

2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION
AMENDMENT BILL 2004**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration and
Multicultural and Indigenous Affairs,
Senator the Honourable Amanda Vanstone, MP)

ABORIGINAL TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 2004

OUTLINE

Overview

1. The Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 implements the Government's decision to abolish the Aboriginal and Torres Strait Islander Commission (ATSIC).
2. The Bill repeals the provisions in the *Aboriginal and Torres Strait Islander Commission Act 1989* ("the ATSIC Act"), which establish the national board of ATSIC, with effect from a date to be proclaimed. It also makes consequential amendments to the ATSIC Act arising from the abolition of ATSIC. This includes the transfer of ATSIC's assets and liabilities to other agencies and the establishment of a new housing fund to be administered by Indigenous Business Australia to replace ATSIC's housing fund. The Bill also modifies the role of the Office of Evaluation and Audit, to take into account the abolition of ATSIC.
3. The Government's decision provided for the retention of ATSIC's Regional Councils until 30 June 2005. The Bill provides for the abolition of the Regional Councils on 1 July 2005 or the day after the abolition of ATSIC, whichever is the later.
4. The Bill also makes consequential amendments to a number of other Acts arising from the abolition of ATSIC.

FINANCIAL IMPACT STATEMENT

5. \$79 million in savings over four years arise from the abolition of ATSIC and the Regional Councils. These savings have been re-allocated to indigenous programs.

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NOTES ON CLAUSES

Clause 1 – Short title

1. This clause provides for the short title of the Act.

Clause 2 – Commencement

2. This clause provides that sections 1-3 and anything in the Act not elsewhere covered by the table in clause 2 commence on Royal Assent. Schedules 1, 2 and 4 commence on a day to be proclaimed ('ATSIC abolition day') and Schedule 3 commences on 1 July 2005 or the day after commencement of Schedules 1, 2 and 4 whichever is the later ('Regional Councils abolition day').

Clause 3 – Schedule(s)

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 This clause provides that each Act specified in a Schedule to the Act is amended or repealed as set out in the Schedule, and any other item in a Schedule has effect according to its terms.

Schedules of Amendments

Schedule 1 – Part 1 - Abolition of Aboriginal and Torres Strait Islander Commission

Item 1 Repeal of Part 2

4. Item 1 repeals Part 2 of the ATSIC Act. That Part provides for the establishment of ATSIC - its functions, constitution, administration and operation. Part 2 also provides for the position of Chief Executive Officer and establishes the Regional Land Fund, the Housing Fund, the Office of Evaluation and Audit, the Office of Torres Strait Islander Affairs and the Torres Strait Islander Advisory Board. Transitional and saving arrangements are provided for in Schedule 1 for the Regional Land Fund and the Housing Fund and in Schedule 2 for the Office of Evaluation and Audit.

Schedule 1 – Part 2 – Consequential amendments relating to the abolition of Aboriginal and Torres Strait Islander Commission

Items 2 – 23 Definitions

5. Item 2 removes "Aboriginal and Torres Strait Islander Commission" from the title. Item 3 changes the short title of the ATSIC Act to the *Aboriginal and Torres Strait Islander Act 2004*. Items 4-23 repeal various definitions in section 4 of the ATSIC Act consequential to the abolition of ATSIC and insert definitions of ATSIC abolition day, the New Housing Fund, and Regional Councils abolition day.

Items 24 - 25 Regions

6. Item 24 inserts a new heading to Part 3 entitled "Regions and Regional Councils". Item 25 repeals paragraph 91(1)(a) and substitutes a provision which refers

to an amended Schedule 1 to the ATSIC Act. Schedule 1 lists places which are included in regions.

Items 26 - 84 Regional Councils

7. Items 26-84 delete references to the Commission, Commission Chairperson and to zones. The Registrar of Aboriginal Corporations instead of ATSIC will now formulate Regional Council Model Rules for the conduct of Regional Council meetings.

8. The role of the Commission in Regional Council matters will now be the role of the Minister including:

- gazetting regional boundary determinations;
- approving Regional Council engaging staff;
- determining terms and conditions for members of Regional Council advisory committees;
- declaring persons to have ceased to be members of or to have been removed/resigned from a Regional Council;
- appointing/terminating an administrator for a Regional Council;
- granting leave of absence (other than recreation leave) for Regional Council Chairpersons; and
- convening a meeting of a Regional Council at any time.

