	am. No. 20, 1995 rs. No. 4, 2001
S. 165.....	am. No. 1, 1994; No. 20, 1995; No. 152, 1997; No. 156, 1999 rs. No. 4, 2001 am. No. 32, 2005
S. 166.....	am. No. 20, 1995; No. 4, 2001
<b>Division 5</b>	
Heading to Div. 5 of Part 4.....	am. No. 20, 1995 rs. No. 4, 2001
Heading to s. 167 .....	am. No. 20, 1995
S. 167.....	am. No. 20, 1995; No. 152, 1997; No. 156, 1999; No. 4, 2001
<b>Division 6</b>	
Heading to Div. 6 of Part 4.....	am. No. 20, 1995 rs. No. 4, 2001
Heading to s. 168 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 168.....	am. No. 20, 1995 rs. No. 4, 2001
S. 169.....	am. No. 20, 1995; Nos. 4 and 159, 2001
Ss. 170, 171 .....	am. No. 20, 1995; No. 4, 2001
Heading to s. 172.....	am. No. 20, 1995 rs. No. 4, 2001
S. 172.....	am. No. 20, 1995; No. 4, 2001
S. 172A .....	ad. No. 35, 1996 am. No. 4, 2001
Ss. 173, 174.....	am. No. 20, 1995; No. 4, 2001
<b>Division 7</b>	
S. 175.....	am. No. 20, 1995 rs. No. 4, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 176 .....	am. No. 20, 1995 rs. No. 4, 2001 rep. No. 32, 2005
S. 176 .....	am. No. 20, 1995 rs. No. 4, 2001 rep. No. 32, 2005
S. 177 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 178 .....	am. No. 20, 1995; No. 20, 1998 rs. No. 4, 2001
<b>Division 8</b>	
Heading to s. 179 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 179 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 180 .....	am. No. 20, 1995 rep. No. 152, 1997
Heading to s. 181 .....	am. No. 20, 1995; No. 4, 2001
S. 181 .....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005
Ss. 181A, 181B .....	ad. No. 32, 2005
Heading to s. 182 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 182 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 183 .....	am. No. 20, 1995; No. 4, 2001; Nos. 8 and 32, 2005
Heading to s. 184 .....	am. No. 20, 1995; No. 4, 2001
S. 184 .....	am. No. 20, 1995; No. 4, 2001
S. 185 .....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005
Heading to s. 186 .....	am. No. 20, 1995 rep. No. 152, 1997
S. 186 .....	am. No. 20, 1995 rep. No. 152, 1997
Heading to s. 187 .....	am. No. 20, 1995; No. 4, 2001
Ss. 187, 188 .....	am. No. 20, 1995; No. 4, 2001
S. 189 .....	am. No. 20, 1995 rep. No. 152, 1997 ad. No. 32, 2005
<b>Division 9</b>	
Heading to s. 190 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 190 .....	am. No. 20, 1995 rs. No. 4, 2001
S. 191 .....	am. No. 20, 1995; Nos. 35 and 43, 1996; No. 137, 2000; Nos. 4 and 112, 2001; No. 32, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 4A</b>	
Heading to Part 4A.....	rs. No. 30, 2006
Part 4A .....	ad. No. 20, 1995
