Aboriginal and Torres Strait Islander Commission Act 1989

Act No. 150 of 1989 as amended

This compilation was prepared on 1 January 2005 taking into account amendments up to Act No. 80 of 2004

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

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xviii  Aboriginal and Torres Strait Islander Commission Act 1989
An Act to establish an Aboriginal and Torres Strait Islander Commission, 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:

Aboriginal and Torres Strait Islander Commission Act 1989
Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Aboriginal and Torres Strait Islander Commission Act 1989*.

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) an Aboriginal association incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*; 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.

**Administrator** means an Administrator appointed under:

- (a) section 115; or
- (b) section 123; or
- (ba) section 123A; or
- (c) section 124J;

**Advisory Board** means the Torres Strait Islander Advisory Board established by section 82.

**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.

**appointed Indigenous Land Corporation Director** means an Indigenous Land Corporation Director referred to in paragraph 191V(2)(a), (b), (d), (e), (f) or (g).

**approved Regional Council estimates** means Regional Council estimates approved by the Minister for the purpose of section 61.
**Section 4**

*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.

*Chief Executive Officer* means the Chief Executive Officer of the Commission referred to in section 46.

*Commission* means the Aboriginal and Torres Strait Islander Commission established by section 6.

*Commission Chairperson* means the Chairperson of the Commission elected under section 31A.

*Commissioner* means a member of the Commission.

*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*: 
(a) in relation to a Regional Council ward—has the meaning given by section 100A; and
(b) in relation to a TSRA ward—has the meaning given by section 142TA.

*election period*, in relation to a round of Regional Council elections, means the period:
(a) starting on the day when the Minister fixes a day or days for the polling in accordance with subsection 104(2); and
(b) ending on the last day on which a poll is declared in relation to an election in that round of Regional Council elections.
**Section 4**

*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.

*electorate notice* means:

(a) a notice under subsection 91(4); or
(b) a notice under subsection 106(3).

*electorate number*, in relation to a region, means the number of
potential voters set out, in relation to the region, in the most recent
electorate notice that includes such a number in relation to the
region.

*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 a region, means the number of
persons living in the region set out, in relation to the region, in the
most recent electorate notice that includes such a number in
relation to the region.

*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.

*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 Fund* means the Housing Fund established by section 67.

*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;
Section 4

(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.

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 Fund means the Aboriginal and Torres Strait Islander Land Fund established by section 192W.

member for a Regional Council ward means a member of a Regional Council who is the member, or a member, as the case requires, for a ward of the Regional Council.

Ministerial Finance Direction means a direction given to the Commission by the Minister under section 74.

misbehaviour has a meaning affected by section 4A.

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

Office means the Office of Torres Strait Islander Affairs established by section 80.

prescribed number, in relation to a Regional Council, means the number determined by reference to the estimated population of the region concerned in accordance with the following table:

<table>
<thead>
<tr>
<th>Estimated population of region</th>
<th>Prescribed number</th>
</tr>
</thead>
<tbody>
<tr>
<td>not more than 1,000</td>
<td>8</td>
</tr>
<tr>
<td>more than 1,000 but not more than 4,000</td>
<td>9</td>
</tr>
<tr>
<td>more than 4,000 but not more than 7,000</td>
<td>10</td>
</tr>
<tr>
<td>more than 7,000 but not more than 10,000</td>
<td>11</td>
</tr>
<tr>
<td>more than 10,000</td>
<td>12</td>
</tr>
</tbody>
</table>

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.
recognised Aboriginal or Torres Strait Islander organisation means:

(a) a body the majority of whose members are Aboriginal persons or Torres Strait Islanders, or both; or
(b) a body controlled, directly or indirectly, by Aboriginal persons or Torres Strait Islanders, or both; or
(c) a body incorporated under the Aboriginal Councils and Associations Act 1976.

region means a region referred to in subsection 91(1).

Regional Council means a Regional Council established by section 92.

Regional Council election means an election for members of a Regional Council conducted under Division 4 of Part 3.

Regional Council election rules means rules made by the Minister under section 113.

Regional Council election year means a calendar year in which section 104 requires Regional Council elections to be held.

Regional Council estimates, in relation to a Regional Council, means the detailed estimates of expenditure for the region concerned that are required by subsection 62(2) to be shown in estimates prepared under section 61.

Regional Council ward means a ward referred to in section 100A.

Regional Council ward election means so much of a Regional Council election as consists of an election for a member or members for a Regional Council ward.

Regional Councillor means a member of a Regional Council.

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

Regional Land Fund means the Regional Land Fund established by section 68.

regional statement means a statement prepared by the Commission under subsection 63(1).
**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 described in the map called “ATSIC Thursday Island Region—ATSIC 93/25”, being the map referred to in the determination made by the Minister under paragraph 91(1)(b) on 27 September 1993.

**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.

**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:
(a) in relation to a Regional Council—means a ward referred to in section 100A; and
(b) in relation to the TSRA—means a ward referred to in section 142TA.

zone means a zone referred to in subsection 130(1).

zone election means an election of a person to be appointed as a Commissioner to represent a zone.

zone election rules means rules made by the Minister under section 138.

(2) The question whether a company is a subsidiary of the Commission, 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.

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.
**Part 1** Preliminary

**Section 4B**

**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%.

*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).

10 *Aboriginal and Torres Strait Islander Commission Act 1989*
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 2—Aboriginal and Torres Strait Islander Commission

Division 1—Aboriginal and Torres Strait Islander Commission

6 Aboriginal and Torres Strait Islander Commission

(1) An Aboriginal and Torres Strait Islander Commission is established.

(2) The Commission:
   (a) is a body corporate, with perpetual succession;
   (b) shall have a common seal;
   (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 Commission. 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 Commission shall be kept in such custody as the Commission directs and shall not be used except as authorised by the Commission.

(4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that it was duly affixed.
Division 2—Functions of Commission

7 Functions of Commission

(1) The Commission has the following functions:

(a) to formulate and implement programs for Aboriginal persons and Torres Strait Islanders;
(b) to monitor the effectiveness of programs for Aboriginal persons and Torres Strait Islanders, including programs conducted by bodies other than the Commission;
(c) to develop policy proposals to meet national, State, Territory and regional needs and priorities of Aboriginal persons and Torres Strait Islanders;
(d) to assist, advise and co-operate with Aboriginal and Torres Strait Islander communities, organisations and individuals at national, State, Territory and regional levels;
(e) to advise the Minister on:
   (i) matters relating to Aboriginal and Torres Strait Islander affairs, including the administration of legislation; and
   (ii) the co-ordination of the activities of other Commonwealth bodies that affect Aboriginal persons or Torres Strait Islanders;
(f) when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister;
(g) to take such reasonable action as it thinks necessary to protect Aboriginal and Torres Strait Islander cultural material and information, being material or information that is considered sacred or otherwise significant by Aboriginal persons or Torres Strait Islanders;
(h) at the request or with the concurrence of the Australian Bureau of Statistics but not otherwise, and without infringing the privacy of any individual, to collect and publish statistical information relating to Aboriginal persons and Torres Strait Islanders;
(j) such other functions as are conferred on the Commission by this Act or any other Act;
(k) such other functions as are conferred on the Commission by the Prime Minister by notices in force under section 8;
(m) such other functions as are expressly conferred on the Commission 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 9;
(n) to undertake such research as is necessary to enable it to perform any of its other functions;
(o) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

(1A) A function referred to in paragraph (1)(a) need not be performed by the Commission itself but may be performed by other persons:
(a) who are authorised by the Commission to do so under contracts or agreements entered into with the Commission; or
(b) to whom the Commission has delegated the function.

(2) The information that may be required by the Minister under paragraph (1)(f) includes, but is not limited to, information about the Commission’s expenditure.

(3) The Minister is not empowered, when requesting information under paragraph (1)(f), to specify the content of the information that is to be provided.

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

(5) Nothing in this section or in any other provision of this Act shall be read as conferring on the Commission a function of acquiring land except:
(a) for its administrative purposes; or
(b) for the purpose of the performance of functions expressly conferred on the Commission by this Act.
8 Prime Minister may confer functions on Commission

(1) The Prime Minister may, for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders, confer a departmental function on the Commission.

(2) The power under subsection (1) shall be exercised by notice published 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.

9 Minister may approve performance of functions under State or Territory laws

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

10 Powers of Commission

(1) The Commission 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 Commission under subsection (1) include, but are not limited to, the following powers:

(a) to negotiate and co-operate with other Commonwealth bodies and with State, Territory and local government bodies;

(aa) subject to subsection (3), to enter into contracts and agreements;

(b) without limiting paragraph (aa), to enter into an agreement for the making of a grant or loan under section 16 to:

(i) a State; or

(ii) the Australian Capital Territory; or

(iii) the Northern Territory; or

(iv) an authority of a State or a Territory (including a local government body);
Section 11

(c) without limiting paragraph (aa), to enter into an agreement (other than an agreement referred to in paragraph (b)) with a State or Territory;
(d) to accept gifts, grants, bequests and devises made to it;
(e) to act as trustee of money and other property vested in it on trust;
(f) to appoint as its agents Indigenous Business Australia or any other persons who it is satisfied have qualifications and experience that are appropriate to enable them to act on its behalf in the matter to which the appointment relates.

(3) The power of the Commission to enter into agreements of the kind referred to in paragraph (2)(c) shall not be exercised without the written approval of the Minister.

(4) In spite of anything contained in this Act, any money or other property held by the Commission on trust shall be dealt with in accordance with the powers and duties of the Commission as trustee.

(5) The powers of the Commission may be exercised within or outside Australia.

(6) In so far as a person is authorised to perform a function as an agent or delegate of the Commission, the person may exercise any of the Commission’s powers for or in connection with the performance of the function.

11 Corporate plan

(1) The Commission shall from time to time, in consultation with the Minister, prepare a corporate plan:
   (a) setting out a statement of the Commission’s objectives; and
   (b) outlining the strategies and policies that the Commission intends to adopt in order to achieve those objectives.

(2) Each corporate plan shall relate to a period of at least 3 years and not more than 5 years.

(3) The Commission shall, in consultation with the Minister, review the corporate plan regularly.
(4) Without limiting the operation of the Freedom of Information Act 1982, the Chief Executive Officer shall ensure that copies of the corporate plan as in force from time to time are:
   (a) given to each Regional Council; and
   (b) available for inspection and purchase at each office of the Commission.

(5) The Chief Executive Officer shall cause notice of the publication of the corporate plan to be published in the Gazette.

12 Directions by Minister

(1) The Commission shall perform its functions and exercise its powers in accordance with such general directions as are given to it by the Minister in writing.

(2) Subsection (1) does not empower the Minister to give directions relating to the content of any advice, information or recommendation that may be given by the Commission to a Minister, Department of State or authority of the Commonwealth.

(3) Subsection (1) does not empower the Minister to give directions relating to the content of any advice, information or recommendation that may be given by the Commission to a Minister, Department of State or authority of a State or Territory, except for the purpose of protecting the confidentiality of information given to the Commission by the Commonwealth or an authority of the Commonwealth.

(4) Subject to subsection (5), the Minister shall cause a copy of any direction given under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after that direction was given.

(5) A copy of a direction laid before the Parliament in accordance with subsection (4) shall 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.
13 Advisory committees

(1) The Commission may establish an advisory committee or advisory committees to advise the Commission in relation to the performance of the Commission’s functions.

(2) A member of an advisory committee is entitled to remuneration and allowances in accordance with section 194.

(3) 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 Commission by notice in the Gazette.

13A Advisory committee—disclosure of interests at meetings

(1) A member of an advisory committee established under section 13 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.

13B Advisory committee—member’s appointment to be terminated for non-disclosure of interests

(1) This section applies to an advisory committee established under section 13.

(2) The Commission must terminate the appointment of a member of the committee if the member fails, without reasonable excuse, to comply with section 13A.

(3) Subsection (2) does not, by implication, limit the Commission’s power to terminate the appointment of a member of the committee.
13C Advisory committee—resignation

A member of an advisory committee established under section 13 may resign from the committee by writing signed by the member and sent to the Commission.

14 Commission may make grants and loans

(1) The Commission 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 the TSRA); or
       (g) an unincorporated body;
   for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.

(2) A grant or loan is subject to such terms and conditions as the Commission determines.

(3) The Commission may acquire by agreement an interest in land, or personal property, for the purpose of making a grant under this section.

15 Commission may give guarantees

(1) If the Commission 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 Commission could, in the performance of its functions, make a loan to that borrower, the Commission 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 16

(2) The Commission’s power to give guarantees is subject to such limits as the Treasurer 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 Commission determines.

16 Commission may make grants and loans to State and Territory governments etc.

(1) The Commission may make a grant of money to:
   (a) a State; or
   (b) the Australian Capital Territory; or
   (c) the Northern Territory; or
   (d) an authority of a State or a Territory (including a local government body);
for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.

(2) The Commission may make a loan of money to:
   (a) a State; or
   (b) the Australian Capital Territory; or
   (c) the Northern Territory; or
   (d) an authority of a State or a Territory (including a local government body);
for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.

(3) A grant or loan is subject to such terms and conditions as the Commission determines.

17 Commission may subscribe for shares in the capital of a body corporate etc.

The Commission may subscribe for, or otherwise acquire, shares or stock in the capital of a body corporate for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.
20 Grants and loans to be repayable where conditions breached etc.

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

(2) A person or body who is given notice under subsection (1) is liable to pay to the Commission an amount equal to:
   (a) the amount of the grant; or
   (b) so much of the grant as the Commission specifies in the notice.

(3) The Commission may give written notice to a person or body to whom a loan has been made under this Part, stating that the Commission is satisfied that the person or body has failed to fulfil a term or condition of the loan.

(4) A person or body who is given notice under subsection (3) is liable to pay to the Commission, 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 Commission specifies in the notice.

(5) This section does not affect the availability to the Commission of any legal or equitable remedy for a failure to fulfil a term or condition of a grant or loan made by the Commission under this Part.

21 Restriction on right to dispose of property

Interests to which this section applies

(1) This section applies if:
   (a) both:
      (i) an individual or body has acquired an interest in land; and
      (ii) any of the following applies:
(A) the interest was acquired using money granted to the individual or body by the Commission under paragraph 14(1)(a);

(B) the interest was acquired from the Commission under paragraph 14(1)(b);

(C) the acquisition of the interest was financed by a loan that was guaranteed by the Commission under section 15; or

(b) a body has acquired an interest in land, or in shares or stock in the capital of a company, under section 27 of the Aboriginal Development Commission Act 1980 or as a result of a grant under section 23 of that Act.

No disposal without Commission’s consent

(2) The individual or body must not dispose of the interest without the Commission’s written consent to that particular disposal or to a disposal of that kind.

Consent must specify person who is to acquire interest

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

Other ways in which consent may specify disposal

(4) Subsection (3) does not prevent a consent from further specifying a particular disposal, or a kind of disposal, in other ways.

Disposal without Commission’s consent is invalid

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

Conditional consent

(6) The Commission may attach a condition to its consent by specifying the condition in the document setting out the consent.
Contravention of condition does not affect disposal

(7) Contravention of a condition attached to the Commission’s consent does not affect the disposal of the interest by the individual or body.

Contravention of condition on using proceeds of disposal

(8) However, the Commission may give the individual or body written notice requiring the individual or body to pay the Commission 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) after the commencement of this subsection; or
   (ii) as a result of the grant of an interest in land by the Commission under paragraph 14(1)(b) after the commencement of this subsection; and

(b) the condition attached to the Commission’s consent was that some or all of the proceeds of the disposal be applied for a purpose specified by the Commission; and

(c) the Commission is satisfied that the condition was not complied with.

Amount that must be paid

(9) The Commission must not specify in the notice an amount greater than the amount of the grant made to the individual or body under paragraph 14(1)(a) or (b).

Liability to pay

(10) An individual or body given a notice is liable to pay the Commission the amount specified in the notice.

Requirement to pay under notice does not affect other remedies

(11) Subsections (8), (9) and (10) do not affect the availability to the Commission of any legal or equitable remedy for contravention of a condition attached to the Commission’s consent.
21A  Commission’s interest in land

(1) Any liability or obligation 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); or
   (b) under section 20 or 21;
   is taken to be an interest of the Commission in the land to which it relates.

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

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

(4) This section does not apply to a liability arising under subsection 21(10) (because of a failure to comply with a condition the Commission attached to its consent for an individual or body to dispose of the interest of the individual or body in land).

22  Commission to formulate decision-making principles about grants, loans and guarantees

(1) The Commission must formulate written principles (decision-making principles), not inconsistent with the objects of this Act, about:
   (a) making grants and loans under section 14 or 16; and
   (b) giving guarantees under section 15; and
   (c) subscribing for, or otherwise acquiring, shares or stock under section 17.