9. Changes to Regional Councils include:

Provide the Minister (previously the Commission) with views of Aboriginal people and Torres Strait Islanders about the activities of the Torres Strait Regional Authority and Commonwealth and state/territory and local government bodies in their region;

- No requirement to prepare draft budgets or proposals for allocation of moneys but the Regional Councils will retain the capacity to make proposals on expenditure of the Regional Land Fund (which is to be administered by the Indigenous Land Corporation);
- Submit annual reports to the Minister; and
- Keep a register of the interests disclosed by members of a Regional Council.

Items 85 - 87 Zones

10. Item 85 repeals Division 7 of Part 3 of the ATSIC Act which establishes zones and sets out the process for the conduct of zone elections. Item 86 is a consequential amendment to the abolition of ATSIC. Item 87 repeals Division 9 of Part 3 which established Review Panels to consider electoral matters arising out of ATSIC elections. On the basis that there will be no more ATSIC elections, review panels are no longer required.

Items 88 - 107 Torres Strait Regional Authority

11. Items 88-107 delete references to the Commission in matters relating to the operation of, election to, and administration of the Torres Strait Regional Authority. The operation of the Authority is not otherwise affected.

Items 108 - 125 Indigenous Business Australia

12. Items 108-125 amend the ATSI Act as a consequence of the new functions of Indigenous Business Australia to make housing and business loans and grants, and to give guarantees in relation to loans or grants that will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders. References to ATSI (which formerly undertook these functions) are deleted and provision is made for the Minister to authorise Indigenous Business Australia to act as agent or delegate of the Commonwealth. The powers of Indigenous Business Australia are extended to allow it to enter into contracts for the provision of business or housing loans and to make grants for purposes associated with business loans or housing loans. Indigenous Business Australia may determine the terms and conditions of grants and loans and may guarantee payment of money in relation to a housing or business loan where it is satisfied that the loan will further the social, economic or cultural development of Aboriginal people and Torres Strait Islanders.

13. Item 109 inserts subsection 148(3) to exempt Indigenous Business Australia from certain requirements imposed by section 148 in operating the former ATSI programs. This will ensure that Indigenous Business Australia can operate in relation to these loans and grants in the same way as ATSI, and make loans on terms and conditions to facilitate the participation of indigenous people in home ownership and business activities.

14. Item 112 replaces section 151 with a new provision empowering the Minister to give general directions to Indigenous Business Australia in relation to its activities. This recognises the fact that Indigenous Business Australia will be delivering former ATSI programs in relation to which the Minister was able to issue general directions.

Items 126 - 128 New Housing Fund

15. Items 126-128 establish the New Housing Fund to replace the Housing Fund established by section 67 of the ATSI Act. This Fund comprises: money credited to the fund established under section 67 of the ATSI Act before ATSI abolition day; amounts appropriated to Indigenous Business Australia for the purposes of the New Housing Fund; repayments relating to housing loans made by or treated as having been made by Indigenous Business Australia out of the New Housing Fund or loans made by the Aboriginal Development Commission or the Aboriginal Loans Commission; interest received by Indigenous Business Australia on investment of money from the New Housing Fund; and money Indigenous Business Australia determines in writing to make available for the purposes of the New Housing Fund.

16. Budget estimates must be prepared for the New Housing Fund by Indigenous Business Australia for each financial year. Money in the New Housing Fund is not counted in determining whether Indigenous Business Australia has a temporary deficit. Security may not be given over money in the New Housing Fund or money held in trust by Indigenous Business Australia. Application for review of a decision to refuse a loan from the New Housing Fund may be made to the Administrative Appeals Tribunal.

Item 129 Financial requirements

17. Item 129 inserts section 189 which requires Indigenous Business Australia to include in its annual report details of any ministerial direction under section 151 and any consultants engaged under section 178 of the ATSI Act. Indigenous Business

Australia is required to deal with the finances of the New Housing Fund separately from the other finances of Indigenous Business Australia in its annual reports.