<b>Division 1</b>	
S. 191A .....	ad. No. 20, 1995
Note to s. 191A(2) .....	ad. No. 152, 1997
S. 191B .....	ad. No. 20, 1995
<b>Division 2</b>	
Ss. 191C, 191D.....	ad. No. 20, 1995 am. No. 32, 2005
S. 191E .....	ad. No. 20, 1995
S. 191EA.....	ad. No. 32, 2005
Ss. 191F–191J.....	ad. No. 20, 1995
S. 191K .....	ad. No. 20, 1995 rep. No. 32, 2005
S. 191L.....	ad. No. 20, 1995 am. No. 152, 1997; No. 32, 2005
S. 191M.....	ad. No. 20, 1995 rep. No. 152, 1997
<b>Division 3</b>	
S. 191N .....	ad. No. 20, 1995 am. No. 32, 2005
Ss. 191P–191R.....	ad. No. 20, 1995
<b>Division 4</b>	
S. 191S .....	ad. No. 20, 1995
Ss. 191SA, 191SB .....	ad. No. 35, 1996
Ss. 191T, 191U .....	ad. No. 20, 1995
<b>Division 5</b>	
Ss. 191V, 191W .....	ad. No. 20, 1995 am. No. 32, 2005
S. 191X .....	ad. No. 20, 1995 am. Nos. 8 and 32, 2005
S. 191Y .....	ad. No. 20, 1995
<b>Division 6</b>	
S. 191Z.....	ad. No. 20, 1995 am. No. 32, 2005
S. 192.....	ad. No. 20, 1995
S. 192A .....	ad. No. 20, 1995 am. No. 32, 2005
Ss. 192B, 192C .....	ad. No. 20, 1995
S. 192D .....	ad. No. 20, 1995 am. No. 146, 1999
S. 192E .....	ad. No. 20, 1995
S. 192F.....	ad. No. 20, 1995 am. No. 152, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 192G .....	ad. No. 20, 1995 am. No. 32, 2005
S. 192H .....	ad. No. 20, 1995 am. No. 152, 1997; No. 156, 1999; No. 32, 2005
S. 192I .....	ad. No. 20, 1995 am. No. 32, 2005
<b>Division 7</b>	
Subhead. to s. 192J(3) .....	am. No. 152, 1997; No. 156, 1999
S. 192J .....	ad. No. 20, 1995 am. No. 152, 1997; No. 156, 1999
<b>Division 8</b>	
Ss. 192K–192N .....	ad. No. 20, 1995
Ss. 192P–192R .....	ad. No. 20, 1995
<b>Division 9</b>	
S. 192S .....	ad. No. 20, 1995
Heading to s. 192T .....	am. No. 4, 2001; No. 32, 2005
S. 192T .....	ad. No. 20, 1995 am. No. 4, 2001; No. 32, 2005
Ss. 192U, 192V .....	ad. No. 20, 1995
<b>Division 10</b>	
Heading to Div. 10 of..... Part 4A	rs. No. 30, 2006
S. 192W .....	ad. No. 20, 1995 am. No. 152, 1997 rs. No. 30, 2006
Heading to s. 192X .....	am. No. 30, 2006
S. 192X .....	ad. No. 20, 1995 am. No. 32, 2005; No. 30, 2006
S. 192Y .....	ad. No. 20, 1995
S. 192Z .....	ad. No. 20, 1995 am. No. 30, 2006
Heading to s. 193 .....	am. No. 30, 2006
S. 193 .....	ad. No. 20, 1995 am. No. 30, 2006
Heading to s. 193AA .....	am. No. 30, 2006
S. 193AA .....	ad. No. 20, 1995 am. No. 8, 2005; No. 30, 2006
Heading to s. 193A .....	am. No. 30, 2006
S. 193A .....	ad. No. 20, 1995 am. No. 30, 2006
S. 193B .....	ad. No. 20, 1995 rep. No. 32, 2005
Heading to s. 193C .....	am. No. 30, 2006
S. 193C .....	ad. No. 20, 1995 am. No. 30, 2006
S. 193D .....	ad. No. 20, 1995