(2) Subject to section 74, the Commission must perform its functions and exercise its powers under sections 14, 15, 16 and 17 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 Chief Executive Officer must ensure that copies of the decision-making principles as in force from time to time are:
   (a) given to each Regional Council; and
   (b) available for inspection and purchase at each of the Commission’s offices.

(4) The Chief Executive Officer must cause notice of the making of decision-making principles to be published in the *Gazette*.

### 26 Review of operation of Act

(1) The Commission may, from time to time:
   (a) review such aspects of the operation of this Act as it determines in writing; and
   (b) report to the Minister accordingly.

(2) The Commission 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.
Division 3—Constitution of Commission

27 Constitution of the Commission

(1) The Commission consists of the members appointed by the Minister under this section.

(2) The Minister must appoint as members of the Commission the persons elected under Division 7 of Part 3 to represent the several zones.

Note: A Commissioner who is elected as the Commission Chairperson ceases to hold office under Division 7 of Part 3 and as a Regional Councillor. See section 31A.

29 Validation of appointments

The appointment of a member is not invalid merely because of a defect or irregularity in connection with his or her appointment.

30 Basis of holding office

(1) Commissioners hold office on a full-time basis.

(2) This section does not prevent a Commissioner holding office as a member of a Regional Council on a part-time basis.

31A Commission Chairperson

(1) At the first meeting of the Commission after each round of zone elections (other than an election for the Torres Strait zone), the Commissioners must elect one of their number to be the Commission Chairperson.

(2) At any other meeting of the Commission, the Commissioners must elect one of their number to be the Commission Chairperson if there is a vacancy in that office.

(3) A Commissioner who is elected as the Commission Chairperson:
   (a) ceases to hold office as a person elected under Division 7 of Part 3 to represent a zone; and
(b) ceases to hold office as a Regional Councillor.

Note: The vacated offices will be filled in accordance with the procedures set out in the zone election rules and the Regional Council election rules.

31 Qualifications for appointment as Commissioner

(1) A person is not qualified to be appointed as a Commissioner unless the person is an Aboriginal person or a Torres Strait Islander.

(2) Subject to subsection (3), a person is not qualified to be appointed as a Commissioner if he or she:
   (a) has been convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
   (aa) has been convicted of 2 or more offences against a Commonwealth, State or Territory law and sentenced in respect of all the offences to a single penalty of imprisonment for one year or longer; or
   (b) has been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
   (c) has been convicted of 2 or more offences against a Commonwealth, State or Territory law involving dishonesty and sentenced in respect of all the offences to a single penalty of imprisonment for 3 months or longer.

(3) Subsection (2) does not disqualify a person from being appointed as a Commissioner if:
   (a) where the person was never actually imprisoned for the offence—at least 2 years have elapsed since the person was convicted;
   (b) where the person served a term of imprisonment for the offence—at least 2 years have elapsed since the person was released from prison; or
   (c) in any case—the Federal Court of Australia, on application by the person, declares that in spite of the person’s conviction, he or she ought not to be disqualified from being appointed as a Commissioner.
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(4) The Federal Court of Australia has jurisdiction with respect to matters arising under subsection (3).

32 Deputy Chairperson of Commission

(1) At the first meeting of the Commission after each round of zone elections (other than an election for the Torres Strait zone), the Commissioners shall elect one of their number to be the Deputy Chairperson of the Commission.

(2) At any other meeting of the Commission, the Commissioners must elect one of their number to be the Deputy Chairperson of the Commission if there is a vacancy in the office of Deputy Chairperson of the Commission.

32A Alternative Deputy Chairperson

If there is a vacancy in the office of alternate of the Deputy Chairperson of the Commission, the Commissioners may, at a meeting of the Commission, elect one of them to be the alternate of the Deputy Chairperson.
Division 4—Administrative provisions

33 Periods of appointment

(1) The Commission Chairperson holds office as Commission Chairperson until:
   (a) he or she ceases to be a Commissioner, otherwise than by the operation of subsection (2); or
   (b) another person is elected as the Chairperson under section 31A;
   whichever happens first.

(1B) The Deputy Chairperson of the Commission holds office as the Deputy Chairperson until:
   (a) he or she ceases to be a Commissioner; or
   (b) another person is elected as the Deputy Chairperson of the Commission under section 32;
   whichever happens first.

(1BA) The alternate of the Deputy Chairperson of the Commission is to be elected for a period determined by the Commission and holds office until:
   (a) the end of that period; or
   (b) he or she is elected as Deputy Chairperson of the Commission; or
   (c) he or she ceases to be a Commissioner;
   whichever happens first. However, if he or she ceases to hold office because of paragraph (a) and is still a Commissioner, he or she may be re-elected.

(2) A Commissioner elected as provided in Division 7 of Part 3 to represent a zone holds office until another person is appointed as a Commissioner after having been elected as provided in that Division to represent that zone.

34 Remuneration and allowances

A Commissioner is entitled to remuneration and allowances in accordance with section 194.
**35 Leave of absence**

(1) A Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(1A) Subject to subsection (2), the Minister may grant a Commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

(2) The Minister shall not grant a Commissioner leave of absence from duty for a continuous period of more than 6 months unless the grant of such leave of absence is required or expressly permitted by any other law of the Commonwealth.

(3) The Minister may delegate to the Commission Chairperson the power under subsection (1A) to grant leave of absence to the other Commissioners.

**36 Acting appointments**

(1) The Deputy Chairperson of the Commission shall act as the Commission Chairperson:

(a) during a vacancy in the office of Commission Chairperson, whether or not a person has previously been elected as Commission Chairperson; or

(b) during any period, or during all periods, when the Commission Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(1A) If:

(a) either of the following circumstances exists:

(i) there is a vacancy in the office of Commission Chairperson, whether or not an appointment has previously been made to the office;

(ii) the Commission Chairperson is absent from duty or from Australia or is, for any reason unable to perform the duties of the office; and

(b) either of the following circumstances exists:
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(i) there is a vacancy in the office of Deputy Chairperson of the Commission, whether or not a person has previously been elected as Deputy Chairperson;
(ii) the Deputy Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of Deputy Chairperson;

the alternate of the Deputy Chairperson is to act as the Commission Chairperson.

(1B) If the alternate of the Deputy Chairperson of the Commission is not acting as the Commission Chairperson under subsection (1A) and either of the following circumstances exists:
(a) there is a vacancy in the office of Deputy Chairperson;
(b) the Deputy Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of Deputy Chairperson;

the alternate of the Deputy Chairperson is to act as the Deputy Chairperson.

(1C) Anything done by or in relation to a person purporting to act under subsection (1), (1A) or (1B) is not invalid merely because the occasion to act had not arisen or had ceased.

(2) The Minister may appoint a Commissioner to act as the Deputy Chairperson of the Commission:
(a) during a vacancy in the office of Deputy Chairperson, whether or not a person has previously been elected as Deputy Chairperson; 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.

(2A) A person appointed to act as the Deputy Chairperson of the Commission may not act if there is an alternate of the Deputy Chairperson.

(3) The appointment of a person to act during a vacancy in the office of Deputy Chairperson of the Commission has effect until the next meeting of the Commission.

(6) The Minister may, after consulting the Commission Chairperson, appoint a person to act in the office of an elected Commissioner:
(a) during a vacancy in the office, whether or not a person has previously been appointed to the office; or
(b) during any period, or during all periods, when the elected Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(7) The Minister shall not appoint a person to act in the office of a Commissioner unless, having regard to section 31, the person is qualified to be appointed as a Commissioner.

(8) The appointment of a person to act in the office of a Commissioner who is also the Deputy Chairperson of the Commission does not constitute an appointment of the person to act as the Deputy Chairperson.

(9) 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.

38 Disclosure of interests

A Commissioner or acting Commissioner who is not a Regional Councillor must comply with section 119A as if he or she were a Regional Councillor.

39 Resignation

(1) A Commissioner may resign by writing signed by him or her and sent to the Minister.

(1A) The Commission Chairperson may resign the office of Commission Chairperson by writing signed by him or her and sent to the Minister.

(1AA) A Commission Chairperson who resigns under subsection (1A) is taken to have also resigned as a member of the Commission.
(1B) The Deputy Chairperson of the Commission may resign the office of Deputy Chairperson of the Commission by writing signed by him or her and sent to the Minister.

(1C) The alternate of the Deputy Chairperson of the Commission may resign the office of alternate of the Deputy Chairperson by writing signed by him or her and sent to the Commission Chairperson.

(2) A Commissioner is taken to have resigned if:
   (a) in the case of a Commissioner elected by the members of Regional Councils:
       (i) the Commissioner resigns from the Regional Council of which he or she was a member when elected to represent the zone concerned; or
       (ii) under section 121, the Commissioner is taken to have resigned from that Regional Council; or
   (b) in the case of a Commissioner elected by the members of the TSRA:
       (i) the Commissioner resigns from the TSRA; or
       (ii) under section 143R, the Commissioner is taken to have resigned from the TSRA.

40 Termination of appointment

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

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

(3) The Minister shall cause a statement identifying the Commissioner 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.

(4) Where 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
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resolution, declare that the Commissioner ought to be restored to office and, if each House so passes such a resolution, the Minister shall terminate the suspension.

(5) If, at the expiration 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 terminate the appointment of the Commissioner.

(6) The Minister may terminate the appointment of a Commissioner if:

(a) in the case of a Commissioner elected by members of Regional Councils—he or she ceases to be a member of a Regional Council otherwise than by resigning from the Regional Council; or

(b) in the case of a Commissioner elected by the members of the TSRA—he or she ceases to be a member of the TSRA otherwise than by resigning from the TSRA.

(6A) If a person who is a Commissioner is, because of a decision or order of the Federal Court of Australia, taken not to have been duly elected as a member of a Regional Council, the person ceases, as a result of the decision or order, to be a Commissioner.

(7) If a Commissioner:

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

(aa) is convicted of 2 or more offences against a Commonwealth, State or Territory law and sentenced in respect of all the offences to a single penalty of 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

(ba) is convicted of 2 or more offences against a Commonwealth, State or Territory law involving dishonesty and sentenced in respect of all the offences to a single penalty of imprisonment for 3 months or longer; or

(c) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
Section 41

(e) fails, without reasonable excuse, to comply with section 27F or 27J of the Commonwealth Authorities and Companies Act 1997;

the Minister shall terminate the appointment of that Commissioner.

(8) If the Minister terminates the appointment of a Commissioner, the Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the termination, a statement:

(a) identifying the Commissioner;
(b) stating that his or her appointment has been terminated; and
(c) setting out the ground of the termination.

(9) Without limiting the generality of this section, a Commissioner shall be 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 Commission, whether under section 12 or 74 or any other provision of this Act.

41 Recall of Commissioner (other than Commissioner representing the Torres Strait zone)

(1) Where the Minister receives a valid petition calling for the termination of the appointment of the Commissioner who represents a zone (other than the Torres Strait zone), the Minister shall forthwith terminate the appointment of that Commissioner.

(2) In this section:

eligible person means a person who would be entitled to vote at an election for the members of the Regional Council for a region included in the zone concerned.

sufficient number means a number that exceeds 66% of the sum of the electorate numbers for all the regions included in the zone.

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;
(b) that sets out legibly:
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(i) the name of each person who has signed the petition;
(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 preceding the delivery of the petition to the Minister.

41A Recall of Commissioner elected by members of TSRA

(1) If the Minister receives a valid petition calling for the removal of the Commissioner who represents the Torres Strait zone, the Minister must remove that Commissioner from office as soon as possible.

(2) In this section:

eligible person means a person who would be entitled to vote at a TSRA election.

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.

42 Commissioners not personally liable

(1) A Commissioner 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 in good faith:
Section 43

(a) by the Commission; or
(b) by the Commissioner in the capacity of Commissioner.

(2) This section does not apply to a liability that arises under the

43 Other terms and conditions

A Commissioner 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.
Section 44

**Division 5—Operations of Commission**

**44 Meetings of Commission**

(1) The Commission Chairperson shall convene at least 4 meetings of the Commission in each calendar year, and may convene such other meetings of the Commission as, in the Chairperson’s opinion, are necessary for the efficient performance of its functions.

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

(3) The Commission Chairperson shall convene a meeting of the Commission upon receipt of a written request for a meeting signed by at least 7 Commissioners.

(4) At a meeting of the Commission a quorum is constituted by 11 Commissioners.

(5) Where:

   (a) a Commissioner 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 Commission with respect to a particular matter;

   (b) when the Commissioner leaves the meeting there is no longer a quorum present; and

   (c) there are at least 7 Commissioners remaining at the meeting; those remaining Commissioners constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

(5A) If the Chairperson is not a Commissioner, then he or she is not entitled to participate in any meeting of the Commission and is treated, for the purposes of this section, as not being present at any such meeting.

Note: Because the Chairperson is treated as not being present, subsection (7) applies in determining who presides at the meeting.
(6) The Commission Chairperson shall preside at all meetings of the Commission at which he or she is present.

(7) If the Commission Chairperson is not present at a meeting of the Commission:

(a) if the Deputy Chairperson of the Commission is present, the Deputy Chairperson of the Commission shall preside at the meeting; and

(b) in any other case, the Commissioners present shall elect one of their number to preside at the meeting.

(8) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

(9) The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) The Commission may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

(11) If the Commission so determines, a Commissioner may participate in, and form part of a quorum at, a meeting of the Commission by means of any of the following methods of communication:

(a) telephone;

(b) closed circuit television;

(c) another method of communication determined by the Commission.

(12) A determination of the Commission under subsection (11) may be made in respect of a particular meeting, or in respect of all meetings, of the Commission.

(13) A Commissioner who participates in a meeting as provided by subsection (11) 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.
Section 45

45 Delegation to Chief Executive Officer, Director of Evaluation and Audit or staff member of Commission

Delegation of certain functions and powers

(1) The Commission may, by writing under its seal, delegate any or all of its functions and powers, other than:
   (a) its power to consent for the purposes of section 21 to the disposal of interests in property used mainly for purposes other than residential purposes; and
   (c) its power to make declarations under section 121; and
   (ca) its powers under section 123A to:
      (i) remove Regional Councillors from office; and
      (ii) appoint an Administrator to administer the affairs of a Regional Council; and
   (e) its power to make declarations under section 205;
   to the Chief Executive Officer or to a member of the staff of the Commission.

Delegation to Director of Evaluation and Audit of powers relating to consultants

(2) The Commission may, by writing under its seal, delegate to the Director of Evaluation and Audit any or all of its powers under section 56 (which deals with consultants).

Chief Executive Officer may sub-delegate function or power

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

Delegation may prohibit sub-delegation

(4) The Chief Executive Officer must not sub-delegate a function or power if the instrument of delegation prohibits the sub-delegation of that function or power.
Section 45A

Application of certain provisions of the Acts Interpretation Act 1901

(5) 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

(6) 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.

45A Delegation to Regional Council

Commission may delegate powers under section 14, 15 or 16

(1) The Commission may, by writing under its seal, delegate to a Regional Council any or all of its powers under section 14, 15 or 16 or any or all of its other powers (except those under section 20) so far as they relate to a grant, loan or guarantee under section 14, 15 or 16.

Delegate subject to Commission’s written directions

(2) In the exercise of a power delegated by the Commission, the delegate is subject to the Commission’s written directions (if any).

Commission Chairperson may suspend delegation

(3) If the delegate contravenes a direction, the Commission Chairperson may, by written notice given to the delegate, suspend the delegation.

Length of suspension

(4) The suspension remains in force for 3 months unless sooner terminated by the Commission.
Section 45B

Subsection (3) does not limit Commission’s power to revoke delegation

(5) Subsection (3) does not, by implication, limit the Commission’s power to revoke a delegation.

Suspensions to be notified in the Gazette

(6) The Commission Chairperson must cause notice of the giving of a suspension to be published in the Gazette.

Delegations to be notified in the Gazette

(7) The Commission Chairperson must cause notice of the making of a delegation to be published in the Gazette.

Directions to be notified in the Gazette

(8) The Commission Chairperson must cause notice of the making of a direction to be published in the Gazette.

Copies of delegations etc. must be given to Regional Councils

(9) Without limiting the operation of the Freedom of Information Act 1982, the Chief Executive Officer must ensure that copies of suspensions, delegations and directions as in force from time to time are:

(a) given to each Regional Council; and

(b) available for inspection and purchase at each office of the Commission.

45B Delegation to Indigenous Business Australia

(1) The Commission may, by writing under its seal, delegate to Indigenous Business Australia any commercial functions falling within paragraph 7(1)(a).

(2) A delegation may not be made under subsection (1) unless Indigenous Business Australia has consented to the delegation.
(3) If the Commission delegates a function under subsection (1), the Indigenous Business Australia Board may, by resolution, sub-delegate the function to the Indigenous Business Australia General Manager.

(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.