Item 130 Secrecy

18. Item 130 inserts a new defence to the secrecy offence in section 191. The defence applies where information or documents relate to housing or business loans, or to grants in relation to housing or business loans, and the information or documents are given to a person authorised (by the person to whose affairs the information/documents relate) to receive them. This defence reflects the secrecy provision which applied to the Commission and Commission staff.

Items 131 - 154 Indigenous Land Corporation

19. Item 131 amends subsection 191C(c) extending the functions of the Indigenous Land Corporation to be such as are conferred by any other law of the Commonwealth (including the Act). Item 132 inserts subsection 191D(1A) to allow the Indigenous Land Corporation to make a grant of an interest in land on such terms and conditions as it determines. This is consistent with the provisions under which ATSIC made grants from the Regional Land Fund. The money held in the Regional Land Fund will be transferred to the Indigenous Land Corporation. Item 133 inserts section 191EA to allow the Indigenous Land Corporation to make payments to Indigenous Business Australia to assist Indigenous Business Australia to carry out its functions. This would allow Indigenous Business Australia to promote economic development on land the Indigenous Land Corporation granted to indigenous people. Item 134 repeals section 191K which enabled ATSIC to grant land to the Indigenous Land Corporation.

20. Item 135 amends section 191L of the ATSIC Act to enable the Minister to give general directions to the Indigenous Land Corporation about the exercise of its functions and powers in relation to the Regional Land Fund moneys between ATSIC abolition day and Regional Councils abolition day.

21. Items 136-154 include amendments that: remove references to the Commission and the Commission Chairperson; remove redundant provisions in regard to the first ten years of the Aboriginal and Torres Strait Islander Land Fund; instruct the Secretary of the Department to keep accounts and prepare financial statements for the Land Fund; and prevent the Indigenous Land Corporation from using money that stood to the credit of the Regional Land Fund as security between ATSIC abolition day and Regional Councils abolition day.

Items 155 - 161 Miscellaneous

22. Item 155 repeals sections 193U, 194A and 195 removing: the requirement for a telephone service to enable calls to regional offices at the cost of a local call; the global limit on remuneration of certain office holders; and the review by the Commission of a delegate's decision. Items 156-160 make consequential amendments to section 196 that sets out the review of Commission decisions by the Administrative Appeals Tribunal. Decisions now made by the Minister under sections 121(1) and 123A will be subject to the review provisions. Item 161 makes a consequential amendment to subsection 199(9) by deleting zone election rules.

Item 162 Secrecy and Delegations

23. Item 162 inserts sections 200A and 200B. Section 200A replaces the secrecy provision in section 90 (which has been repealed) and enables secrecy provisions to apply to former members of the Commission, to former members of committees, staff and consultants engaged by ATSIC. Section 200B is a consequential amendment enabling the Minister to delegate all or any of the powers or functions conferred under the ATSIC Act except for declarations under section 121, removal of Regional Councillors and appointment of administrators under section 123A and directions to Indigenous Business Australia and the Indigenous Land Corporation.

Items 163 - 165 Regulations

24. Items 163 - 165 make consequential amendments to the regulation making power in section 201 by deleting references to zone election rules and ATSIC decisions previously reviewable under section 195.

Items 166 - 179 Transitional provisions

25. These provisions amend the transitional provisions inserted into the ATSIC Act when ATSIC was established and repeal provisions that are no longer relevant. Item 166 amends the definition of authorised officer to refer to *successor Commission*. Item 167 repeals the definition of *new Commission* in section 202. Item 168 inserts a definition of *successor Commission*. Items 170-172 amend section 206 to remove references to ATSIC and insert references to the Indigenous Land Corporation. Items 173-179 are consequential amendments upon the cessation of ATSIC and include provisions for determining assets and liabilities.

Items 180 - 190 Zones

26. Item 180 repeals Schedule 1 which included references to zones and inserts a new schedule with a list of places for inclusion in regions. These places are identical with the former places included in regions. Items 181-190 are consequential amendments, deleting references to zones, zone elections, zone election rules and the Commission.

Schedule 1 – Part 3 – Transitional and saving arrangements relating to Aboriginal and Torres Strait Islander Commission

Items 191 - 193 Transfer of assets, liabilities and instruments

27. Items 191-192 vest assets and liabilities held by ATSIC on ATSIC abolition day in the Commonwealth, with certain assets and liabilities exempted. Those exemptions are money standing to the credit of the Housing Fund and the Regional Land Fund, and housing loans, business loans and other assets which are declared to be exempted by the Minister. Item 193 provides that ATSIC instruments in force immediately before the ATSIC abolition day continue as if they were instruments of the Commonwealth with certain instruments exempted.