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 193E .....	ad. No. 20, 1995 am. No. 30, 2006
Note to s. 193E(3) .....	rep. No. 30, 2006
S. 193F .....	ad. No. 20, 1995 rep. No. 152, 1997
Heading to s. 193G .....	am. No. 30, 2006
S. 193G .....	ad. No. 20, 1995 am. No. 152, 1997; No. 30, 2006
Note to s. 193G(1) .....	rep. No. 152, 1997
S. 193H .....	ad. No. 20, 1995 am. Nos. 8 and 32, 2005; No. 30, 2006
Heading to s. 193I .....	am. No. 30, 2006
S. 193I .....	ad. No. 20, 1995 am. No. 32, 2005; No. 30, 2006
<b>Division 11</b>	
S. 193J .....	ad. No. 20, 1995
S. 193K .....	ad. No. 20, 1995 rs. No. 152, 1997
S. 193L .....	ad. No. 20, 1995
S. 193M .....	ad. No. 20, 1995 am. No. 32, 2005
S. 193N .....	ad. No. 20, 1995
Ss. 193P, 193Q .....	ad. No. 20, 1995
<b>Division 12</b>	
S. 193R .....	ad. No. 20, 1995 am. No. 32, 2005
<b>Division 13</b>	
S. 193S .....	ad. No. 20, 1995 am. No. 112, 2001
<b>Division 14</b>	
S. 193T .....	ad. No. 20, 1995
S. 192 Renumbered s. 193U .....	No. 20, 1995
S. 193U .....	rep. No. 32, 2005
<b>Part 4B</b>	
Part 4B .....	ad. No. 32, 2005
S. 193 Renumbered s. 193V .....	No. 20, 1995
S. 193V .....	rep. No. 152, 1997 ad. No. 32, 2005
S. 193W .....	ad. No. 32, 2005
S. 193X .....	ad. No. 32, 2005 am. No. 93, 2006
Ss. 193Y, 193Z .....	ad. No. 32, 2005
Ss. 193ZA–193ZG .....	ad. No. 32, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 5</b>	
Heading to Part 5 .....	am. No. 1, 1994
S. 194 .....	am. No. 43, 1996
S. 194A .....	ad. No. 37, 1993 rep. No. 32, 2005
S. 195 .....	am. No. 1, 1994; No. 40, 2002 rep. No. 32, 2005
S. 195A .....	ad. No. 1, 1994
S. 196 .....	am. No. 1, 1994; No. 4, 2001; No. 40, 2002; No. 32, 2005 rep. No. 32, 2005
S. 196A .....	ad. No. 1, 1994 am. No. 100, 1994; No. 20, 1998
S. 197 .....	am. No. 35, 1996; No. 137, 2000
S. 198 .....	am. No. 35, 1996; No. 112, 2001
S. 199 .....	am. No. 1, 1994; No. 137, 2000; No. 112, 2001; No. 32, 2005
S. 200 .....	am. No. 1, 1994; Nos. 114 and 152, 1997; No. 146, 1999
S. 200A .....	ad. No. 32, 2005 am. No. 32, 2005
S. 200B (first occurring) .....	ad. No. 8, 2005
S. 200B (second occurring) .....	ad. No. 32, 2005 am. No. 32, 2005
Renumbered s. 200C .....	No. 30, 2006
S. 201 .....	am. No. 37, 1993; No. 1, 1994; No. 43, 1996; No. 32, 2005
<b>Part 6</b>	
Heading to Part 6 .....	am. No. 1, 1994
<b>Division 1</b>	
S. 202 .....	am. No. 32, 2005
Div. 2 of Part 6 .....	rep. No. 1, 1994
S. 203 .....	rep. No. 1, 1994
<b>Division 3</b>	
Ss. 204, 205 .....	rep. No. 32, 2005
S. 206 .....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005
S. 207 .....	rep. No. 32, 2005
Heading to s. 208 .....	am. No. 20, 1995 rep. No. 4, 2001
S. 208 .....	am. No. 20, 1995 rep. No. 4, 2001
S. 209 .....	rep. No. 32, 2005
Heading to s. 210 .....	am. No. 20, 1995; No. 4, 2001 rep. No. 32, 2005
S. 210 .....	am. No. 20, 1995; No. 4, 2001 rep. No. 32, 2005
S. 211 .....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005
Ss. 212–214 .....	rep. No. 32, 2005
S. 215 .....	am. No. 20, 1995; No. 4, 2001; No. 32, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 217.....	rep. No. 32, 2005
<b>Division 4</b>	
S. 218.....	rep. No. 32, 2005
S. 220.....	am. No. 32, 2005
S. 221.....	rep. No. 32, 2005
S. 222.....	am. No. 20, 1995; No. 4, 2001
Div. 5 of Part 6 .....	rep. No. 1, 1994
Ss. 223–232.....	rep. No. 1, 1994
<b>Schedule 1</b>	
Schedule 1 .....	rs. Nos. 26 and 37, 1993 am. No. 1, 1994 rs. No. 32, 2005
<b>Schedule 2</b>	
Heading to Schedule 2.....	rs. No. 32, 2005
Schedule 2 .....	am. No. 37, 1993; No. 100, 1994; No. 32, 2005
<b>Schedule 2A</b>	
Heading to Schedule 2A .....	rs. No. 32, 2005
Schedule 2A.....	ad. No. 37, 1993 am. No. 100, 1994; No. 32, 2005
Schedule 2B.....	ad. No. 1, 1994 rep. No. 100, 1994
Schedule 3 .....	rep. No. 32, 2005
<b>Schedule 4</b>	
Schedule 4 .....	am. Nos. 1 and 100, 1994; No. 140, 2003; No. 62, 2004; No. 32, 2005