(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 6—Chief Executive Officer

46 Chief Executive Officer

(1) There shall be a Chief Executive Officer of the Commission who shall be appointed by the Minister.

(2) The Minister shall not appoint a person as the Chief Executive Officer, except as the first Chief Executive Officer, unless the Commission agrees to the appointment.

(3) The Chief Executive Officer shall, subject to subsection (4), manage the day-to-day administration of the Commission.

(4) The Chief Executive Officer shall, in managing the administration of the Commission and in exercising any powers conferred on the Chief Executive Officer by this Act, act in accordance with any policies determined, and any directions given, by the Commission in writing.

47 Period of appointment

(1) The Chief Executive Officer holds office for such period as is specified in the instrument of appointment.

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

48 Remuneration and allowances

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

49 Leave of absence

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

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

50 Acting Chief Executive Officer

(1) The Minister may, after consulting the Commission, appoint a person to act as the Chief Executive Officer:
   (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
   (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

   but a person appointed to act during a vacancy 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.

51 Disclosure of interests

(1) The Chief Executive Officer shall give written notice to the Minister and the Commission Chairperson of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate that carries on a business.

(2) Where the Chief Executive Officer has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, the Chief Executive Officer shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Commission Chairperson in writing.
52 Resignation

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

53 Termination of appointment

(1) The Minister may, with the agreement of the Commission, terminate the appointment of the Chief Executive Officer because of incompetence, misbehaviour or physical or mental incapacity.

(2) If the Chief Executive Officer:

(a) is absent from duty, except on leave granted under section 49, for 14 consecutive days or for 28 days in any period of 12 months;

(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;

(c) fails, without reasonable excuse, to comply with section 51; or

(d) engages in paid employment outside the duties of the office of Chief Executive Officer without the written consent of the Minister given after consulting the Commission;

the Minister and the Commission shall terminate the appointment of the Chief Executive Officer.

54 Other terms and conditions

The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister, with the agreement of the Commission, by notice published in the Gazette.
Section 55

**Division 7—Staff**

**55 Staff**

(1) Subject to section 56, the staff required to assist the Commission in the performance of its functions shall be persons engaged under the *Public Service Act 1999*.

Note 1: A member of the staff of the Commission or the TSRA is not qualified to stand for election, or to be elected, as a member for a Regional Council ward (see paragraph 102(1)(c)).

Note 2: The Commission may declare that a Regional Councillor has become an employee of the Commission or the TSRA. The Regional Councillor is taken to have resigned from the Regional Council on the date of the declaration (see subsections 121(3) and (4)).

(2) For the purposes of the *Public Service Act 1999*:
   (a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and
   (b) the Chief Executive Officer is the Head of that Statutory Agency.

**56 Consultants**

(1) The Commission may engage as consultants to the Commission persons having suitable qualifications and experience.

(2) The terms and conditions on which consultants are engaged shall be as determined by the Commission in writing.

(3) The Commission must, by written instrument:
   (a) set out criteria for the engagement of consultants by the Commission; and
   (b) set out standard terms and conditions for the engagement of consultants by the Commission.
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(4) The Commission must notify the making of an instrument under subsection (3) in the Gazette.

Note 1: A consultant to the Commission or the TSRA is not qualified to stand for election, or to be elected, as a member for a Regional Council ward (see paragraph 102(1)(c)).

Note 2: The Commission may declare that a Regional Councillor has become a consultant to the Commission or the TSRA. The Regional Councillor is taken to have resigned from the Regional Council on the date of the declaration (see subsections 121(3) and (4)).
Division 8—Finances

57 Money payable to Commission

(1) There is payable to the Commission such money as is appropriated from time to time by the Parliament for the Commission.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money so appropriated is to be paid to the Commission.

60 Estimating procedures after Regional Councils elected

Sections 61, 62, 63, 64 and 65 apply in relation to the financial year that starts on 1 July in the calendar year next after the calendar year in which the first members of Regional Councils take office under this Act, and to each subsequent financial year.

61 Estimates

(1) The Commission shall prepare budget estimates for the Commission for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

(2) Subject to subsections (3) and (4) and 67(2), the money of the Commission shall not be spent, or paid into the Housing Fund or the Regional Land Fund, otherwise than in accordance with estimates of expenditure approved by the Minister.

(3) The amount spent by the Commission in relation to matters covered by an item in estimates approved by the Minister (not being matters covered in Regional Council estimates) may differ from the amount allocated to that item in those estimates by not more than:

(a) 1% of the amount so allocated; or
(b) $250,000 or such larger amount as is prescribed; whichever is larger.
(4) Nothing in subsection (3) empowers the Commission to spend amounts in relation to matters covered by the estimates approved by the Minister that exceed in total the total amount of expenditure provided for by those estimates.

(5) The amount spent, or paid into the Regional Land Fund, by the Commission in relation to matters covered by an item in approved Regional Council estimates may, if the Regional Council concerned so directs in writing, differ from the amount allocated to that item in those estimates by not more than 10% of the amount so allocated.

(6) Nothing in subsection (5) empowers the Commission to spend or pay amounts in relation to matters covered by approved Regional Council estimates for a region that exceed in total the total amount allocated by those approved Regional Council estimates for that region.

(6A) Subject to subsection (6B), the Commission may revise estimates.

(6B) The Commission may revise Regional Council estimates only if each of the Regional Councils concerned has approved the revision in writing.

(6C) Section 14 of the Commonwealth Authorities and Companies Act 1997 does not apply to the Commission.

(7) In this section:

money of the Commission does not include:

(a) money held in trust by the Commission; or

(b) money in the Housing Fund or the Regional Land Fund.

62 Form of estimates

(1) Estimates prepared under section 61 shall use the same headings as those set out in the paragraphs of subsection 63(4).

(2) Estimates prepared under section 61 shall set out, under the heading “amount for allocation by Regional Councils”, budget estimates for each region covering the matters required or permitted to be covered in Regional Council draft budgets prepared under section 97.

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(3) Except as provided by subsections (1) and (2), estimates prepared under section 61 shall be in such form as the Minister directs.

(4) Nothing in this section prevents the Minister directing the Commission to prepare a second set of estimates, dealing with the same proposed expenses, and the same period, as estimates prepared under section 61 and consistent with those estimates, but showing those expenses under headings different from those required by subsection (1).

63 Commission to prepare draft budget

(1) For the purpose of preparing estimates under section 61 for the next financial year, the Commission shall prepare:

(a) a draft budget for that financial year; and

(b) a statement for each Regional Council setting out, in respect of that financial year:

(i) the share of the amount for allocation by Regional Councils that is proposed to be allocated for the region concerned;

(ii) the amount proposed to be allocated for the administrative expenses of the Regional Council;

(iii) the amount proposed to be allocated in grants under section 16 to the State or Territory, and to authorities of the State or Territory, in which the region, or most of the region, is located; and

(iv) the amount proposed to be spent out of the Housing Fund.

(2) The Commission:

(a) is not required to prepare more than one draft budget under subsection (1) for each financial year; and

(b) shall not prepare the draft budget for a financial year until the Commission considers that:

(i) it is able to make an informed estimate of the amount referred to in paragraph (3)(a); and

(ii) the Regional Councils will be able to make reasonably detailed and realistic proposals for regional expenditure in that financial year.
(3) A draft budget for a financial year shall set out the following matters:

   (a) the amount that the Commission estimates might be appropriated by the Parliament for the Commission for that financial year, having regard to:
       (i) the amount appropriated by the Parliament for the Commission for the current financial year;
       (ii) an appropriate inflation factor; and
       (iii) any other matter that the Commission thinks relevant;

   (b) the proposed allocation of that amount in accordance with subsection (4).

(4) A draft budget shall, for the purposes of paragraph (3)(b), allocate amounts under the following headings:

   (a) amount for allocation by Regional Councils;
   (b) Aboriginal Hostels Limited;
   (c) additional capital for Indigenous Business Australia;
   (d) administrative expenses of the Commission and Regional Councils;
   (e) Community Development Employment Projects (other than amounts that may be allocated by Regional Councils in respect of those projects);
   (f) programs appropriately conducted on a national basis;
   (g) any other heading approved by the Minister.

(5) For the purposes of subparagraph (1)(b)(i), a draft budget must subdivide a share into the following components:

   (a) amounts in respect of wages for participants in Community Development Employment Projects;
   (b) amounts in respect of other expenditure under Community Development Employment Projects;
   (c) amounts that the Commission requires the Regional Council to apply to specified purposes;
   (d) amounts not covered by the components mentioned in paragraph (a), (b) or (c).

(6) The Commission shall give to the Minister and the Regional Councils a copy of the draft budget, and of each regional statement, for a financial year.
(12) When the Commission gives a Regional Council a copy of a draft budget for a financial year, it may also give the Regional Council a copy of any guidelines that the Commission wants the Regional Council to consider in preparing the Regional Council’s draft budget.

64 Commission to give draft budgets to Minister

The Commission shall give to the Minister a copy of each draft budget, or revised draft budget, for a financial year that the Commission has received from a Regional Council.

65 Minister to explain inconsistencies between approved estimates and Regional Council draft budgets

(1) Where Regional Council estimates included in estimates approved for the purpose of section 61 are inconsistent with the draft budget of the Regional Council given to the Minister under section 64, the Minister shall cause to be laid before each House of the Parliament, within 15 sitting days of that House after the estimates are approved, a statement:
   (a) identifying the inconsistency between the Regional Council estimates and the draft budget; and
   (b) giving the Minister’s reasons for approving Regional Council estimates that are inconsistent with the draft budget.

(2) Subsection (1) does not apply where an inconsistency between Regional Council estimates and the draft budget of a Regional Council has been approved by the Regional Council in writing.

66 Application of money held by Commission

(1) Money of the Commission shall be applied only:
   (a) in payment or discharge of the costs, expenses and other obligations incurred by the Commission 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
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(c) in making any other payments which the Commission is authorised or required to make under this Act or any other law.

(2) In this section:

*money of the Commission* does not include:

(a) money held in trust by the Commission; or

(b) money in the Housing Fund or the Regional Land Fund.

67 Housing Fund

(1) There is established by this subsection a fund to be known as the Housing Fund.

(2) There shall be paid into the Housing Fund:

(a) such amounts as are appropriated to the Commission for the purposes of the Housing Fund; and

(b) such amounts as are paid to the Commission as repayment of, or otherwise in respect of:

(i) housing loans made by the Commission under section 14; 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

(c) such amounts as are paid to the Commission by any other person for the purposes of the Housing Fund; and

(d) such amounts of the Commission’s money as the Commission determines in writing.

(3) Money in the 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

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(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.

(3A) Subsection (3) does not prevent the investment of money under section 18 of the Commonwealth Authorities and Companies Act 1997.

(4) The Commission shall prepare budget estimates for the Housing Fund for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

(5) Money in the Housing Fund shall not be spent otherwise than in accordance with budget estimates approved by the Minister.

68 Regional Land Fund

(1) There is established by this subsection a fund to be known as the Land Fund.

(2) Subject to subsection 61(5), there shall be paid into the Regional Land Fund, from the Money of the Commission, amounts equal to amounts allocated to the Regional Land Fund in approved Regional Council estimates.

(3) Money in the Regional Land Fund may only be spent:
   (a) in making a grant of money under section 14, where:
       (i) the grant is made on condition that the money be spent in acquiring an interest in land; and
       (ii) the acquisition has been proposed by a Regional Council; or
   (b) in acquiring an interest in land under subsection 14(3), where the acquisition has been proposed by a Regional Council.

(3A) Subsection (3) does not prevent the investment of money under section 18 of the Commonwealth Authorities and Companies Act 1997.

(5) The total amount of money spent from the Regional Land Fund from time to time on land in a region must not exceed the sum of:
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(a) the total amount of money paid, or taken to have been paid, from time to time into the Regional Land Fund under subsection (2) by virtue of Regional Council estimates for the region concerned; and

(b) such amount as the Commission determines is a fair share of the income earned by the Regional Land Fund through investments under subsection (6).

69 Borrowing on overdraft to meet temporary deficit

(1) The Commission may, for the purpose only of meeting a temporary deficit in the money of the Commission, borrow money on overdraft from a bank.

(2) The operation of this section is subject to such limits as the Treasurer determines as to:

(a) the total amount of money (other than interest) that may be owed by the Commission 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.

70 Limits on Commission’s powers

(1) The Commission shall not borrow money except in accordance with section 69.

(2) The Commission shall not raise money except by borrowing.

71 Exemption from taxation

(1) The Commission is not subject to taxation (including taxation under the Debits Tax Act 1982) under any law of the Commonwealth or of a State or Territory.

(2) Excise duty is not payable by the Commission, or by any other person, on goods that are for use by the Commission.
72 Annual report and financial statements

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

(2) The Commission shall include in each annual report particulars of:
   (a) any directions given by the Minister under section 12;
   (b) any consultants engaged under section 56; and
   (c) any statements laid before the Houses of the Parliament under section 65 or 68;
   during the period to which the report relates.

(3) The Commission shall include in each annual report a report by the Director of Evaluation and Audit of the operations of the Office of Evaluation and Audit during the period to which the report relates.

(4) The Commission shall include in each annual report the model rules for Regional Council meetings formulated under subsection 128(12).

(5) Subject to any direction by the Minister for Finance, the financial statements included in the annual report shall deal with the Housing Fund and the Regional Land Fund separately from each other and from the other finances of the Commission.

(6) The Commission shall not, in any annual report, disclose any matters known to the Commission to be held sacred by Aboriginal persons or Torres Strait Islanders or by a particular community or group of Aboriginal persons or Torres Strait Islanders.

(7) Where an annual report gives particulars of a consultant engaged under section 56, the report shall 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 Commission as set out in the instrument referred to in subsection 56(3).

74 Ministerial Finance Directions

(1) The Minister shall give to the Commission written directions about the administration of the Commission’s finances.
(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.

(2) The Commission shall comply with a Ministerial Finance Direction that is in force even if it is inconsistent with:
   (a) the provisions of the corporate plan; or
   (b) decision-making principles in force under section 22.

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

(5) The Chief Executive Officer shall cause notice of the giving of Ministerial Finance Directions under this section to be published in the *Gazette*. 
Division 9—Office of Evaluation and Audit

75 Office of Evaluation and Audit

An Office of Evaluation and Audit is established within the Commission.

76 Functions of Office

(1) The Office has the following functions:

(a) to evaluate and audit the operations of the following bodies regularly:
   (i) the Commission;
   (ii) Aboriginal Hostels Limited;
   (iii) Indigenous Business Australia;
   (iv) the TSRA;

(b) when requested to do so by the Minister or the Commission, to evaluate or audit particular aspects of the operations of the following bodies:
   (i) the Commission;
   (ii) Aboriginal Hostels Limited;
   (iii) Indigenous Business Australia;
   (iv) a Regional Council;
   (v) the TSRA;

(ba) when requested to do so by the Minister, to evaluate or audit particular aspects of the operations of:
   (i) the Indigenous Land Corporation; or
   (ii) a subsidiary of the Indigenous Land Corporation;

(c) when requested to do so by Aboriginal Hostels Limited:
   (i) to evaluate or audit particular aspects of the operations of Aboriginal Hostels Limited; or
   (ii) to evaluate or audit particular aspects of the operations of a body that has received money from Aboriginal Hostels Limited, but only to the extent that the evaluation or audit concerns that money;

(d) when requested to do so by Indigenous Business Australia:
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(i) to evaluate or audit particular aspects of the operations of Indigenous Business Australia; or
(ii) to evaluate or audit particular aspects of the operations of a body that has received money from Indigenous Business Australia, but only to the extent that the evaluation or audit concerns that money;
(da) when requested to do so by the Indigenous Land Corporation, to evaluate or audit particular aspects of the operations of:
   (i) the Indigenous Land Corporation; or
   (ii) a subsidiary of the Indigenous Land Corporation;
(db) when requested to do so by the TSRA, to evaluate or audit particular aspects of the operations of the TSRA;
(e) when requested to do so by the Minister or the Commission, to evaluate or audit the activities of an individual who has 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;
(f) when requested to do so by the Minister or the Commission, to evaluate or audit the operations of a body corporate that has 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;
(g) when requested to do so by the Minister or the Commission, to evaluate or audit the operations of an unincorporated body that has 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;
(h) when requested to do so by the Minister or the Commission, to evaluate or audit the activities of a borrower, being an individual one or more of whose loans have been guaranteed by the Commission, but only to the extent that the evaluation or audit concerns those guarantees;
(i) when requested to do so by the Minister or the Commission, to evaluate or audit the operations of a borrower, being a body corporate one or more of whose loans have been guaranteed by the Commission, but only to the extent that the evaluation or audit concerns those guarantees;
(j) when requested to do so by the Minister or the Commission, to evaluate or audit the operations of a borrower, being an