28. Exempted assets, liabilities and instruments are vested in Indigenous Business Australia (those associated with the ATSIC Business Development Program and the Home Ownership Program) or the Indigenous Land Corporation (those associated with the Regional Land Fund and other landholdings of ATSIC). The Commonwealth's

interest in any grant or loan made under a business loans program (as defined) is vested in Indigenous Business Australia. Indigenous Business Australia is also liable to pay/discharge liabilities of the Commonwealth that existed in the relation to a business loans program.

Item 194 Constraints on money transferred from Regional Land Fund

29. Item 194 ensures that the assets formerly in the Regional Land Fund within ATSIC and vested in the Indigenous Land Corporation will continue to be used in accordance with the proposals of the Regional Councils between ATSIC abolition day and Regional Councils abolition day.

Item 195 Proceedings

30. Item 195 provides that where ATSIC is a party to proceedings before any court or tribunal immediately before ATSIC abolition day the Commonwealth is substituted as that party. Indigenous Business Australia or the Indigenous Land Corporation is substituted for ATSIC in those proceedings relating to exempted assets, liabilities or instruments, or loans, grants, securities or guarantees transferred to Indigenous Business Australia or the Indigenous Land Corporation respectively.

Item 196 Reports and Financial Statements

31. Item 196 requires final reports and financial statements for ATSIC (for the period 1 July 2004 to immediately prior to ATSIC abolition day) to be prepared by the Secretary, submitted to the Auditor-General for opinion, provided to the Minister and tabled in the Parliament. Financial statements in the report are required to deal with the Housing Fund and the Regional Land Fund separately from each other and from the other finances of ATSIC.

Items 197 - 198 Certificates relating to assets, liabilities and instruments

32. Item 197 allows an authorised officer to certify assets and liabilities become those of the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation. It also allows an authorised officer to certify instruments as Commission instruments or exempted instruments. Item 198 provides for exemption from taxation for any transfer or dealing under Part 3.

Item 199 Repayment of grants and loans

33. Item 199 provides that grants and loans transferred to the Commonwealth, Indigenous Business Australia or the Indigenous Land Corporation from ATSIC continue on the same terms and conditions as the grant or loan made by ATSIC and that all remedies for a breach of a term or condition available to ATSIC remain available. Any notice issued by ATSIC prior to ATSIC abolition day under section 20 of the ATSIC Act would continue in effect as if the breach notice was issued by the body to whom the interest in the grant or loan transfers.

Item 200 Restriction on right to dispose of certain property

34. Item 200 prohibits an individual or body who was granted an interest in land by ATSIC or who acquired an interest in land using ATSIC money or an ATSIC guarantee

before ATSIIC abolition day from disposing of such interest without obtaining consent from the appropriate consenting authority.

Item 201 Interest in land

35. Item 201 provides that certain liabilities of ATSIIC are taken to be interests in land of the Commonwealth, Indigenous Business Australia and the Indigenous Land Corporation on and after ATSIIC abolition day. Any liability of an individual or body to the Commonwealth, Indigenous Business Australia and the Indigenous Land Corporation which arises under items 199 or 200 (except item 200(10)) will be treated as an interest in the land to which it relates.

Item 202 Preservation of Model Rules

36. Item 202 preserves the Regional Council Model Rules in force immediately before ATSIIC abolition day. The Rules will have effect as if formulated by the Registrar of Aboriginal Corporations as required after ATSIIC abolition day.

Items 203 - 205 Former Commissioners

37. Items 203 and 204 are saving provisions in relation to statements made by ATSIIC under section 122A and petitions received by ATSIIC under section 123 of the ATSIIC Act. The Minister will replace the role of the Commission so as to continue the effect of statements made/petitions received beyond ATSIIC abolition day.

38. Item 205 provides that a person who was a Commissioner at any time on or after 14 April 2004 and held office as member of the Board of Directors of Indigenous Business Australia or the Board of the Indigenous Land Corporation immediately before ATSIIC abolition day ceases to hold those offices from ATSIIC abolition day.