**Table A**

---

**Table A**

**Application, saving or transitional provisions**

*Aboriginal and Torres Strait Islander Commission Amendment Act 1996*  
(No. 35, 1996)

**Schedule 1**

**5 Transitional**

- (1) This item applies only if this Act receives the Royal Assent on or before 12 September 1996.
- (2) The amendment made by item 4 extends to the round of Regional Council elections for which the election period started on 12 July 1996 (the *current round of Regional Council elections*).
- (3) The Regional Council Election Rules are amended by repealing Schedule 1 and substituting the Schedule set out at the end of this item.
- (4) The amendment of the Regional Council Election Rules made by subitem (3) is taken to have been duly made by the Minister under section 113 of the *Aboriginal and Torres Strait Islander Commission Act 1989* and may be amended or repealed by further rules made by the Minister under that section.
- (5) Despite paragraph 100(b) of the *Aboriginal and Torres Strait Islander Commission Act 1989*, the current round of Regional Council elections is to be conducted by the Australian Electoral Commission in accordance with the Regional Council Election Rules referred to in that paragraph as amended by subitem (3).
- (6) If:
  - (a) before the commencement of this Act, the authorised electoral officer, under subsection 107(1) of the *Aboriginal and Torres Strait Islander Commission Act 1989*, declared, in relation to the current round of Regional Council elections, a candidate or candidates who nominated for election as the member or members for a Regional Council ward to be duly elected; and

---

**Table A**

- (b) the number of candidates nominated for election as the member or members for that Regional Council ward was greater than the number that, under that Act as amended by this Act, is the designated number in relation to the ward;

the declaration is taken not to have been made and a poll must be held.

**Table A**

SCHEDULE TO BE INSERTED IN REGIONAL COUNCIL ELECTION  
RULES  
SCHEDULE 1  
WARDS

Rule 2A

Column 1 Region that contains the following place	Column 2 Ward	Column 3 Designated number for ward	Column 4 Map depicting boundaries of wards
PART 1 NEW SOUTH WALES			
Coffs Harbour	Gattang	7	ATSIC Coffs Harbour Region - ATSIC 96/1
	Northern Rivers	5	
Tamworth	Gomilaroi	5	ATSIC Tamworth Region - ATSIC 96/2
	Tingha	3	
	Quirindi	4	
Sydney	Sydney	12	ATSIC Sydney Region - ATSIC 96/3
Bourke	Wangkumara	7	ATSIC Bourke Region - ATSIC 96/4
	NSW Far West	3	
Wagga Wagga	Deniliquin	1	ATSIC Wagga Wagga Region - ATSIC 96/5
	Wirawongam	7	
	Murrumbidgee/ Lachlan	4	
Queanbeyan	Bogong	5	ATSIC Queanbeyan Region - ATSIC 96/6
	Umbara	6	