60 Aboriginal and Torres Strait Islander Commission Act 1989
unincorporated body one or more of whose loans have been
guaranteed by the Commission, but only to the extent that the
evaluation or audit concerns those guarantees;

(ja) when requested to do so by the Minister or the TSRA, to
evaluate or audit the activities of an individual who has
received one or more grants or loans from the TSRA, but
only to the extent that the evaluation or audit concerns those
grants or loans;

(jb) when requested to do so by the Minister or the TSRA, to
evaluate or audit the operations of a body corporate that has
received one or more grants or loans from the TSRA, but
only to the extent that the evaluation or audit concerns those
grants or loans;

(jc) when requested to do so by the Minister or the TSRA, to
evaluate or audit the operations of an unincorporated body
that has received one or more grants or loans from the TSRA,
but only to the extent that the evaluation or audit concerns those
grants or loans;

(jd) when requested to do so by the Minister or the TSRA, to
evaluate or audit the activities of a borrower, being an
individual one or more of whose loans have been guaranteed
by the TSRA, but only to the extent that the evaluation or
audit concerns those guarantees;

(je) when requested to do so by the Minister or the TSRA, to
evaluate or audit the operations of a borrower, being a body
corporate one or more of whose loans have been guaranteed
by the TSRA, but only to the extent that the evaluation or
audit concerns those guarantees;

(jf) when requested to do so by the Minister or the TSRA, to
evaluate or audit the operations of a borrower, being an
unincorporated body one or more of whose loans have been
guaranteed by the TSRA, but only to the extent that the
evaluation or audit concerns those guarantees;

(jg) when requested to do so by the Minister or the Indigenous
Land Corporation, to evaluate or audit the activities of an
individual who has received one or more grants or loans from:

(i) the Indigenous Land Corporation; or
(ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those grants or loans;

(jh) when requested to do so by the Minister or the Indigenous Land Corporation, to evaluate or audit the operations of a body corporate that has received one or more grants or loans from:
   (i) the Indigenous Land Corporation; or
   (ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those grants or loans;

(ji) when requested to do so by the Minister or the Indigenous Land Corporation, to evaluate or audit the operations of an unincorporated body that has received one or more grants or loans from:
   (i) the Indigenous Land Corporation; or
   (ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those grants or loans;

(jj) when requested to do so by the Indigenous Land Corporation, to evaluate or audit the activities of a borrower, being an individual one or more of whose loans have been guaranteed by:
   (i) the Indigenous Land Corporation; or
   (ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those guarantees;

(jk) when requested to do so by the Indigenous Land Corporation, to evaluate or audit the operations of a borrower, being a body corporate one or more of whose loans have been guaranteed by:
   (i) the Indigenous Land Corporation; or
   (ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those guarantees;

(jl) when requested to do so by the Indigenous Land Corporation, to evaluate or audit the operations of a borrower, being an unincorporated body one or more of whose loans have been guaranteed by:
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(i) the Indigenous Land Corporation; or
(ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns
those guarantees;

(k) to report on evaluations and audits conducted in accordance
with paragraph (a) or (b), in writing, to the Commission and
the Minister at least every 3 months;

(ka) to report on evaluations and audits conducted in accordance
with paragraph (ba), (jg), (jh), (ji), (jj), (jk) or (jl), in writing,
to the Indigenous Land Corporation and the Minister at least
every 3 months;

(l) to report on evaluations and audits conducted in accordance
with paragraph (c), in writing, to Aboriginal Hostels Limited
and the Minister at least every 3 months;

(m) to report on evaluations and audits conducted in accordance
with paragraph (d), in writing, to Indigenous Business
Australia and the Minister at least every 3 months;

(n) to report on evaluations and audits conducted in accordance
with paragraph (e), (f), (g), (h), (i) or (j), in writing, to the
Commission and the Minister at least every 3 months;

(na) to report on evaluations and audits conducted in accordance
with paragraph (ja), (jb), (jc), (jd), (je) or (jf), in writing, to
the TSRA and the Minister at least every 3 months;

(o) to tell the Minister and the Commission about particular
problems that have arisen or may arise in relation to:

(i) the operations of the Commission; or
(ii) the operations of any other body that exercises powers,
performs functions or receives money under this Act; or
(iii) the activities of an individual who receives money under
this Act;

(oa) to tell the Minister and the Indigenous Land Corporation
about particular problems that have arisen or may arise in
relation to the operations of:

(i) the Indigenous Land Corporation; or
(ii) a subsidiary of the Indigenous Land Corporation;

(p) to tell the Minister and the TSRA about particular problems
that have arisen or may arise in relation to:

(i) the operations of the TSRA; or
(ii) the operations of any other body that exercises powers, performs functions or receives money under Part 3A; or
(iii) the activities of an individual who receives money under Part 3A.

(1A) Paragraphs (1)(jg) to (jl) (inclusive) do not apply in relation to a thing done by a subsidiary of the Indigenous Land Corporation unless the thing was done as the result of the performance by the subsidiary of a function corresponding to a function of the Indigenous Land Corporation.

(2) The functions conferred on the Office of Evaluation and Audit 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.

### 77 Director of Evaluation and Audit

(1) There shall be a Director of Evaluation and Audit appointed by the Minister after consulting the Commission.

(2) The Director of Evaluation and Audit is the head of the Office of Evaluation and Audit.

(3) The Director of Evaluation and Audit shall, as soon as practicable after 30 June in each year, give the Commission a report of the operations of the Office of Evaluation and Audit during that year for inclusion in the annual report of the Commission.

### 77A Period of appointment

(1) The Director of Evaluation and Audit 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.

### 77B Remuneration and allowances

The Director of Evaluation and Audit is entitled to remuneration and allowances in accordance with section 194.
Section 77C

77C Leave of absence

(1) The Director of Evaluation and Audit is to have such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may, with the Commission Chairperson’s agreement, grant the Director of Evaluation and Audit leave of absence (other than recreation leave) on such terms and conditions, as to remuneration or otherwise, as the Minister, with the Commission Chairperson’s agreement, determines in writing.

77D Acting Director of Evaluation and Audit

(1) The Minister may, after consulting the Commission Chairperson, appoint a person to act as the Director of Evaluation and Audit:
   (a) during a vacancy in the office of Director of Evaluation and Audit; or
   (b) during any period, or during all periods, when the Director of Evaluation and Audit 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.

77E Disclosure of interests

(1) The Director of Evaluation and Audit must make to the Minister and the Commission Chairperson a written disclosure of:
   (a) the Director’s financial interests; and
   (b) the financial interests of the Director’s immediate family;
Section 77F

equivalent to the disclosure of financial interests required to be made by SES employees.

(2) The Director of Evaluation and Audit must make a disclosure under subsection (1) within one month after being appointed as Director.

(3) The Director of Evaluation and Audit must from time to time make such further disclosures as are necessary to ensure that the information available to the Minister and the Commission Chairperson about the financial interests of the Director, and of the members of the Director’s immediate family, is up-to-date.

(4) In this section:

Director of Evaluation and Audit includes an acting Director of Evaluation and Audit.

77F  Resignation

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

77G  Termination of appointment

(1) The Minister may, after consulting the Commission, terminate the appointment of the Director of Evaluation and Audit because of incompetence, misbehaviour or physical or mental incapacity.

(2) If the Director of Evaluation and Audit:

(a) is absent from duty, except on leave granted under section 77C, 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 77E; or

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(g) engages in paid employment outside the duties of the office of Director of Evaluation and Audit without the written consent of the Minister given after consulting the Commission;

the Minister must terminate the Director’s appointment.

77H  Director of Evaluation and Audit not personally liable

The Director of Evaluation and Audit is not personally liable to an action or other proceeding for damages for or in relation to anything done or omitted to be done in good faith:

(a) by the Office of Evaluation and Audit; or

(b) by the Director in the capacity of Director.

77J  Other terms and conditions

The Director of Evaluation and Audit 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.

78  Desirability of regular evaluations etc.

In directing the operations of the Office of Evaluation and Audit, the Director of Evaluation and Audit shall have regard to the desirability of evaluating and auditing:

(a) every program that is conducted, or funded, under this Act; and

(b) the operations of every office of the Commission; at least once in every 3 years.

78A  Examination of documents etc.

This section applies to the evaluation and audit of certain individuals and bodies

(1) This section applies if the Office of Evaluation and Audit:

(a) evaluates or audits the operations of a body in accordance with paragraph 76(1)(b), (ba), (c), (d), (da), (db), (f), (g), (jb), (jc), (jh) or (ji); or
Section 78A

(b) evaluates or audits the activities of an individual in accordance with paragraph 76(1)(e), (ja) or (jg).

**Authorised person**

(2) The Director of Evaluation and Audit may, by notice in the *Gazette*, authorise a person (the *authorised person*) who is a member of the staff of, or a consultant to, the Commission to perform functions and exercise powers for the purposes of this section.

**Power of Director or authorised person to examine documents**

(3) For the purposes of a particular evaluation or audit, the Director of Evaluation and Audit or an authorised person may examine documents relating to the individual or body concerned.

**Authorised person must report to the Director on the results of examination**

(4) An authorised person must report to the Director of Evaluation and Audit on the results of an examination conducted in accordance with subsection (3), drawing the Director's attention to any irregularity that is relevant to the evaluation or audit of the individual or body concerned.

**Director or authorised person entitled to access to documents**

(5) For the purposes of performing the function conferred by subsection (3), the Director of Evaluation and Audit or the authorised person:

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

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

(c) 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;
as the Director of Evaluation and Audit or the authorised person, as the case requires, considers necessary for that purpose.

Penalty for failure to comply with paragraph (5)(c)

(6) A person who fails to comply with a requirement under paragraph (5)(c) is guilty of an offence punishable upon conviction by a fine not exceeding 20 penalty units.

Strict liability

(6A) Subsection (6) is an offence of strict liability.

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

Defence of reasonable excuse

(6B) Subsection (6) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6B) (see subsection 13.3(3) of the Criminal Code).

Self-incrimination

(7) For the purposes of subsection (6B), 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, as the case may be, might tend to incriminate the person or make the person liable to a penalty. However:

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

is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against, or arising out of, subsection (6) or (8).
Part 2  Aboriginal and Torres Strait Islander Commission
Division 9  Office of Evaluation and Audit

Section 78A

Penalty for knowingly making a statement that is false or misleading

(8) A person who, in purported compliance with a requirement under paragraph (5)(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.

Authorised person must produce written authority before exercising powers

(9) Before exercising powers under subsection (5), an authorised person must produce written authority given by the Director of Evaluation and Audit. If the authorised person fails to do so, he or she has no powers under that subsection.

Functions and powers conferred are additional to functions and powers conferred on Auditor-General

(10) 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.
Division 10—Torres Strait Islander Affairs

80 Office of Torres Strait Islander Affairs

An Office of Torres Strait Islander Affairs is established within the Commission.

81 Functions of Office

(1) The Office has the following functions:
   (a) to monitor the conduct of programs affecting Torres Strait Islanders by the Commission, by other Commonwealth bodies (except the TSRA) and by State, Territory and local government bodies, and to evaluate the extent to which those programs meet the needs of Torres Strait Islanders;
   (b) to monitor the development of programs and policies affecting Torres Strait Islanders by the Commission, by Regional Councils and by other Commonwealth bodies (except the TSRA), and to evaluate the extent to which those programs and policies are likely to meet the needs of Torres Strait Islanders;
   (c) to report to the Advisory Board, the Commission and the Minister, as appropriate, on the results of the performance of the functions set out in paragraphs (a) and (b).

(2) In performing its functions, the Office shall pay particular attention to the needs of Torres Strait Islanders who live outside the Torres Strait area.

(3) The Office shall consult the Advisory Board from time to time in relation to the performance of the functions of the Office.

82 Torres Strait Islander Advisory Board

A Torres Strait Islander Advisory Board is established.
Section 83

83 Function of Advisory Board

(1) The function of the Advisory Board is to provide advice to the Minister and the Commission for the purpose of furthering the social, economic and cultural advancement of Torres Strait Islanders living outside the Torres Strait area.

(2) The function of the Advisory Board may be performed by the Advisory Board on its own initiative or at the request of the Minister or the Commission, as the case requires.

84 Constitution of Advisory Board

(1) The Advisory Board consists of:
   (a) a Chairperson appointed by the Minister, being the Commissioner who represents the Torres Strait zone; and
   (b) 6 other members, being Torres Strait Islanders appointed by the Minister to represent Torres Strait Islanders living in the following areas:
      (i) New South Wales and the Australian Capital Territory;
      (ii) Victoria and Tasmania;
      (iii) Queensland;
      (iv) Western Australia;
      (v) South Australia;
      (vi) the Northern Territory.

(2) The members of the Advisory Board hold office on a part-time basis.

(3) The members of the Advisory Board referred to in paragraph (1)(b) hold office for such periods, not exceeding 3 years, as are specified in their instruments of appointment.

85 Remuneration and allowances

A member of the Advisory Board is entitled to remuneration and allowances in accordance with section 194.
86 Other terms and conditions

A member of the Advisory Board 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.

86A Advisory Board—disclosure of interests at meetings

(1) A member of the Advisory Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board 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 Board.

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

86B Advisory Board—member’s appointment to be terminated for non-disclosure of interests

(1) The Minister must terminate the appointment of a member of the Advisory Board if the member fails, without reasonable excuse, to comply with section 86A.

(2) Subsection (1) does not, by implication, limit the Minister’s power to terminate the appointment of a member of the Advisory Board.

86C Advisory Board—resignation

A member of the Advisory Board may resign from the Board by writing signed by the member and sent to the Minister.

87 Meetings of Advisory Board

(1) The Chairperson of the Advisory Board shall convene at least 4 meetings of the Advisory Board in each calendar year, and may convene such other meetings of the Advisory Board as, in the Chairperson’s opinion, are necessary for the efficient performance of its functions.
(2) The Minister or the Chief Executive Officer may, at any time, convene a meeting of the Advisory Board.

(3) The Advisory Board may regulate the conduct of proceedings at its meetings as it thinks fit.

(4) If the Advisory Board so determines, a member of the Advisory Board may participate in a meeting of the Advisory 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 Advisory Board.

(5) A determination of the Advisory Board under subsection (4) may be made in respect of a particular meeting, or in respect of all meetings, of the Advisory Board.
Division 11—Miscellaneous

90 Secrecy

(1) This section applies to a person who is or has been:
   (a) a Commissioner; or
   (b) a member of an advisory committee established under section 13; or
   (c) the Chief Executive Officer; or
   (d) a member of the staff of the Commission; or
   (e) engaged as a consultant under section 56; or
   (f) the Director of Evaluation and Audit; or
   (g) a member of the Torres Strait Islander Advisory Board; or
   (h) a Regional Councillor; or
   (i) a member of an advisory committee established under section 96; or
   (j) an Administrator; or
   (k) a member of the TSRA; or
   (l) a member of an advisory committee established under section 142M; or
   (m) the TSRA General Manager; or
   (n) a member of the staff of the TSRA; or
   (o) engaged as a consultant under section 144T; or
   (p) a TSRA Administrator.

(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 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.

Penalty: Imprisonment for one year.

(2A) Despite subsection (2), a person to whom this section applies may:

(a) divulge or communicate any information referred to in paragraph (2)(a) to anyone who is authorised in writing by the person to whose affairs the information relates to receive the information; and

(b) produce a document referred to in paragraph (2)(b) to anyone who is authorised in writing by the person to whose affairs the document relates to receive the document.

(3) A person to whom this section applies shall 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.

(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 3—Regions and zones

Division 1—Regions

91 Regions

(1) For the purposes of this Act, so much of Australia as does not consist of the Torres Strait area is divided into 35 regions:
   (a) each of which includes the place or places set out in a single line of column B of Schedule 1, and does not include any place set out in any other line of that column; and
   (b) the boundaries of which are as determined from time to time by the Minister in writing.

(1A) If the Minister makes a determination under subsection (1), he or she must cause a notice to be published in the Gazette that:
   (a) states that the determination has been made; and
   (b) specifies the places where members of the public may buy copies of the determination.

(1B) The Commission must take all reasonable steps to ensure that, from the time the notice is published or as soon as practicable thereafter, copies of the determination are available to be bought by members of the public at the places specified in the notice.

(2) The Minister must not make a determination under subsection (1) except in accordance with a final boundary recommendation under Division 9.

(4) If the Minister causes to be published a Gazette notice about the making of a determination under subsection (1), the Minister must also cause to be published in the same issue of the Gazette a notice consisting of:
   (a) a statement setting out, in respect of each region whose boundaries are changed, the amount (if any) in the Regional Land Fund that is to be taken, for the purpose of subsection 68(5), to have been paid into the Regional Land Fund by virtue of Regional Council estimates for that region;
(b) an estimate by the Minister, made after consulting the Australian Electoral Commission, in relation to each region whose boundaries are changed, of:
   (i) the number of persons who will be entitled to vote at the next Regional Council election for that region; and
   (ii) the number of persons living in that region who are Aboriginal persons or Torres Strait Islanders; and
(c) any provisions that the Minister thinks necessary transferring assets or liabilities between Regional Councils for regions whose boundaries are changed.