Items 206 - 208 Rights of review of decisions before ATSIIC abolition day

39. Item 206 is a saving provision for internal review of certain decisions to refuse housing loans made by agents or delegates of ATSIIC. The refusals are to be treated as refusals by an agent or delegate of Indigenous Business Australia and a request for reconsideration can be made to Indigenous Business Australia (within a certain time frame). There is also provision for Indigenous Business Australia to continue certain reconsideration processes already in train before ATSIIC abolition day.

40. Item 207 is a saving provision in relation to Administrative Appeals Tribunal review of certain decisions of ATSIIC made before ATSIIC abolition day. The decisions are treated as decisions of the Commonwealth, Indigenous Business Australia and the Indigenous Land Corporation, as appropriate.

41. Item 208 gives a right to seek review by the Administrative Appeals Tribunal for certain decisions made by the Minister, Indigenous Business Australia and the Indigenous Land Corporation to issue notices under item 199 of Schedule 1.

Item 209 Offences in relation to guarantees by ATSIIC

42. Item 209 replicates provisions of the ATSIIC Act which make it an offence for a person to make a misleading statement or present a document with misleading information in connection with a claim under a guarantee given under the ATSIIC Act.

Item 209 relates to guarantees given by ATSIIC under Part 2 of the ATSIIC Act before ATSIIC abolition day.

Items 210 - 212 ATSIIC notices and determinations

43. Items 210-212 are saving provisions in relation ATSIIC notices under sections 124H or 124J, ATSIIC determinations under subsection 127D(2) and function conferral under subsection 142AA(1). The notices/determinations continue to have effect beyond ATSIIC abolition day and are treated as notices/determinations of the Minister or the Prime Minister.

Item 213 Delegations

44. Item 213 provides that the Minister may delegate certain of his or her powers conferred under Part 3 of Schedule 1 in relation to transitional and saving arrangements to the Secretary, an Australian Public Service Senior Executive Service employee or Chief Executive officer of a Commonwealth authority. A Secretary or agency head may sub-delegate these powers and functions.

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

Schedule 2 – Part 1 – Amendments relating to Office of Evaluation and Audit

Item 1 Insert Part 4B

45. Item 1 inserts Part 4B relating to the Office of Evaluation and Audit (Indigenous Programs). This Part establishes an Office of Evaluation and Audit (Indigenous Programs) within the Department of the Minister responsible for administering this Part. An Office of Evaluation and Audit was formerly established within ATSIIC. The purpose of the Office is to report to the Minister (and other Ministers as directed) on evaluations or audits of:

- a) relevant programs administered by Australian Government bodies; and
- b) the activities of any individual or organisation that has received funding under any relevant program.

A relevant program is one that furthers the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders. These programs are generally known as indigenous specific programs. The Office is to report on evaluations or audits as required by the Minister. The Minister may table reports in Parliament. The Office also has the power to inform the Minister of significant issues encountered in an evaluation or audit, and to inform the Minister of issues affecting the independence of the Office.

46. Item 1 also establishes the position of Director of Evaluation and Audit who will head the Office of Evaluation and Audit (Indigenous Programs). The Director must provide to the Minister a report on the operations of the Office as soon as practicable after 30 June each year. The Director is to be engaged under the *Public Service Act 1999*, with the relevant Agency Head being the Secretary of the Department. Other provisions ensure that the Director has full and free access to documents relating to the Australian Government body, individual or organisation subject to evaluation or audit.

Schedule 2 – Part 2 - Transitional and saving arrangements relating to Office of Evaluation and Audit

Items 2 – 6 Continuity of existing arrangements

47. Item 2 provides definitions for the transitional arrangements relating to the Office of Evaluation and Audit. Item 3 ensures that on ATSIC abolition day the existing Office of Evaluation and Audit under the ATSIC Act will be continued as the Office of Evaluation and Audit (Indigenous Programs) established within the Department. Item 4 provides that the person holding office as the Director of Evaluation and Audit is taken to have been appointed by the Minister for the balance of their current term under the same terms and conditions provided for by the ATSIC Act.