**Table A**

Column 1 Region that contains the following place	Column 2 Ward	Column 3 Designated number for ward	Column 4 Map depicting boundaries of wards
<b>PART 2 – NORTHERN TERRITORY</b>			
Katherine	Ward 1	1	ATSIC Katherine Region - ATSI 96/7
	Ward 2	2	
	Ward 3	3	
	Ward 4	2	
	Ward 5	3	
Jabiru	Tiwi Islands	3	ATSIC Jabiru Region - ATSI 96/8
	Jabiru	4	
	Coburg	1	
	Wadeye	2	
	Daly River	1	
Nhulunbuy	West	5	ATSIC Nhulunbuy Region - ATSI 96/9
	East	3	
	South	3	
Darwin	Ward 1	6	ATSIC Darwin Region - ATSI 96/10
	Ward 2	3	
	Ward 3	1	
	Ward 4	1	
Alice Springs	Alice Springs	10	ATSIC Alice Springs Region - ATSI 96/11
Tennant Creek	Tennant Creek	9	ATSIC Tennant Creek Region - ATSI 96/12
Apatula	Papunya	6	ATSIC Apatula Region - ATSI 96/13
	Impiyara	1	
	Arntarlpilta	3	

**Table A**

Column 1 Region that contains the following place	Column 2 Ward	Column 3 Designated number for ward	Column 4 Map depicting boundaries of wards
<b>PART 3 - QUEENSLAND</b>			
Cooktown	Cooktown	10	ATSIC Cooktown Region - ATSI 96/14
Mt Isa	Burke Mornington Mount Isa South East Carpentaria	2 1 4 2 1	ATSIC Mt Isa Region - ATSI 96/15
Brisbane	Brisbane Brisbane North Brisbane South	6 2 4	ATSIC Brisbane Region - ATSI 96/16
Cairns	Cairns	12	ATSIC Cairns Region - ATSI 96/17
Townsville	Townsville Palm Island Mackay Ingham Charters Towers	4 2 4 1 1	ATSIC Townsville Region - ATSI 96/18
Roma	Roma	11	ATSIC Roma Region - ATSI 96/19
Rockhampton	Rockhampton	11	ATSIC Rockhampton Region - ATSI 96/20

**Table A**

Column 1 Region that contains the following place	Column 2 Ward	Column 3 Designated number for ward	Column 4 Map depicting boundaries of wards
<b>PART 4 - SOUTH AUSTRALIA</b>			
Adelaide	Kaurna	8	ATSIC Adelaide Region - ATSI 96/21
	Murrundi	4	
Port Augusta	Amata	2	ATSIC Port Augusta Region - ATSIC 96/22
	Indulkana	2	
	Coober Pedy	1	
	Nulla Wanga	4	
	Tjuta South		
	Nulla Wanga Tjuta North	1	
Ceduna	Wangka Pulka North	4	ATSIC Ceduna Region - ATSI 96/23
	Wangka Pulka South	3	
	Kakarrara	2	
	Wilurrara		
<b>PART 5 - TASMANIA</b>			
Hobart	Hobart	12	ATSIC Hobart Region - ATSI 96/24
<b>PART 6 - VICTORIA</b>			
Wangaratta	Gippsland	3	ATSIC Wangaratta Region - ATSI 96/26
	Goulburn Valley	3	
	East Melbourne	5	
Ballarat	Tumbukka	7	ATSIC Ballarat Region - ATSI 96/27
	West Melbourne	5	

**Table A**

Column 1 Region that contains the following place	Column 2 Ward	Column 3 Designated number for ward	Column 4 Map depicting boundaries of wards
<b>PART 7 - WESTERN AUSTRALIA</b>			
Perth	Perth	12	ATSIC Perth Region - ATSIC 96/28
Narrogin	Moora	1	ATSIC Narrogin Region - ATSIC 96/29
	Northam	2	
	Bunbury	3	
	Narrogin	1	
	Albany	3	
Derby	Jayida Buru	5	ATSIC Derby Region - ATSIC 96/30
	Bandaral Ngadu	5	
Kununurra	Wunan	5	ATSIC Kununurra Region - ATSIC 96/31
	Yarleyel	3	
	Kutjungka	2	
Broome	Broome	5	ATSIC Broome Region - ATSIC 96/32
	Outer Areas	4	
South Hedland	Port Hedland	4	ATSIC South Hedland Region - ATSIC 96/33
	Roebourne	3	
	Ashburton	1	
	East Pilbara	2	
Geraldton	Geraldton	10	ATSIC Geraldton Region - ATSIC 96/34
Kalgoorlie	Town	4	ATSIC Kalgoorlie Region - ATSIC 96/35
	North	2	
	South	3	