(5) The Minister shall consult the Commission and any Regional Council that would be affected before including provisions referred to in paragraph (4)(c) in a determination under subsection (1).

(6) Provisions made under paragraph (4)(c) have effect according to their terms.

(7) A determination changing boundaries under subsection (1):
   (a) has effect for the purposes of the first round of Regional Council elections held after the date of the determination; and
   (b) takes effect, for all other purposes, at the end of the election period in relation to the first round of Regional Council elections held after the date of the determination.

78 Aboriginal and Torres Strait Islander Commission Act 1989
Division 2—Regional Councils

92 Regional Councils

(1) A Regional Council is established for each region.

(2) Each Regional Council:
   (a) is a body corporate, with perpetual succession;
   (b) shall have a common seal;
   (c) has the capacity to acquire, hold and dispose of real and personal property; and
   (d) may sue and be sued in its corporate name.

(3) The common seal of a Regional Council shall be kept in such custody as the Regional Council directs and shall not be used except as authorised by the Regional Council.

(4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of a Regional Council appearing on a document and shall presume that it was duly affixed.

93 Names of Regional Councils

(1) The Regional Council for a region may from time to time, by resolution, determine a name, or a new name, for the Regional Council.

(2) Where a Regional Council determines a name, or a new name, for the Regional Council, the Regional Council shall give the Commission written notice of the name or the new name.

(3) The corporate name of a Regional Council for a region that includes a place or places set out in column B of Schedule 1 is:
   (a) if a name for the Regional Council has not been determined under subsection (1)—the Regional Council for the region that includes that place or those places; or
   (b) the name shown in the most recent notice given to the Commission under subsection (2).
Division 3—Functions of Regional Councils

94 Functions of Regional Councils

(1) Each Regional Council has the following functions:
   (a) to formulate, and revise from time to time, a regional plan for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents of the region;
   (b) to assist, advise and co-operate with the Commission, the TSRA, other Commonwealth bodies and State, Territory and local government bodies in the implementation of the regional plan;
   (c) to make proposals, in accordance with section 97, in relation to the region;
   (d) to receive, and to pass on to the Commission and the TSRA, the views of Aboriginal persons and Torres Strait Islanders about the activities, in the region, of the Commission, the TSRA, other Commonwealth bodies and State, Territory and local government bodies;
   (e) to represent Aboriginal and Torres Strait Islander residents of the region and to act as an advocate of their interests;
   (f) such other functions as are conferred on the Regional Council by or under this Act;
   (g) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

(2) Nothing in this section or in any other provision of this Act shall be read as conferring on a Regional Council a function of acquiring land except:
   (a) for its administrative purposes; or
   (b) for the purpose of the performance of functions expressly conferred on the Regional Council by this Act.

95 Powers of Regional Councils

(1) A Regional Council 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) A Regional Council shall not exercise its power to engage staff without the written approval of the Commission.

96 Advisory committees

(1) A Regional Council may establish an advisory committee or advisory committees to advise the Regional Council in relation to the performance of the Regional Council’s functions.

(2) An advisory committee established under subsection (1) may include members of the Regional Council.

(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 Commission by notice published in the Gazette.

96A Advisory committee—disclosure of interests at meetings

(1) A member of an advisory committee established under section 96 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.

96B Advisory committee—member’s appointment to be terminated for non-disclosure of interests

(1) This section applies to an advisory committee established under section 96 by a Regional Council.

(2) The Regional Council must terminate the appointment of a member of the committee if the member fails, without reasonable excuse, to comply with section 96A.
Part 3  Regions and zones
Division 3  Functions of Regional Councils

Section 96C

(3) Subsection (2) does not, by implication, limit the power of the Regional Council to terminate the appointment of a member of the committee.

96C  Advisory committee—resignation

A member of an advisory committee established under section 96 may resign from the committee by writing signed by the member and sent to the Regional Council concerned.

97  Regional Councils to prepare draft budgets

(1) Where, under section 63, a Regional Council is given a copy of the Commission’s draft budget for a financial year, the Regional Council shall, within such period as the Commission directs:
   (a) prepare a draft budget for the Regional Council for that financial year; and
   (b) give a copy of the draft budget to the Commission.

(2) In preparing a draft budget, the Regional Council must:
   (a) have regard to the regional plan for the region concerned; and
   (b) consider any guidelines given to it by the Commission under subsection 63(12).

(3) A draft budget for a Regional Council for a financial year must set out the proposed allocation in accordance with subsection (4) of each of the components referred to in subsection 63(5) of the amount specified under subparagraph 63(1)(b)(i) in the regional statement for the region for that financial year.

(4) For the purposes of subsection (3), a draft budget:
   (a) may allocate some of the amount to the Regional Land Fund; and
   (b) must allocate the amount, or so much of it as is not allocated to the Regional Land Fund, among programs to improve the economic, social and cultural status of Aboriginal persons and Torres Strait Islanders living in the region concerned.

82  Aboriginal and Torres Strait Islander Commission Act 1989
(5) In subsection (4):

*program* does not include:

(a) a program of a kind to which amounts could be allocated under a paragraph of subsection 63(4) (other than paragraph 63(4)(a)); or

(c) any other program declared by the Commission to be excluded from the scope of Regional Council draft budgets; or

(d) except where the Commission, at the request of the Regional Council concerned, has approved the program for the purposes of this section—a program to be conducted by a State, the Australian Capital Territory or the Northern Territory, by an authority of a State, the Australian Capital Territory or the Northern Territory, by Aboriginal Hostels Limited or by the Australian Institute of Aboriginal and Torres Strait Islander Studies.

(6) When the Commission receives a copy of a Regional Council’s draft budget under subsection (1), the Commission may, in writing, ask the Regional Council to reconsider the draft budget and change it in specified respects.

(7) A Regional Council that is asked to reconsider its draft budget under subsection (6):

(a) shall reconsider its draft budget;

(b) is not required to change its draft budget; and

(c) shall, within such period as the Commission directs:

(i) notify the Commission in writing that it has not changed its draft budget; or

(ii) give the Commission a copy of its revised draft budget.

98 Regional Councils to advise Commission

(1) The Commission may from time to time ask a Regional Council for advice, in such form (if any) as the Commission specifies, about any matter.

(2) The Regional Council shall give the Commission that advice.
99 Annual report

(1) Each Regional Council must, as soon as practicable after the end of each financial year and, in any event, within 2 months after the end of each financial year, prepare and give to the Commission a report dealing with:
   (a) the operations of the Regional Council during that year; and
   (b) the implementation during that year of the regional plan for the region concerned; and
   (c) such other matters (if any) relating to that year as the Commission determines in writing.

(1A) If:
   (a) a grant was made to an individual or body during a financial year; and
   (b) the grant was covered by Regional Council estimates relating to the region concerned;
then, in addition to the matters referred to in subsection (1), a report relating to the year must also set out:
   (c) the name of the individual or body; and
   (d) the amount and purpose of the grant.

(2) A report given to the Commission under subsection (1) during a year shall be tabled at a meeting of the Commission before 31 December of that year.

(3) Within 7 days after a report of a Regional Council is given to the Commission, the Chairperson of the Regional Council must:
   (a) make copies of the report available for inspection and purchase by residents of the region; and
   (b) if the report deals with the implementation of a particular version of the regional plan for the region—make copies of the version of the plan available for inspection and purchase by residents of the region.

(4) The Commission must make copies of the report and the regional plan for the region concerned available for inspection and purchase at each office of the Commission that serves the region.
Division 4—Regional Council elections

100 Regional Council elections

Regional Council elections shall be conducted by the Australian Electoral Commission in accordance with:

(a) the provisions of this Act; and

(b) the Regional Council election rules in force at the beginning of the election period.

100A Regional Council wards

Rules may divide region into wards

(1) The Regional Council election rules may:

(a) provide for the division of a region into such wards as are specified; and

(b) set out the boundaries of each ward so specified; and

(c) fix the designated number for each ward so specified.

No more than 5 wards in each region

(2) The number of wards in each region must not be more than 5.

Significance of fixing the designated number for a ward

(3) 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 107 (which deals with nominations), there is to be a single member of the Regional Council for the ward;

(b) if the designated number is any other number—subject to section 107 (which deals with nominations), there is to be that number of members of the Regional Council for the ward.
Total of designated numbers for wards in a region must equal the prescribed number for the Regional Council

(4) The total of the designated numbers for the wards in a region must equal the prescribed number in relation to the Regional Council.

Rules about wards not to be made except in accordance with a final boundary recommendation

(4A) The Minister must not make Regional Council election rules for the purposes of this section except in accordance with a final boundary recommendation under Division 9.

Minister not required to consult before making rules about wards

(4B) Despite subsection 113(1), the Minister is not required to consult the Aboriginal and Torres Strait Islander Commission and the Electoral Commissioner before making rules for the purposes of this section.

When rules about wards take effect

(5) Regional Council election rules made for the purposes of this section:
   (a) have effect for the purposes of the first round of Regional Council elections held after the commencement of the rules; and
   (b) take effect, for all other purposes, at the end of the election period in relation to the first round of Regional Council elections held after the date on which the rules commence.

If no rules in force then region taken to be a single ward

(6) For the purposes of this Act, if there are no Regional Council election rules in force that divide a region into wards:
   (a) the region is taken to be a single ward; and
   (b) the designated number in relation to the ward is equal to the prescribed number in relation to the Regional Council concerned.

86 Aboriginal and Torres Strait Islander Commission Act 1989
101 Persons entitled to vote at Regional Council elections

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

(a) the person is an Aboriginal person or a Torres Strait Islander; 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 pursuant to rules made under subsection 113(3).

102 Persons qualified to be elected to Regional Councils

(1) A person is not qualified to stand for election, or to be elected, as a member for a Regional Council ward if:

(a) the person is not entitled to vote at the Regional Council ward election concerned; or

(b) the person does not live in the ward; or

(c) the person is a member of the staff of, or a consultant to, the Commission or the TSRA; or

(d) 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

(da) subject to subsection (2), the person has been convicted of 2 or more offences against a Commonwealth, State or Territory law and sentenced in respect of all the offences to a single penalty of imprisonment for one year or longer; or

(e) 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; or

(ea) subject to subsection (2), the person has been convicted of 2 or more offences against a Commonwealth, State or Territory law involving dishonesty and sentenced in respect of all the offences to a single penalty of imprisonment for 3 months or longer; or

(f) the person is bankrupt; or
(g) there is in operation a personal insolvency agreement with
the person’s creditors under the law relating to bankruptcy.

(1A) Paragraph (1)(b) does not apply to a person who is the Commission
Chairperson or to the Chairperson of a Regional Council covered
by a determination in force under subsection 121(1B).

(1B) A person who:
(a) has ceased to be a member of a Regional Council under
subsection 122(2); or
(b) has been removed from office as a Regional Councillor under
subsection 122A(5) after having been suspended from office
because of misbehaviour;

is not qualified to stand for election, or to be elected, as a member
for a Regional Council ward until after the next round of elections
for Regional Councils.

(2) In spite of subsection (1), a person covered by paragraph (1)(d),
(da), (e) or (ea) is not disqualified by that paragraph from standing
for election, or being elected, as a member of a Regional Council
if:
(a) where the person was never actually imprisoned for the
offence or offences—at least 2 years have elapsed since the
person was convicted;
(b) where the person served a term of imprisonment for the
offence or offences—at least 2 years have elapsed since the
person was released from prison; or
(c) in any case—the Federal Court of Australia, on application
by the person, declares that in spite of the person’s
conviction, he or she ought not to be disqualified from
standing for election, or being elected, as a member of a
Regional Council.

(3) The Federal Court of Australia has jurisdiction with respect to
matters arising under subsection (2).

103 Errors in Commonwealth Electoral Roll not to affect
entitlements

(1) For the purposes of the application of this Act to the Commission,
a person’s name shall be taken to be on the Commonwealth

88 Aboriginal and Torres Strait Islander Commission Act 1989
Electoral Roll if the name appearing 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 a wrong given name has been entered on the Roll;
(b) the person’s surname has been misspelt; or
(c) the Roll does not show the person’s correct address.

(2) For the purposes of the application of this Act to the Commission, a person’s name shall be 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.

104 Timing of Regional Council elections

(1) Regional Council elections shall, subject to this section, be held every 3 years during periods determined under the rules having regard to the day or days fixed for the polling in accordance with this section.

(2) The Minister shall, by notice in writing, fix a day or days for the polling in each round of Regional Council elections.

(3) The polling day, or the last of the polling days, for the first round of Regional Council elections shall be no later than 8 months after the commencement of this Act.

(4) The polling day or days for each subsequent round of Regional Council elections shall be between 1 July and 31 December, inclusive, in the third calendar year after the immediately preceding round of Regional Council elections.

105 Polling places

(1) The Electoral Commissioner shall, by notice in writing, appoint by name such polling places for each Regional Council ward as he or she considers necessary.

(3) The Electoral Commissioner shall give a copy of each notice under subsection (1) to the Minister and to the Aboriginal and Torres Strait Islander Commission.
(4) The Aboriginal and Torres Strait Islander Commission shall take reasonable steps to ensure that a copy of the most recent notice appointing polling places for a region under subsection (1) is available for inspection at each office of the Aboriginal and Torres Strait Islander Commission that serves that region.

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

(1) The Minister shall cause a copy of the notice under subsection 104(2) fixing a polling day or polling days for the first round of Regional Council elections to be published in the Gazette before the day, or the first of the days, so fixed.

(1A) The Minister shall cause a copy of the notice under subsection 104(2) fixing a polling day or polling days for the round of Regional Council elections for 1993 to be published in the Gazette at least 60 days before the day, or the first of the days, so fixed.

(2) The Minister shall cause a copy of the notice under subsection 104(2) fixing a polling day or polling days for a subsequent round of Regional Council elections to be published in the Gazette at least 90 days before the day, or the first of the days, so fixed.

(3) The Minister shall cause to be published, together with the copy referred to in subsection (1), (1A) or (2):
   (a) a copy of the most recent notice appointing polling places under section 105; and
   (b) a notice setting out an estimate by the Minister, in relation to each region, of:
      (i) the number of persons who will be entitled to vote at the forthcoming Regional Council election for that region; and
      (ii) the number of persons living in that region who are Aboriginal persons or Torres Strait Islanders; and
   (c) if a particular region is divided into wards—a notice setting out an estimate by the Minister, in relation to each ward, of:
      (i) the number of persons who will be entitled to vote at the forthcoming Regional Council ward election for that ward; and
(iii) the number of persons living in that ward who are Aboriginal persons or Torres Strait Islanders.

(4) 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.

107 Effect of nominations

(1) If the number of candidates nominated for election as the member or members for a Regional Council ward is equal to or less than the designated number in relation to the ward, the authorised electoral officer must declare the candidate or candidates, as the case requires, to be duly elected. Subsection (3) may require the deferral of the declaration.

(2) If the number of candidates nominated for election as the member or members for a Regional Council ward is more than the designated number in relation to the ward, a poll must be held.

(3) If subsection (1) applies to some, but not all, of the wards in a region, all declarations (whether made under this section or otherwise) must be made in respect of all the wards on the same day.

108 Voting not compulsory

Voting at Regional Council elections is not compulsory.

109 Voting to be by secret ballot

Voting at Regional Council elections shall be by secret ballot.

110 Voting

(1) A voter shall cast a vote at a Regional Council election by marking the ballot paper so as to show the order of the voter’s preference for the candidates.

(2) A ballot paper is formal if and only if:

(a) the authorised electoral officer is satisfied that it is an authentic ballot paper;
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(b) it indicates the voter’s first preference for one, and only one, candidate; and
(c) it does not have upon it any identifying mark.

(3) A ballot paper that is formal shall 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 the 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.

111 Counting of votes and election of candidates

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

(a) whichever of Schedules 2 and 2A applies; and
(b) the Regional Council election rules.

112 General obligation to inform voters about elections

In addition to its specific obligations in relation to Regional Council elections, the Australian Electoral Commission shall take such steps as it considers reasonable to inform persons who are or may be entitled to vote at Regional Council elections about:

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

113 Rules for conduct of elections

(1) The Minister may, after consulting the Aboriginal and Torres Strait Islander Commission and the Electoral Commissioner, make rules, not inconsistent with this Act, prescribing:

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(a) the manner in which Regional Council 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 Regional Councils are to be filled (including, but not limited to, the holding of by-elections).