48. Item 5 requires the Office of Evaluation and Audit (Indigenous Programs), when requested to do by the Minister, to evaluate or audit the activities of an individual or organisation, which had received grants, loans or loan guarantees from ATSIC. Item 6 requires that where the Office of Evaluation and Audit (Indigenous Programs) had commenced before ATSIC abolition day an evaluation or audit of the activities of an individual or organisation, which had received a grant, loan or loan guarantee from ATSIC or certain other bodies, the Office of Evaluation and Audit (Indigenous Programs) must continue that evaluation or audit.

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

Schedule 3 – Part 1 - Abolition of Regional Councils

Item 1 Repeal of statutory basis for Regional Councils

49. Item 1 repeals Part 3 of the ATSIC Act which provides for the election and operation of Regional Councils. This will take effect from Regional Councils abolition day.

Schedule 3 – Part 2 – Consequential amendments relating to abolition of Regional Councils

Items 2 – 21 Repeal of definitions

50. Items 2-17 and 19 repeal definitions in the ATSIC Act relating to Regional Councils which are no longer required as a result of the abolition of Regional Councils. Item 18 amends the definition of *Torres Strait area* to be that area declared by the Minister. Item 20 clarifies that such a declaration is not a legislative instrument. Item 21 inserts section 143I to allow Schedule 4 to apply where there is a dispute in relation to a TSRA election.

Item 22 Review by Administrative Appeals Tribunal

51. Item 22 repeals section 196 which provides for reviews by the Administrative Appeals Tribunal in relation to decisions about the removal of Regional Councillors from office.

Item 23 Secrecy provision

52. Item 23 ensures that secrecy provisions continue to apply to certain office holders, for example, former members of Regional Councils, former members of advisory committees and former Administrators of Regional Councils after Regional Councils abolition day.

Items 24 - 46 Regional Council elections and rules

53. Items 24-43 are consequential amendments and include the removal of references to Regional Council ward elections, Regional Council elections and Regional Council election rules. Items 44-46 are consequential amendments to remove references to model rules for Regional Council meetings from the *Aboriginal Councils and Associations Act 1976*.

Schedule 3 – Part 3 – Transitional and saving arrangements relating to Regional Councils**Item 47 Transitional arrangement definitions**

54. Item 47 provides definitions for the transitional arrangements that facilitate the transfer of Regional Council assets, liabilities and instruments on Regional Councils abolition day.

Item 48 Transfer of assets and liabilities

55. Item 48 vests Regional Council assets and liabilities in the Commonwealth from Regional Councils abolition day.

Items 49 - 52 Instruments, proceedings, certificates and taxation

56. Items 49-51 provide that the operation of Regional Council instruments in relation to matters occurring on and after Regional Councils abolition day will have effect as if a reference to a Regional Council were a reference to the Commonwealth. The Commonwealth is substituted for a Regional Council in court or tribunal proceedings. Item 52 provides for exemption from taxation for any transfer or dealing under the transitional arrangements.

Item 53 Saving provision

57. Item 53 is a saving provision in relation to Administrative Appeals Tribunal review of certain decisions made on or after ATSIC abolition day and before Regional Councils abolition day.

Schedule 4 – Amendment of other Acts consequent on the abolition of the Aboriginal and Torres Strait Islander Commission***Aboriginal and Torres Strait Islander Heritage Protection Act 1984*****Items 1 – 2 Consequential**

58. Item 1 removes reference to the Chief Executive Officer and staff of ATSIC from the delegation provisions in section 21B of the *Aboriginal and Torres Strait Heritage Protection Act 1984*. Item 2 is a saving provision and enables any delegation

to an officer of the Department in force immediately before ATSIC abolition day to continue to operate.

Aboriginal Councils and Associations Act 1976

Items 3 - 4 Consequential

59. Item 3 amends subsection 5(1) of the *Aboriginal Councils and Associations Act 1976* to extend the functions of the Registrar to the formulation of model rules for the conduct of proceedings at Regional Council meetings. Item 4 clarifies that such model rules are not legislative instruments.

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

Items 5 - 6 Consequential

60. Item 5 removes reference to the Chief Executive Officer and staff of ATSIC from the delegation provisions in section 5 of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*. Item 6 is a saving provision with the effect that any delegation to an officer of the Department in force immediately before ATSIC abolition day will continue to operate.