**Table A**

Column 1	Column 2	Column 3	Column 4
Region that contains the following place	Ward	Designated number for ward	Map depicting boundaries of wards
Warburton	Western Desert	4	ATSIC
	Warburton	4	Warburton
	Cundeelee	1	Region - ATSIC 96/36

**37 Application**

The amendment made by item 36 applies to determinations made after the commencement of that item.

**39 Application**

The amendment made by item 38 applies to rules made after the commencement of that item.

**69 Application**

- (1) In this item:

***appointment day*** means the day, or the earliest day, on which the Minister appoints a person as a Commissioner after the person has been elected in the first zone election (other than a zone election for the Torres Strait zone) held after the end of the election period that started on 12 July 1996.

***deferred items*** means items 1, 2, 3, 7, 8, 9, 10, 15, 18, 19, 22, 24, 25, 26, 27, 28 and 56.

- (2) The amendments made by the deferred items do not apply until the appointment day.
- (3) The person who held office as the Commission Chairperson immediately before the appointment day ceases to hold that office on that day.

**Table A**

---

*Aboriginal and Torres Strait Islander Commission Amendment (TSRA) Act 1997* (No. 98, 1997)

**Schedule 1**

**8 Application**

The amendments made by items 1 to 7 apply in relation to the financial year beginning on 1 July 1997 and later financial years.

---

*Aboriginal and Torres Strait Islander Commission Amendment Act 1998* (No. 20, 1998)

**Schedule 1**

**12 Application of amendment of section 21**

- (1) The amendment of section 21 of the *Aboriginal and Torres Strait Islander Commission Act 1989* made by this Schedule applies to disposals of interests (and purported disposals of interests) on or after the day on which this Act receives the Royal Assent.
- (2) A consent given by the Commission before that day remains effective for the purposes of that section on and after that day (despite that amendment).

**13 Application of amendments of paragraph 45(1)(a) and subsection 45A(1)**

The amendments of paragraph 45(1)(a) and subsection 45A(1) of the *Aboriginal and Torres Strait Islander Commission Act 1989* made by this Schedule do not affect delegations under instruments made before the day on which this Act receives the Royal Assent.

*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

**Schedule 2**

**418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
-

**Table A**

---

*Aboriginal and Torres Strait Islander Commission Amendment Act 2001*  
(No. 4, 2001)

**Schedule 1**

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

If an appointment of a person to act as the Deputy Chairperson, or as a Director, of the Board of Directors of the Aboriginal and Torres Strait Islander Commercial Development Corporation under subsection 162(2) or (3) of the *Aboriginal and Torres Strait Islander Commission Act 1989* was in force immediately before the commencement of item 60, and the appointment did not end at that time, the appointment is not affected by the amendment made by that item but continues in force as if it had been made under subsection 162(2) or (3), as the case may be, substituted in that Act by that item.

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

If a person held office as General Manager of the Aboriginal and Torres Strait Islander Commercial Development Corporation under subsection 168(1) of the *Aboriginal and Torres Strait Islander Commission Act 1989* immediately before the commencement of item 73 under an appointment that did not end at that time, the appointment is not affected by the amendment made by that item but continues in force as if it had been made under subsection 168(1) substituted in that Act by that item.

**77 Saving of existing engagements of employees and consultants**

Any engagement of an employee under section 175, or any engagement of a consultant under section 178, of the *Aboriginal and Torres Strait Islander Commission Act 1989* that was in force immediately before the commencement of item 76 and did not end at that time is not affected by the amendment made by that item and continues in force as if it had been entered into under section 175 or 178, as the case may be, substituted in that Act by that item.