(2) The matters that may be dealt with in rules under subsection (1) 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 persons who have cast votes;

(b) the functions of Aboriginal and Torres Strait Islander liaison officers in connection with the determination of a person’s entitlement to vote;

(c) the nomination of candidates for election;

(ca) nomination fees;

(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;

(j) the scrutiny and counting of votes;

(k) the declaration of the poll.

(3) The rules may make provisions entitling Aboriginal persons and Torres Strait Islanders to vote at Regional Council ward elections even if those persons would not be entitled so to vote pursuant to subparagraph 101(b)(i) and, without limiting the generality of the foregoing, may make provision in relation to the following matters:

(a) the determination of the Regional Council ward election at which a person is entitled to vote if:

(i) the person’s name is on the Commonwealth Electoral Roll; but

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(ii) pursuant to a provision of the Commonwealth Electoral Act 1918, the person’s place of living or address is not shown on the Commonwealth Electoral Roll;

(b) how a vote cast by a person is to be dealt with where:
   (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 pursuant to rules made under paragraph (c) is to be accepted.

(4) The rules may provide penalties for breaches of the rules not exceeding:
   (a) in the case of a natural person—$1,000; or
   (b) in the case of a body corporate—$5,000.

(5) Where:
   (a) the rules create an offence in relation to Regional Council elections that corresponds to an offence under the Commonwealth Electoral Act 1918; and
   (b) the maximum pecuniary penalty for the offence under the Commonwealth Electoral Act 1918 exceeds the penalty that, by subsection (4), could be imposed for a breach of the rules;

the rules may provide a maximum penalty for the first-mentioned offence not exceeding the maximum pecuniary penalty for the corresponding offence under the Commonwealth Electoral Act 1918, but nothing in this subsection enables the rules to provide penalties of imprisonment.

(6) In making rules under subsection (1), the Minister shall have regard to the desirability of providing for Regional Council elections to be conducted in a manner similar to the manner in which elections for the Parliament are conducted with a view to increasing Aboriginal and Torres Strait Islander understanding of, and participation in, elections for the Parliament.

(7) Nothing in subsection (6) prevents the Minister making rules.
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(a) that take account of the special circumstances of Aboriginal persons or Torres Strait Islanders; or

(b) that will enable significant reductions in the costs of conducting Regional Council elections.

(8) Rules made by the Minister under subsection (1) are a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

114 Authorised electoral officer

A reference in a provision of this Division or Schedule 2 to an authorised electoral officer is, in relation to a Regional Council 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 Regional Council election.
Division 5—Administrative provisions

115 Constitution of Regional Councils

(1) Each Regional Council consists of the prescribed number of members elected in accordance with Division 4 of this Part and such number (if any) of other members as are appointed under section 115A or 116.

(1A) The performance of the functions or the exercise of the powers of a Regional Council is not affected merely because there are more than the prescribed number of members of the Regional Council provided that the number of members of the Regional Council is not more than the number that was the prescribed number of members at the beginning of the election period for the last round of Regional Council elections.

(2) The performance of the functions or the exercise of the powers of a Regional Council is not affected by reason only that there are fewer than the prescribed number of members of the Regional Council because:

(a) there were fewer than the designated number of candidates for election as the member or members for any ward at the last election for the Regional Council; or

(b) a casual vacancy in the membership of the Regional Council has occurred and has not yet been filled, or is not able to be filled, in accordance with the Regional Council election rules.

(3) Where there are fewer than 7 members of a Regional Council, the Commission may, subject to subsection (4), by notice in writing published in the Gazette:

(a) remove the remaining members (if any) of the Regional Council from office; and

(b) appoint an Administrator to administer the affairs of the Regional Council.

(4) Subsection (3) does not apply where:

(a) there are casual vacancies in the membership of the Regional Council;
(b) some or all of those vacancies will be able to be filled in accordance with the Regional Council election rules; and
(c) when those casual vacancies are filled, the Regional Council will have at least 7 members.

115A Additional member where a member is appointed as Commissioner

(1) This section applies to a Regional Council if:
(a) one of its members who is a Regional Councillor for a ward is appointed under section 27 as a member of the Commission; and
(b) there has not previously been an appointment under this section for the Regional Council during the current term of the Regional Council.

(2) The Minister must appoint, as a member of the Regional Council, the person ascertained by applying the same rules as would apply to filling a casual vacancy in the ward.

(3) A person appointed as a member of a Regional Council under this section holds office until the end of the next round of Regional Council elections following his or her appointment.

116 Additional members of Regional Councils

(1) Subject to subsection (2), if the Minister is of the opinion that the number of members of a particular Regional Council is insufficient to enable the Council properly to perform its functions, the Minister may, after consulting the Commission, appoint an additional person or persons to be a member or members of the Regional Council.

(2) The Minister may not appoint a person as a member of a Regional Council under subsection (1) unless the person is qualified for election as a member for a Regional Council ward for the Regional Council concerned.

(3) A person appointed as a member of a Regional Council under this section holds office until the end of the next round of Regional Council elections following his or her appointment.
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(4) If a person appointed under this section as a member of a Regional Council ceases to hold the office to which he or she was appointed, the Minister may appoint another person as a member of the Regional Council in place of the first-mentioned person.

117 Term of office of members of Regional Council

(1) Persons elected, or declared to have been elected, as members of a Regional Council 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 next election period.

(2) A person elected, or declared to have been elected, as a member of a Regional Council 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 an election in the next round of Regional Council elections.

118 Remuneration and allowances

A member of a Regional Council is entitled to remuneration and allowances in accordance with section 194.

119 Disclosure of interests

(1) A member of a Regional Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Regional Council shall, 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 Regional Council.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and the member must not:

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(a) unless the Minister otherwise determines in writing—be present during any deliberation of the Regional Council with respect to that matter; or
(b) unless the Minister otherwise determines in writing—take part in any decision of the Regional Council with respect to that matter.

(2A) The Minister must cause a copy of each determination made under paragraph (2)(a) or (b) to be published in the Gazette.

(3) The Minister may, by writing, delegate to the Commission Chairperson any or all of the Minister’s powers under subsection (2).

(4) The Minister may make a written determination providing that specified interests are taken to be direct or indirect pecuniary interests for the purposes of this section.

(5) The Minister may make a written determination providing that specified interests are taken not to be direct or indirect pecuniary interests for the purposes of this section.

(6) A determination under subsection (4) or (5) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

119A Register of interests

(1) Each member of a Regional Council must make to the Commission written disclosures of the member’s direct or indirect pecuniary interests in accordance with a Ministerial determination under subsection (4).

(2) The Commission must keep a register of the interests disclosed in accordance with a Ministerial determination under subsection (4).

(3) The Commission must allow any person to inspect the register at any reasonable time without charge.

(4) The Minister may make a written determination specifying:
   (a) the kinds of interests to be disclosed; and
   (b) the manner in which, and the times at which, disclosures are to be made; and
(c) the form in which the register is to be kept.

(5) A determination under subsection (4) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

120 Resignation

A member of a Regional Council may resign by writing signed by the member and sent to the Minister.

121 Persons taken to have resigned from Regional Councils in certain circumstances

(1) Where the Commission is satisfied that a member for a Regional Council ward:
   (a) does not live in the ward; and
   (b) has not lived in the ward at all during the immediately preceding period of 6 months;
   the Commission may, in writing, declare that it is so satisfied.

(1A) Subsection (1) does not apply to a member of a Regional Council who is the Commission Chairperson.

(1B) Subsection (1) does not apply to the Chairperson of a Regional Council if the Commission makes a written determination that it is satisfied that the Chairperson lives within reasonable daily commuting distance of an office of the Commission that serves the region concerned.

(2) Subject to the Administrative Appeals Tribunal Act 1975, where the Commission makes a declaration under subsection (1) about a member of a Regional Council, the member shall for all purposes be taken to have resigned on the date of the declaration.

(3) If the Commission is satisfied that a member of a Regional Council:
   (a) has become a member of the staff of the Commission or the TSRA; or
   (b) has become a consultant to the Commission or the TSRA; or
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122 Persons cease to be members of Regional Councils in certain circumstances

(1) Where the Commission is satisfied that a member of a Regional Council, since becoming, or last becoming, a member of the Regional Council:

(a) has been convicted of an offence against a Commonwealth, State or Territory law and sentenced in respect of the offence to imprisonment for one year or longer; or

(aa) has been convicted of 2 or more offences against a Commonwealth, State or Territory law and sentenced in respect of all the offences to a single penalty of imprisonment for one year or longer; or

(b) has been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced in respect of the offence to imprisonment for 3 months or longer; or

(ba) has been convicted of 2 or more offences against a Commonwealth, State or Territory law involving dishonesty and sentenced in respect of all the offences to a single penalty of imprisonment for 3 months or longer; or

(c) has failed, without reasonable excuse, to comply with section 119 or 119A; or

(d) has been absent from 3 consecutive meetings of the Council without leave of the Council and without reasonable excuse; or

(e) has become bankrupt; or

(4) Where the Commission makes a declaration under subsection (3) about a member of a Regional Council, the member shall for all purposes be taken to have resigned on the date of the declaration.
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(f) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
(g) has compounded with his or her creditors; or
(h) has made an assignment of his or her remuneration for the benefit of his or her creditors;
the Commission shall, in writing, declare that it is so satisfied.

(2) Where the Commission makes a declaration under subsection (1) about a member of a Regional Council, the member ceases to be a member of the Regional Council on the date of the declaration.

122A  Suspension and removal from office of Regional Councillor

Commission may suspend a Regional Councillor

(1) Subject to subsection (2), the Commission may suspend a Regional Councillor from office because of misbehaviour or physical or mental incapacity.

Commission must give Regional Councillor notice before suspension

(2) The Commission must not suspend the Regional Councillor from office unless the Commission has, by written notice served on the Regional Councillor, given the Regional Councillor 30 days within which to show cause why he or she should not be suspended.

Statement to be laid before each House of the Parliament

(3) The Commission must cause a statement identifying the Regional Councillor 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.

Regional Councillor 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 Regional Councillor ought to be restored to office.
If each House so passes such a resolution, the Commission must terminate the suspension.

*Commission may remove Regional Councillor from office if no declaration*

(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 Commission may remove the Regional Councillor from office.

*Statement to be laid before Parliament if Regional Councillor removed from office*

(6) If the Commission removes a Regional Councillor from office, the Commission 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 Regional Councillor; and
(b) stating that he or she has been removed from office; and
(c) setting out the ground of the removal from office.

### 122B Regional Council may recommend that action be taken against Regional Councillor

(1) A Regional Council may recommend that the Commission take action against a member of the Council under section 122 or 122A.

(2) The Commission must consider the recommendation.

### 123 Removal of Regional Council

(1) Where the Commission receives a valid petition calling for the suspension of a Regional Council, the Commission may, at any time within the period of 6 months after receiving the petition but no later, by notice in writing published in the *Gazette*:

(a) remove the members of the Regional Council from office; and
(b) appoint an Administrator to administer the affairs of the Regional Council.
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(2) In this section:

eligible person means a person who would be entitled to vote at an election for members of the Regional Council concerned.

sufficient number means a number that exceeds 25% of the electorate number.

valid petition means a petition:

(a) that contains the signatures of a sufficient number of eligible persons who were eligible persons when they signed the petition;
(b) that sets out legibly:
   (i) the name of each person who has signed the petition;
   (ii) the day 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 preceding the delivery of the petition to the Commission.

123A Removal of Regional Councillors if Regional Council contravenes certain statutory obligations

(1) If a Regional Council:
   (a) refuses or fails to perform the functions conferred on it by paragraph 94(1)(a) (which relates to regional plans); or
   (b) refuses or fails to comply with section 97 (which deals with draft budgets); or
   (c) refuses or fails to comply with section 99 (which deals with annual reports); or
   (ca) purports to exercise a power in its capacity as a delegate of the Commission in circumstances where no delegation of that power is in force; or
   (cb) purports to exercise a power delegated to it by the Commission in breach of a direction in force under section 45A;

the Commission may, by notice in the Gazette:

(d) remove the Regional Councillors from office; and
(e) appoint an Administrator to administer the affairs of the Regional Council.

(2) The Commission must not remove the Regional Councillors from office unless the Commission has:
   (a) by written notice served on the Regional Councillors:
       (i) given the Regional Councillors 28 days within which to show cause why they should not be removed; and
       (ii) given reasons for the removal; and
   (b) told the Minister that it intends to so remove the Regional Councillors.

(3) If:
   (a) on a particular day (the appointment day), the Commission makes a decision under subsection (1) to:
       (i) remove Regional Councillors from office; and
       (ii) appoint an Administrator to administer the affairs of the Regional Council concerned; and
   (b) on a later day (the review day), a court or the Administrative Appeals Tribunal makes a decision or order quashing or setting aside the decision of the Commission;
   anything done, or omitted to be done, by the Administrator during the period:
   (c) beginning on the appointment day; and
   (d) ending on whichever is the later of the following days:
       (i) the review day;
       (ii) the day on which the decision or order of the court or the Administrative Appeals Tribunal takes effect;
   is as valid as it would have been if the decision of the Commission had been validly made and had not been quashed or set aside.

124 Powers of Administrator

An Administrator appointed to administer the affairs of a Regional Council:
   (a) shall do so until the new members of the Regional Council take office;
   (b) has all the functions and powers of the Regional Council;
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(c) has all powers necessary to rectify any problems in the affairs of the Regional Council; and
(d) does not have power to vote in a zone election.

124A Remuneration and allowances

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

124B Administrator holds office on a full-time basis

An Administrator holds office on a full-time basis.

124C Disclosure of interests

(1) An Administrator must make to the Commission Chairperson a written disclosure of:
(a) the Administrator’s financial interests; and
(b) the financial interests of the Administrator’s immediate family;
equivalent to the disclosure of financial interests required to be made by SES employees.

(2) An Administrator must make a disclosure under subsection (1) within one month after being appointed as an Administrator.

(3) An Administrator must from time to time make such further disclosures as are necessary to ensure that the information available to the Commission Chairperson about the financial interests of the Administrator, and of the members of the Administrator’s immediate family, is up-to-date.

(4) In this section:
Administrator includes an acting Administrator.

124D Resignation of Administrator

An Administrator may resign by writing signed by him or her and sent to the Commission.

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124E Leave of absence

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

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

124F Termination of appointment

Commission may terminate Administrator’s appointment

(1) The Commission may terminate the appointment of an Administrator because of misbehaviour or physical or mental incapacity.

Commission must terminate Administrator’s appointment

(2) If an Administrator:
   (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
   (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
   (c) fails, without reasonable excuse, to comply with section 124C; or
   (d) is absent from duty, except on leave of absence granted under section 124E, for 14 consecutive days or for 28 days in any period of 12 months; 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 Commission must terminate the Administrator’s appointment.
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124G  Acting Administrator

(1) The Commission may appoint a person to act as an Administrator:
   (a) during a vacancy in an office of Administrator; or
   (b) during any period, or during all periods, when an
       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.

124H  Other terms and conditions

An 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 Commission by notice in the Gazette.

124J  Commission may appoint replacement Administrator if there
      is a vacancy in an office of Administrator

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

125  Members of Regional Councils, and Administrators, not
     personally liable

(1) A member of a Regional Council 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 in good faith:
        (a) by the Regional Council; or
(b) by the member in the capacity of member.

(2) An 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 Regional Council concerned before the Administrator was appointed; or

(b) in good faith by the Administrator in the capacity of Administrator.

126 Other terms and conditions

A member of a Regional Council 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.
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127 Chairperson and Deputy Chairperson

(1) A Regional Council shall, at its first meeting after it is elected, elect from among its members by secret ballot:
   (a) a Chairperson; and
   (b) a Deputy Chairperson.

(1A) If a Commissioner is elected as Chairperson, the Commissioner:
   (a) ceases to hold office as a Commissioner; and
   (b) ceases to hold office as a person elected under Division 7 to represent a zone.

(3) At any other meeting of a Regional Council, the Regional Council:
   (a) shall elect a new Chairperson if there is a vacancy in the office of Chairperson of the Regional Council; and
   (b) must elect a new Deputy Chairperson if there is a vacancy in the office of Deputy Chairperson of the Regional Council.

(4) Elections under this section shall be conducted in accordance with the regulations.

(5) The first meeting of a Regional Council after it is elected must be held as soon as practicable after the declaration of the poll in relation to that election.

127A Provisions relating to Chairpersons

(1) The Chairperson of a Regional Council holds office on a full-time basis.

(2) If the Chairperson of a Regional Council becomes a Commissioner, he or she ceases to be the Chairperson of the Regional Council.

(3) The Chairperson of a Regional Council holds office for the period that:
   (a) starts when he or she is elected; and

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(b) ends when a Chairperson is elected at the first meeting of the Regional Council after the end of the next election period of the Regional Council.

127B Resignation of Chairpersons

(1) The Chairperson of a Regional Council may resign by writing signed by him or her and sent to the Minister.