Aboriginal Land Rights (Northern Territory) Act 1976

Items 7 - 11 Consequential

61. Items 7-11 are consequential amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*. These include removing reference to the Chief Executive Officer, staff or a member of ATSIC in the secrecy provisions of section 23E and transferring the role of the Commission in preparing an annual report for the operation of the Aboriginals Benefit Account under section 64B to the relevant Department.

Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989

Items 12 - 22 Consequential

62. Items 12-22 are consequential amendments to the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989*. Amendments include removing references to ATSIC and the ATSIC Act and the Torres Strait Islander Advisory Board. A Torres Strait Islander will continue to be appointed to the Australian Institute of Aboriginal and Torres Strait Islander Studies Council by the Minister but not on the recommendation of the Torres Strait Advisory Board which has been abolished. Item 18 is a saving provision with the effect that a person appointed by the Minister under paragraph 12(1)(b) before ATSIC abolition day continues to hold office.

Environment Protection and Biodiversity Conservation Act 1999

Item 23 Consequential

63. Item 23 repeals subsection 74(1A) of the *Environment Protection and Biodiversity Conservation Act 1999* removing the requirement for the Minister to inform and invite comments from ATSIC after receiving a proposal for decision as to

whether the proposal will have a significant impact on the environment and therefore require approval under that Act.

Human Rights and Equal Opportunity Commission Act 1986

Item 24 Consequential

64. Item 24 amends subsection 46C(3) of the *Human Rights and Equal Opportunity Commission Act 1986* removing the requirement for the Aboriginal and Torres Strait Islander Social Justice Commissioner to consult ATSIC in the performance of his or her functions.

National Health and Medical Research Council Act 1992

Items 25 - 29 Consequential

65. Item 25 removes reference to an ATSIC member of the Council appointed under paragraph 20(f) of the *National Health and Medical Research Council Act 1992*. Item 26 amends paragraph 20(f) to remove the requirement that ATSIC must nominate the person to be appointed to the Council under this paragraph. Item 27 is a saving provision enabling a member appointed on that basis before ATSIC abolition day to continue to hold office for the balance of the term of their appointment.

Native Title Act 1993

Items 30 - 79 Consequential

66. References to ATSIC in Division 1 of Part 11 which deals with representative Aboriginal and Torres Strait Islander bodies are deleted and the *Aboriginal and Torres Strait Islander Commission Act 1989* is substituted with the *Aboriginal and Torres Strait Islander Act 2004*. In considering whether to withdraw recognition of a body under section 203AH of the *Native Title Act 1993* the Minister will consider notices given by the Secretary of the relevant Department. A representative body will now apply to the Secretary of the Department for funding. From ATSIC abolition day, repayment of funding in cases where recognition is withdrawn from the representative body will be to the Commonwealth. Breaches of conditions of funding under section 203CA will be dealt with by the Secretary.

67. Amendments have been made to Part 11 to allow for the provision of funds from the Commonwealth by the Secretary of the relevant Department to representative bodies. This will remove the restriction of funding being provided through grants.

68. A representative body may be audited by the Office of Evaluation and Audit (Indigenous Programs) under the *Aboriginal and Torres Strait Islander Act 2004*. The role of ATSIC in informing the Minister of certain matters in relation to activities of representative bodies under section 203F will be substituted by the Secretary. Review of assistance decisions will be undertaken by the Secretary instead of ATSIC. A new section 203FI is added under which the powers of the Secretary under the amended provisions may be delegated to an officer of the Australian Public Service who is a member of the Senior Executive Service or equivalent rank.

Remuneration Tribunal Act 1973**Items 80 - 81 Consequential**

69. Items 80-81 are consequential amendments to the *Remuneration Tribunal Act 1973* and include substituting the *Aboriginal and Torres Strait Islander Act 2004* for the *Aboriginal and Torres Strait Islander Commission Act 1989* in subsection 7(9) and removing reference to the payment of remuneration and allowances of office holders under Part 2 or Part 3 of the ATSI Act by moneys available to ATSI.

Social Security Act 1991**Items 82 - 84 Consequential**

70. Items 82 - 84 are consequential amendments to the *Social Security Act 1991* and include removing references to ATSI. The Secretary of the Department whose Minister is responsible for the administration of the Community Development Employment Program (CDEP) scheme will have responsibility for approving CDEP participant schedules under subsection 1188B(3).