## **89 Saving of existing delegations**

Any delegation that was in force under section 190 of the *Aboriginal and Torres Strait Islander Commission Act 1989* immediately before the commencement of item 88 and did not end at that time is not affected by the amendment made by that item and continues in force as if it had been given under section 190 substituted in that Act by that item.

---

*Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Act 2001* (No. 112, 2001)

## **4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

---

*Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001* (No. 159, 2001)

## **Schedule 1**

### **97 Application of amendments**

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

## Table A

---

*Aboriginal and Torres Strait Islander Commission Amendment Act 2002*  
(No. 40, 2002)

### 4 Transitional provisions

A request that a body corporate purported to make before the commencement of this section under the subsection repealed by item 46 of Schedule 1, and a decision that the Commission purported to make as a result of such a request, are taken to be, and to have at all times been, as valid as they would have been if the subsection substituted by that item had been in force when the body purported to make the request or the Commission purported to make the decision, as the case may be.

---

*Bankruptcy Legislation Amendment Act 2004* (No. 80, 2004)

### Schedule 1

#### 212 Transitional—pre-commencement deeds and compositions

- (1) For the purposes of this item, if a deed of assignment or a deed of arrangement was executed by a debtor and a trustee under Part X of the *Bankruptcy Act 1966* before the commencement of this item, the deed is a *pre-commencement deed*.
- (2) For the purposes of this item, if a composition was accepted before the commencement of this item by a special resolution of a meeting of creditors under section 204 of the *Bankruptcy Act 1966*, the composition is a *pre-commencement composition*.
- (3) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
  - (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;continue to apply, in relation to:
  - (c) a pre-commencement deed; and
  - (d) a pre-commencement composition; and
  - (e) any matter connected with, or arising out of:

- (i) a pre-commencement deed; or
  - (ii) a pre-commencement composition;
- as if those repeals had not happened and those amendments had not been made.

### 213 Transitional—pre-commencement authorities

- (1) For the purposes of this item, if:
- (a) an authority given by a debtor under section 188 of the *Bankruptcy Act 1966* became effective before the commencement of this item; and
  - (b) as at the commencement of this item, none of the following had happened:
    - (i) the execution by the debtor and the trustee of a deed of assignment under Part X of the *Bankruptcy Act 1966*;
    - (ii) the execution by the debtor and the trustee of a deed of arrangement under Part X of the *Bankruptcy Act 1966*;
    - (iii) the acceptance of a composition by a special resolution of a meeting of the debtor's creditors under section 204 of the *Bankruptcy Act 1966*;
- the authority is a *pre-commencement authority*.
- (2) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
- (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;
- continue to apply, in relation to:
- (c) a pre-commencement authority; and
  - (d) the control of the debtor's property following a pre-commencement authority becoming effective; and
  - (e) a meeting of the debtor's creditors called under a pre-commencement authority; and
  - (f) whichever of the following is applicable:
    - (i) a deed of assignment executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;

**Table A**

---

- (ii) a deed of arrangement executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
- (iii) a composition accepted after the commencement of this item by a special resolution of such a meeting; and
- (g) any other matter connected with, or arising out of:
  - (i) a pre-commencement authority; or
  - (ii) a deed of assignment mentioned in subparagraph (f)(i); or
  - (iii) a deed of arrangement mentioned in subparagraph (f)(ii); or
  - (iv) a composition mentioned in subparagraph (f)(iii);

as if those repeals had not happened and those amendments had not been made.

**215 Transitional—regulations**

- (1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Parts 1 and 2 of this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

---

*Financial Framework Legislation Amendment Act 2005* (No. 8, 2005)

**Schedule 2**

**174 Saving provision—provisions that formerly referred to the Treasurer**

- (1) Any thing that:
  - (a) was done by the Treasurer, or by a delegate of the Treasurer, before the commencing time under an affected provision; and
  - (b) was in effect immediately before the commencing time;continues to have effect after the commencing time as if it had been done by the Finance Minister under the affected provision.