(2) The Chairperson of a Regional Council is taken to have resigned if:
   (a) he or she resigns from the Regional Council; or
   (b) under section 121, he or she is to be taken to have resigned from the Regional Council.

127C Suspension and removal from office of Chairpersons

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

(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 Commission.

(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.

(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 and, if each House so passes such a resolution, the Minister must terminate the suspension.
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(5) If, at the expiration 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.

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

(6A) If the person who is the Chairperson of a Regional Council is, because of a decision or order of the Federal Court of Australia, taken not to have been duly elected as a member of the Regional Council, the person ceases, as a result of the decision or order, to be the Chairperson of the Regional Council.

(7) If the Chairperson of a Regional Council:
   (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
   (aa) is convicted of 2 or more offences against a Commonwealth, State or Territory law and sentenced in respect of all the offences to a single penalty of 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
   (ba) is convicted of 2 or more offences against a Commonwealth, State or Territory law involving dishonesty and sentenced in respect of all the offences to a single penalty of imprisonment for 3 months or longer; or
   (c) 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) fails, without reasonable excuse, to comply with section 119; the Minister must remove the Chairperson from office.

(8) If the Minister removes a person from the office of Chairperson of a Regional Council, 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:

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(a) identifying the Chairperson;
(b) stating that he or she has been removed from office; and
(c) setting out the ground of the removal from office.

127D Leave of absence for Chairpersons

(1) The Chairperson of a Regional Council has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Commission Chairperson may grant the Chairperson of a Regional Council leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Commission Chairperson determines in writing.

(3) The Commission Chairperson must not grant to the Chairperson of a Regional Council leave of absence for a continuous period of more than 6 months unless the grant of such leave of absence is required or expressly permitted by a law of the Commonwealth.

127E Term of office of Deputy Chairperson

(1) The Deputy Chairperson of a Regional Council holds office for the period starting when he or she is elected and ending at the end of the next election period of the Regional Council.

(2) If the Deputy Chairperson of a Regional Council becomes a Commissioner or the Chairperson of the Regional Council, he or she ceases to be the Deputy Chairperson of the Regional Council.

127F Resignation of Deputy Chairperson

(1) The Deputy Chairperson of a Regional Council may resign by writing signed by him or her and sent to the Minister.

(2) The Deputy Chairperson of a Regional Council is taken to have resigned if:
   (a) he or she resigns from the Regional Council; or
   (b) under section 121, he or she is taken to have resigned from the Regional Council.
Section 127G

127G 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 a Regional Council 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 Commission.

Statement to be laid before each House of the Parliament

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

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

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

Minister may remove Deputy Chairperson from office if no declaration made

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

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Minister must remove Deputy Chairperson from office if he or she ceases to be a Regional Councillor

(6) If the Deputy Chairperson of a Regional Council ceases to be a Regional Councillor otherwise than by resigning from the Regional Council, the Minister must remove the Deputy Chairperson from office.

(6A) If a person who is the Deputy Chairperson of a Regional Council is, because of a decision or order of the Federal Court of Australia, taken not to have been duly elected as a member of the Regional Council, the person ceases, as a result of the decision or order, to be the Deputy Chairperson of the Regional Council.

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 a Regional Council, 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.

127H Acting appointments

(1) The Deputy Chairperson of a Regional Council is to act as the Chairperson of the Regional Council:

(a) during a vacancy in the office of Chairperson of the Regional Council, 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 Regional Council 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 subsection (1) is not invalid merely because the occasion to act had not arisen or had ceased.
Section 127J

127J Alternate Deputy Chairperson

Election of alternate

(1) A Regional Council may elect a member of the Council to be the alternate of the Deputy Chairperson.

Commissioner not to be elected as alternate

(2) A Regional Council must not elect a Commissioner 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 Regional Council. However, the alternate of the Deputy Chairperson may be re-elected under subsection (1).

Alternate ceases to hold office if he or she becomes a Commissioner

(4) If the alternate of the Deputy Chairperson becomes a Commissioner, the Chairperson of the Regional Council or the Deputy Chairperson of the Regional Council he or she ceases to be the alternate of the Deputy Chairperson.

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
(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 Regional Council may remove the alternate of the Deputy Chairperson from office.
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Section 128

**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 Regional Council.

**128 Meetings of Regional Councils**

(1) The Chairperson of a Regional Council shall convene at least 4 meetings of the Regional Council in each calendar year, and may convene such other meetings of the Regional Council as, in the Chairperson’s opinion, are necessary for the efficient performance of its functions.

(2) The Commission Chairperson:
   (a) may at any time; and
   (b) shall whenever the Regional Council does not have a Chairperson;
   convene a meeting of a Regional Council.

(3) The Commission Chairperson shall give members of the Regional Council concerned at least 14 days notice of a meeting convened in circumstances mentioned in paragraph (2)(b).

(4) The Chairperson of a Regional Council shall convene a meeting of the Regional Council upon receipt of a written request for a meeting signed by at least 4 members of the Regional Council.

(4A) When appropriate action has been taken under this section to convene a meeting of a Regional Council, the Chairperson of the Regional Council or, if the Regional Council does not have a Chairperson, the Commission Chairperson must cause notice of the proposed date, time and place of the meeting to be publicly notified, at least 7 days before the proposed date of the meeting, in any manner that the Chairperson concerned thinks appropriate.

(4B) A Regional Council must make available, at a meeting of the Council, for inspection by any person:
   (a) copies of the agenda for the meeting; and
   (b) copies of any other business papers prepared for the meeting except papers that, in the opinion of the Chairperson of the

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Council, are likely to be considered by the Council at the meeting at a time when it is closed to the public.

(4C) A Regional Council must make available at reasonable times during, and at the end of, a meeting of the Council and on the first business day following the day of the meeting, for inspection by any person, any documents presented to the meeting other than documents presented at a time when the meeting was closed to the public.

(5) At a meeting of a Regional Council a quorum is constituted by a majority of the number of members of the Regional Council holding office on the day of the meeting.

(5A) If the Chairperson of a Regional Council is not a Regional Councillor, then he or she is not entitled to be present at any meeting of the Regional Council and is treated, for the purposes of this section, as not being present at any such meeting.

Note: Because the Chairperson is treated as not being present, subsection (7) applies in determining who presides at the meeting.

(6) The Chairperson of a Regional Council shall preside at all meetings of the Regional Council at which he or she is present.

(7) If the Chairperson of a Regional Council is not present at a meeting of the Regional Council:
   (a) if the Deputy Chairperson of the Regional Council is present—the Deputy Chairperson of the Regional Council is to preside at the meeting; and
   (b) if:
       (i) the Deputy Chairperson of the Regional Council is not present; and
       (ii) the alternate of the Deputy Chairperson of the Regional Council is present;
       the alternate of the Deputy Chairperson is to preside at the meeting; and
   (c) in any other case—the Regional Councillors present are to elect one of their number to preside at the meeting.

(8) Questions arising at a meeting of the Regional Council shall be determined by a majority of the votes of the members present and voting.
(9) The person presiding at a meeting of Regional Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) A Regional Council shall cause minutes of the proceedings at its meetings to be kept.

(11) Subject to subsections (12), (13) and (14), a Regional Council may regulate the conduct of proceedings at its meetings as it thinks fit and, in particular, may conduct its meetings in accordance with Aboriginal or Torres Strait Islander tradition and custom.

(12) The Commission shall formulate model rules, not inconsistent with this Act, for the conduct of proceedings at meetings of Regional Councils.

(13) A Regional Council may:
   (a) adopt the model rules for the conduct of proceedings at its meetings;
   (b) adopt the model rules for the conduct of proceedings at its meetings with such modifications, not inconsistent with this Act, as the Regional Council from time to time determines; or
   (c) formulate its own rules, not inconsistent with this Act, for the conduct of proceedings at its meetings.

(14) Where a Regional Council has not adopted or formulated rules for the conduct of proceedings at its meetings under subsection (13), proceedings at meetings of the Regional Council shall be conducted in accordance with the model rules formulated by the Commission.

128A Meeting of Regional Council to be open to the public except in certain circumstances

(1) Except as provided by this section, anyone is entitled to be present at a meeting of a Regional Council.

(2) A person (other than a member of the Regional Council concerned) is not entitled to be present at a meeting of a Regional Council if:
   (a) the Council has passed a resolution stating that the person is to be excluded from the meeting; or

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(b) the Council has passed a resolution authorising the member presiding at the meeting to direct that a person or persons be excluded from the meeting and the member presiding has given such a direction in relation to the first-mentioned person.

(3) A person (other than a member of the Regional Council concerned) is not entitled to be present at a meeting of a Regional Council if:
   (a) the Council is considering an excludable matter; and
   (b) the Council has resolved that the meeting be closed to the public while that matter is being considered.

(4) A resolution referred to in paragraph (3)(b) must identify the matter concerned and the resolution must be recorded in the minutes of the meeting.

128B  Right of public to inspect documents without charge

A Regional Council must allow any person to inspect, at any reasonable time, without charge, any documents described in the following paragraphs that are in its possession:
   (a) a document setting out a code of conduct to be observed by the Council or its members;
   (b) rules for the conduct of proceedings at meetings of the Council;
   (c) a regional or other plan formulated by the Council;
   (d) a determination of, or any other document relating to, remuneration or allowances for members;
   (e) a document identifying any of the facilities that are provided for members;
   (f) the minutes of proceedings at meetings of the Council other than any part of the minutes that relates to an excludable matter;
   (g) a determination made under subsection 119(2);
   (h) any other document to which the person is entitled to have access under the Freedom of Information Act 1982.

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128C Excludable matters

The following are excludable matters for the purposes of sections 128A and 128B:

(a) a matter relating to a member of the staff of the Regional Council or to any other person assisting the Council in the performance of its functions;

(b) a matter involving personal hardship suffered by a person;

(c) any of the following:
   (i) a trade secret;
   (ii) other information having a commercial value the disclosure of which would, or could reasonably be expected to, affect a person adversely in respect of the person’s lawful business, professional, commercial or financial affairs;
   (iii) information (other than a trade secret or information to which subparagraph (ii) applies) that would, or could reasonably be expected to, confer a financial advantage on a competitor of the Regional Council;

(d) a proposal for the making of a grant or loan, or the giving of a guarantee, by the Regional Council;

(e) any matter the divulging of which is prohibited by section 90;

(f) information the disclosure of which would found an action for breach of confidence;

(g) information of such a nature that it would be privileged from being disclosed in legal proceedings on the ground of legal professional privilege;

(h) information the disclosure of which would, or could reasonably be expected to, prejudice the enforcement or proper administration of the law;

(i) a matter affecting the security of the Regional Council, its members, its staff or its property;

(j) a motion to close the meeting to the public.
Commission officers may be required to attend Regional Council meetings

(1) The Chairperson of a Regional Council may ask the Chief Executive Officer, in writing, to nominate a member of the staff of the Commission to attend meetings of the Regional Council.

(2) The Chief Executive Officer shall nominate a member of the staff of the Commission to attend meetings accordingly.
Division 7—Zones

130 Zones

(1) For the purposes of this Act:
   (a) the regions are grouped, as shown in Schedule 1, into the zones set out in column A of that Schedule; and
   (b) the Torres Strait area is a zone known as the Torres Strait zone.

(2) The Minister may, by written determination, amend Schedule 1 so as to remove a region from one zone and include it in another zone.

(3) A determination made pursuant to subsection (2) takes effect at the end of the election period in relation to the first round of Regional Council elections held after the date on which the determination is notified in the Gazette.

(4) The Minister must not make a determination under subsection (2) except in accordance with a final boundary recommendation under Division 9.

(5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

131 Election of zone representatives

(1) The members of the Regional Councils of the regions included in a zone shall elect one of their number to represent the zone.

(1A) The members of the TSRA must elect one of their number to represent the Torres Strait zone.

(2) A person whose appointment as the Commissioner representing a zone has been terminated by the Minister:
   (a) under subsection 40(4) because of misbehaviour; or
   (b) under section 41 or 41A;
   is not eligible to stand for election at the next election under subsection (1) or (1A) for a person to represent the zone.
132 Zone elections

(1) A zone election must be conducted in accordance with this Act.

(2) A zone election (other than a zone election for the Torres Strait zone) must also be conducted in accordance with:
   (a) if the election is a supplementary election—the zone election rules in force immediately before the day on which the Minister fixes the day for the close of the poll for the supplementary election; or
   (b) if the election is not a supplementary election—the zone election rules in force at the end of the election period for the last round of Regional Council elections.

(2A) A zone election for the Torres Strait zone must also be conducted in accordance with:
   (a) if the election is a supplementary election—the zone election rules in force immediately before the day on which the Minister fixes the day for the close of the poll for the supplementary election; or
   (b) if the election is not a supplementary election—the zone election rules in force at the end of the election period for the last TSRA election.

(3) Subject to zone election rules made under section 138, a zone election must be conducted by the Australian Electoral Commission.

(4) In this section:

   supplementary election means:
   (a) a zone election held to fill a casual vacancy in the office of Commissioner representing the zone; or
   (b) a zone election held in place of a zone election in relation to which the Federal Court of Australia has made an order under Schedule 4.

133 Timing of zone elections

(1) Each round of zone elections (other than zone elections for the Torres Strait zone) shall be held as soon as practicable, and in any
case within 3 months, after the end of the election period in relation to a round of Regional Council elections.

(2) Each zone election for the Torres Strait zone must be held as soon as practicable, and in any case within 3 months, after the end of the election period in relation to a TSRA election for all wards (other than a by-election to fill a casual vacancy).

134 Effect of nominations

(1) If only one candidate is nominated for election at a zone election, the authorised electoral officer shall declare the candidate to be duly elected.

(2) If 2 or more candidates are nominated for election at a zone election, a poll shall be held.

135 Voting to be by secret ballot

Voting at zone elections shall be by secret ballot.

136 Voting

(1) A voter shall cast a vote at a zone election by marking the ballot paper so as to show the order of the voter’s preference for the candidates.

(2) A ballot paper is formal if and only if:
   (a) the authorised electoral officer is satisfied that it is an authentic ballot paper;
   (b) it indicates the voter’s first preference for one, and only one, candidate; and
   (c) it does not have upon it any identifying mark.

(3) A ballot paper that is formal shall 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 the 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.

### 137 Counting of votes and election of candidates

Votes cast at a zone election shall be counted, and candidates shall be elected, as provided in Schedule 3 and in the zone election rules.

### 138 Rules for conduct of elections

(1) The Minister may, after consulting the Aboriginal and Torres Strait Islander Commission and the Electoral Commissioner, make rules, not inconsistent with this Act, prescribing:

   (a) the manner in which zone elections are to be conducted; and
   (b) the manner in which casual vacancies among the Commissioners are to be filled.

(2) The matters that may be dealt with in rules under subsection (1) include, but are not limited to, the following matters:

   (a) the nomination of candidates for election;
   (b) ballot papers and forms;
   (c) postal voting;
   (d) confidentiality of voting;
   (e) the performance of administrative duties in relation to elections by members of staff of the Aboriginal and Torres Strait Islander Commission;
   (f) the scrutiny and counting of votes;
   (g) the declaration of the poll.

(3) The rules may provide penalties for breaches of the rules not exceeding:

   (a) in the case of a natural person—$1,000; or
   (b) in the case of a body corporate—$5,000.
(4) Where:
   (a) the rules create an offence in relation to zone elections that corresponds to an offence under the *Commonwealth Electoral Act 1918*; and
   (b) the maximum pecuniary penalty for the offence under the *Commonwealth Electoral Act 1918* exceeds the penalty that, by subsection (3), could be imposed for a breach of the rules; the rules may provide a maximum penalty for the first-mentioned offence not exceeding the maximum pecuniary penalty for the corresponding offence under the *Commonwealth Electoral Act 1918*, but nothing in this subsection enables the rules to provide penalties of imprisonment.

(5) Rules made by the Minister under subsection (1) are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### 139 Authorised electoral officer

A reference in a provision of this Division to an authorised electoral officer is a reference to:

(a) in the case of a zone election being conducted by the Australian Electoral Commission—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 zone election; or

(b) in the case of a zone election being conducted by another person or body pursuant to a determination by the Minister under zone election rules made under paragraph 138(1)(b)—a person designated in the determination.

### 139A Injunctions

(1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act in its application to an election held under this Act, a prescribed court may, on the application of the Australian Electoral Commission, grant an injunction restraining the person from engaging in the conduct and,
if in the court’s opinion it is desirable to do so, requiring the person to do something.

(2) If:

(a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do something; and

(b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act in its application to an election held under this Act;

a prescribed court may, on the application of the Australian Electoral Commission, grant an injunction requiring the person to do the thing.

(3) If an application is made to a prescribed court for an injunction under subsection (1), the court may, if in its opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

(4) A prescribed court may discharge or vary an injunction granted under subsection (1), (2) or (3).