- (2) In this item:
- affected provision*** means a provision that is amended by an item in this Schedule so as to replace references to the Treasurer with references to the Finance Minister.
- commencing time*** means the day this Act receives the Royal Assent.
- Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

---

*Aboriginal and Torres Strait Islander Commission Amendment Act 2005*  
(No. 32, 2005)

## Schedule 1

### 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

**Table A**

---

- (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.

**Table A**

**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 ATSIIC 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 ATSIIC 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 ATSIIC 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

**Table A**

---

- (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
-



**Table A**

- (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.

**Table A**

---

- (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

**Table A**

- 
- (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.

**Table A**

---

- (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.

**Table A**

- 
- (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.
-

**Table A**

---

**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:
-

---

**Table A**

- (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:

**Table A**

---

- (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
-



**Table A**

- 
- (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
-

**Table A**

---

- (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.

**Table A**

- 
- (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 ATSI 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 ATSI 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.
-

**Table A**

---

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

is taken, on and after ATSI 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 ATSI Act that is, on ATSI abolition day, declared to be a class A exempted asset; or
- (b) under section 20 or 21 of the ATSI 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 ATSI Act that is, on ATSI abolition day, declared to be a class B exempted asset; or
- (b) under section 20 or 21 of the ATSI 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.

**Table A**

---

- (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 ATSI Act or under subitem 200(10) of this Schedule.

**202 Preservation of model rules**

Despite the repeal of subsection 128(12) of the ATSI Act, the model rules formulated by the Commission under that subsection and in force immediately before ATSI 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 ATSI abolition day**

If, before ATSI abolition day:

- (a) the Commission had suspended a Regional Councillor under section 122A of the ATSI 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 ATSI abolition day, finally elapsed;

section 122A of the ATSI Act as amended by this Act applies, on and after ATSI 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 ATSI 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.

**Table A**

---

**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



**Table A**

- 
- (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.
-

**Table A**

---

**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

**Table A**

- (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****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*.

---

**Table A**

---

**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 ATSI Act and that became, on ATSI abolition day, the Office of Evaluation and Audit (Indigenous Programs).

**Secretary** means the Secretary of the Department.

**TSSRA** means the Torres Strait Regional Authority established by section 142 of the ATSI 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 ATSI Act becomes, by force of this item, on ATSI 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 ATSI Act immediately before ATSI 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 ATSI Act; and
  - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before ATSI 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

**Table A**

- 
- (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*.
-

**Table A**

---

**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;

**Table A**

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 ATSI 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 ATSI Act, make a final report of its operations for the period commencing on 1 July 2004 and ending immediately before ATSI 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****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.

**Table A**

---

***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

**Table A**

---

- (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.

---

*Aboriginal Land Rights (Northern Territory) Amendment Act 2006*  
(No. 93, 2006)

**Schedule 1**

**206 Application—audit reports**

*Land Councils*

- (1) Paragraph 193X(1)(ca) of the *Aboriginal and Torres Strait Islander Act 2005*, as inserted by item 1, applies in relation to the activities or operations of a Land Council carried out after the commencement of that item.

*Persons receiving certain amounts under section 35 of the Aboriginal Land Rights (Northern Territory) Act 1976*

- (2) Paragraph 193X(1)(cb) of the *Aboriginal and Torres Strait Islander Act 2005*, as inserted by item 1, applies in relation to amounts received by a body corporate or other person after the commencement of that item (including amounts received under a determination made before that commencement).

**Table A**

---

- (3) However, for amounts received under subsection 35(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* in accordance with an agreement mentioned in that subsection, the agreement must also have been made after that commencement.

*Persons receiving amounts under subsection 64(4) of the  
Aboriginal Land Rights (Northern Territory) Act 1976*

- (4) Paragraph 193X(1)(cc) of the *Aboriginal and Torres Strait Islander Act 2005*, as inserted by item 1, applies in relation to amounts received by an individual or organisation after the commencement of that item.