(5) If an application is made to a prescribed court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the court to grant the injunction may be exercised:

(a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to anyone if the person engages in conduct of that kind.
(6) If an application is made to a prescribed court for the grant of an injunction requiring a person to do something, the power of the court to grant the injunction may be exercised:

(a) if the court is satisfied that the person has refused or failed to do the thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the thing; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do the thing—whether or not the person has previously refused or failed to do the thing and whether or not there is an imminent danger of substantial damage to anyone if the person refuses or fails to do the thing.

(7) If the Australian Electoral Commission applies to a prescribed court for the grant of an injunction under this section, the court must not require the applicant or anyone else, as a condition of the granting of an interim injunction, to give any undertakings as to damages.

(8) The Supreme Court of each State is invested with federal jurisdiction, and, to the extent that the Constitution permits, jurisdiction is conferred on the Supreme Court of each Territory, with respect to all matters arising under this section.

(9) An appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this section.

(10) The powers conferred on a prescribed court under this section are in addition to, and not in derogation of, any other powers of the court, whether conferred by this Act or otherwise.

(11) In this section:

*prescribed court* means the Supreme Court of a State or Territory.
Division 8—Disputed elections

140 Disputed elections

The provisions of Schedule 4 apply where there is a dispute in relation to a Regional Council election, a TSRA election or a zone election.
Division 9—Review Panels

Subdivision A—Review Panels to be convened after elections

141 Review Panels

(1) The Minister must convene a Review Panel within 90 days after the last declaration of the poll in a round of zone elections (other than zone elections for the Torres Strait zone).

(2) A Review Panel must:
   (a) review the following matters:
      (i) whether a determination under subsection 91(1) relating to boundaries of regions should be made, revoked or varied and, if so, the precise terms of such a determination, revocation or variation;
      (ii) whether a determination under subsection 130(2) relating to zones should be made, revoked or varied and, if so, the precise terms of such a determination, revocation or variation;
      (iii) whether Regional Council election rules under section 100A relating to wards should be made, revoked or varied and, if so, the precise terms of the rules, revocation or variation; and
   (b) make draft recommendations about those matters in accordance with the provisions of this Division.

(3) A Review Panel must also:
   (a) review such other matters relating to the following:
      (i) the Regional Council electoral system;
      (ia) the TSRA electoral system;
      (ii) the zone electoral system;
      as it determines in writing; and
   (b) report to the Minister accordingly.

(4) A report to the Minister under subsection (3) may include suggestions for amendments of this Act, the Regional Council
election rules, the TSRA election rules or the zone election rules to solve problems identified in the report.

(5) For the purposes of a review under subsection (3), a Review Panel must give the following bodies an opportunity to express their views about the matters under review:
   (a) Regional Councils;
   (aa) the TSRA;
   (b) recognised Aboriginal or Torres Strait Islander organisations.

(6) A report to the Minister under subsection (3) in respect of the first Regional Council elections conducted after 1 July 1996 must include an examination of ways in which the representation of distinct community groups on Regional Councils could be accommodated.

Subdivision B—Review Panels—constitution and procedure

141A Constitution of Review Panel

(1) A Review Panel consists of the following members:
   (a) a Chairperson appointed by the Minister, being a person who is an Aboriginal person or a Torres Strait Islander and who is not a Commissioner, a member of the TSRA or a Regional Councillor;
   (b) the Electoral Commissioner or a person nominated by the Electoral Commissioner to represent the Australian Electoral Commission;
   (c) 2 persons appointed by the Minister, being persons each of whom is an Aboriginal person or a Torres Strait Islander and neither of whom is a Commissioner, a member of the TSRA or a Regional Councillor;
   (d) the General Manager of the Australian Surveying and Land Information Group or a person nominated by him or her to represent that organisation.

(2) The performance of the functions or the exercise of the powers of a Review Panel is not affected only because:
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(a) there are fewer than 5 members because of the death, resignation or termination of appointment of one or more members; or
(b) of the incapacity or absence from Australia of one or more members.

141C  Review Panel must invite submissions

(1) As soon as practicable, but in any event not later than 30 days, after it is convened, a Review Panel must invite written submissions by notice in:
(a) the Gazette; and
(b) at least 2 newspapers or periodicals, being such newspapers or periodicals as the Review Panel considers are likely to be read by a reasonable number of persons having an interest in the matters under review.

(2) The notice must set out the effect of section 141D (which deals with deadlines for lodging submissions).

141D  Submissions must be given to the Review Panel within 90 days

Submissions must be given to the Review Panel within 90 days after the day on which the notice is published in the Gazette.

141E  Submissions must be made available for inspection

The Chairperson of the Review Panel must make the submissions available for inspection at each office of:
(a) the Australian Electoral Commission; and
(b) the Aboriginal and Torres Strait Islander Commission.

141F  Conduct of review etc.

(1) Within 240 days after the day on which the notice is published in the Gazette, the Review Panel must:
(a) consider all the submissions; and
(b) in the case of a review under subsection 141(2)—make one or more written draft recommendations (the draft boundary recommendations) about the matters under review; and

134  Aboriginal and Torres Strait Islander Commission Act 1989
(c) in the case of a review under subsection 141(3)—give the Minister a written report under that subsection about the matters under review.

(2) If a report is given to the Minister under subsection 141(3), the Minister must cause a copy 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.

141G Notice of making of draft boundary recommendation to be published in the Gazette etc.

(1) Within 14 days after the day on which a Review Panel makes a draft boundary recommendation, the Chairperson of the Panel must cause notice of the making of the recommendation to be published in:

(a) the Gazette; and

(b) at least 2 newspapers or periodicals, being such newspapers or periodicals as the Review Panel considers are likely to be read by a reasonable number of persons having an interest in the matters under review.

(2) The notice must include a statement:

(a) to the effect that a person may give the Review Panel a written objection against the draft boundary recommendation; and

(b) setting out the effect of section 141H (which deals with deadlines for lodging objections).

141H Objections against draft boundary recommendation

A person may give the Review Panel a written objection against a particular draft boundary recommendation within 90 days after the date of publication of the Gazette notice under section 141G.
Section 141J

141J If no objections received, then draft boundary recommendation becomes final boundary recommendation etc.

If no objections are received before the end of that period of 90 days:
(a) the draft boundary recommendation becomes a final boundary recommendation; and
(b) the Review Panel must, within 14 days after the end of that period, give the Minister the final boundary recommendation and all the submissions.

141K Minister must cause copy of final boundary recommendation to be laid before each House of the Parliament

The Minister must cause a copy of the final boundary recommendation to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

141L Proceedings at meetings of Review Panel

Chairperson to preside at meetings

(1) The Chairperson of a Review Panel must preside at all meetings of a Review Panel at which he or she is present.

Members to elect one of their number to preside if Chairperson not present

(2) If the Chairperson of a Review Panel is not present at a meeting of a Review Panel, the members present are to elect one of their number to preside at the meeting.

Quorum

(3) At a meeting of a Review Panel, 3 members constitute a quorum.
Questions arising to be determined by majority

(4) Questions arising at a meeting of a Review Panel must be determined by a majority of the votes of the members present and voting.

Member presiding has deliberative and casting vote

(5) The member presiding at a meeting of a Review Panel has a deliberative vote and, if the votes are equal, also has a casting vote.

Review Panel may regulate conduct of its meetings

(6) A Review Panel may regulate the conduct of proceedings at its meetings as it thinks fit.

Review Panel may inform itself as it considers fit

(7) A Review Panel may inform itself on any matter in such manner as it thinks fit and may consult with such persons as it thinks fit.

Australian Electoral Commission must assist Review Panel

(8) The Australian Electoral Commission must, on request by a Review Panel, give the Panel such information and assistance as the Panel reasonably requires for the purposes of this Division.

141M Matters Review Panel must consider before making draft boundary recommendation

Before making a draft boundary recommendation, the Review Panel must consider:

(a) the community of interest, or communities of interest, of the Aboriginal persons or Torres Strait Islanders concerned; and
(b) the physical features and area of the wards, regions and zones concerned; and
(c) the areas of operation of recognised Aboriginal and Torres Strait Islander organisations; and
(d) such other matters as the Review Panel considers relevant.
Part 3 Regions and zones
Division 9 Review Panels

Section 141N

Subdivision C—Augmented Review Panel to be convened to consider objections against draft boundary recommendations

141N Minister must convene Augmented Review Panel if objection received

If one or more objections are received before the end of the period referred to in section 141H, the Minister must convene an Augmented Review Panel within 30 days after the end of that period.

141P Consideration of objections

Within 90 days after the end of the period referred to in section 141H, the Augmented Review Panel must:
   (a) consider the objections; and
   (b) make a written decision:
      (i) confirming the draft boundary recommendation concerned; or
      (ii) varying the draft boundary recommendation concerned; or
      (iii) setting aside the draft boundary recommendation concerned and making a draft boundary recommendation in substitution for the draft recommendation so set aside.

141Q Draft boundary recommendation to become final boundary recommendation

(1) If, on a particular day, the Augmented Review Panel makes a decision confirming a draft boundary recommendation, the draft boundary recommendation becomes a final boundary recommendation at the end of the period of 7 days after that day.

(2) If, on a particular day, the Augmented Review Panel makes a decision varying a draft boundary recommendation, the draft boundary recommendation as varied becomes a final boundary recommendation at the end of the period of 7 days after that day.

138 Aboriginal and Torres Strait Islander Commission Act 1989
(3) If, on a particular day, the Augmented Review Panel sets aside a draft boundary recommendation and makes a draft boundary recommendation in substitution for the draft recommendation so set aside, the substituted draft boundary recommendation becomes a final boundary recommendation at the end of the period of 7 days after that day.

141R Augmented Review Panel may invite submissions etc.

For the purposes of considering objections, the Augmented Review Panel may:
(a) invite further submissions; and
(b) hold public hearings.

141S Constitution of Augmented Review Panel

(1) An Augmented Review Panel consists of the following members:
(a) a Chairperson appointed by the Minister, being a person who is an Aboriginal person or a Torres Strait Islander and who is not a Commissioner, a member of the TSRA or a Regional Councillor;
(b) the Electoral Commissioner or a person nominated by the Electoral Commissioner to represent the Australian Electoral Commission;
(c) the General Manager of the Australian Surveying and Land Information Group or a person nominated by him or her to represent that organisation;
(d) 2 persons appointed by the Minister, being persons each of whom is an Aboriginal person or a Torres Strait Islander and neither of whom is a Commissioner, a member of the TSRA or a Regional Councillor;
(e) 2 other persons appointed by the Minister, being persons at least one of whom is an Aboriginal person or a Torres Strait Islander.

(2) The performance of the functions or the exercise of the powers of an Augmented Review Panel is not affected only because:
(a) there are fewer than 7 members because of the death, resignation or termination of appointment of one or more members; or
Part 3  Regions and zones
Division 9  Review Panels

Section 141U

(b) of the incapacity or absence from Australia of one or more members.

141U Chairperson must give copy of decision to each person who objected

Within 14 days after the day on which the Augmented Review Panel makes a decision in relation to an objection, the Chairperson of the Augmented Review Panel must give a copy of the decision to each person who made the objection.

141V Notice of making of decision to be published in the Gazette etc.

Within 14 days after the day on which an Augmented Review Panel makes a decision, the Chairperson of the Panel must cause notice of the making of the decision to be published in:
(a) the Gazette; and
(b) at least 2 newspapers or periodicals, being such newspapers or periodicals as the Augmented Review Panel considers are likely to be read by a reasonable number of persons having an interest in the outcome of the objections.

141W Augmented Review Panel must give decision to Minister

Within 14 days after the day on which notice of the making of the decision is published in the Gazette, the Augmented Review Panel must give the decision to the Minister, together with a copy of the recommendation to which the decision relates.

141X Minister must cause copy of final boundary recommendation to be laid before each House of the Parliament

The Minister must cause a copy of a final boundary recommendation to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

140  Aboriginal and Torres Strait Islander Commission Act 1989
141Y  Proceedings at meetings of Augmented Review Panel etc.

Chairperson of Panel must preside at meetings

(1) The Chairperson of an Augmented Review Panel must preside at all meetings of an Augmented Review Panel at which he or she is present.

Members present to elect one of their number to preside if Chairperson not present

(2) If the Chairperson of an Augmented Review Panel is not present at a meeting of an Augmented Review Panel:
   (a) the Electoral Commissioner or the person nominated by the Electoral Commissioner must preside; or
   (b) if the person referred to in paragraph (a) is not present at the meeting—the members present must elect one of their number to preside.

Quorum

(3) At a meeting of an Augmented Review Panel, 4 members constitute a quorum. At least one of the members constituting the quorum must be a member referred to in paragraph 141S(1)(e).

Questions arising to be determined by majority

(4) Questions arising at a meeting of an Augmented Review Panel must be determined by a majority of the votes of the members present and voting.

Member presiding to have deliberative and casting vote

(5) The member presiding at a meeting of an Augmented Review Panel has a deliberative vote and, if the votes are equal, also has a casting vote.

Augmented Review Panel may regulate conduct of its meetings

(6) An Augmented Review Panel may regulate the conduct of proceedings at its meetings as it considers fit.
Augmented Review Panel may inform itself as it considers fit

(7) An Augmented Review Panel may inform itself on any matter in such manner as it considers fit.

Australian Electoral Commission must assist Augmented Review Panel

(8) The Australian Electoral Commission must, on the written request of an Augmented Review Panel, give the Augmented Review Panel such information and assistance as the Panel reasonably requires for the purposes of this Division.

Subdivision D—Administrative provisions

141Z Subdivision applies to members of Review Panels and members of Augmented Review Panels

This Subdivision applies to members of Review Panels and members of Augmented Review Panels.

141ZA Remuneration and allowances

A member of a Panel is entitled to remuneration and allowances in accordance with section 194.

141ZB Panel—disclosure of interests at meetings

(1) A member of a Panel who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Panel 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 Panel.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the Panel.
141ZC Other terms and conditions

A member of a Panel 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.

141ZD Panel—resignation

A member of a Panel, being a member appointed by the Minister, may resign from the Panel by writing signed by the member and sent to the Minister.

Subdivision E—Implementation of final boundary recommendation

141ZE Minister must give effect to final boundary recommendation

(1) If, on a particular day, a draft boundary recommendation becomes a final boundary recommendation, the Minister must give effect to the final boundary recommendation before the end of the period of 90 days beginning on that day.

(2) The Federal Court of Australia may extend the period referred to in subsection (1) in special circumstances.

(3) The Federal Court of Australia may make an order requiring the Minister to comply with subsection (1), even if the period referred to in that subsection has ended.
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.
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:
   (a) the Prime Minister may confer a departmental function on the TSRA;
   (b) the Minister may confer a function of the Commission on the TSRA.

(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, but does not include a function of the Commission.

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.
(2) The TSRA’s power to give guarantees is subject to such limits as the Treasurer 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.
Part 3A Torres Strait Regional Authority  
Division 3 General funding powers of TSRA

Section 142J

(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
(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.
Section 142M

(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.

(5) This section does not, by implication, limit the powers of the Commission under section 26.

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.

(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.
Section 142R

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.
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.
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 the Commission; or
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(c) the person is bankrupt; or
(d) there is in operation a personal insolvency agreement with the person’s creditors under the law relating to bankruptcy; or
(e) subject to subsection (2), the person has been convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
(f) subject to subsection (2), the person has been convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer.

(2) Despite subsection (1), a person covered by paragraph (1)(e) or (f) is not disqualified by that paragraph from standing for election, or being elected, as a member of the TSRA if:
   (a) if the person was never actually imprisoned for the offence—at least 2 years have passed since the person was convicted; or
   (b) if the person served a term of imprisonment for the offence—at least 2 years have passed since the person was released from prison; or
   (c) in any case—the Federal Court of Australia, on application by the person, declares that despite the person’s conviction, he or she ought not to be disqualified from standing for election, or being elected, as a member of the TSRA.

(3) The Federal Court of Australia has jurisdiction with respect to matters arising under subsection (2).

142W Term of office of members of TSRA

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

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

(3) In this section:

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

142X Errors in Commonwealth Electoral Roll not to affect entitlements

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

(2) For the purposes of the application of this Act to the TSRA, a person’s name is taken to be on the Commonwealth Electoral Roll even if his or her name as shown on that Roll has been changed because of his or her marriage.
42Y 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:
   (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.
Section 143D

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

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(d) any other matters about the conduct of TSRA elections that the Australian Electoral Commission considers significant.

**143G Rules for conduct of elections**

*Minister may make rules*

(1) The Minister may, after consulting the TSRA and the Electoral Commissioner, make rules, not inconsistent with this Act, prescribing:

(a) the manner in which TSRA elections are to be conducted (including, but not limited to, elections conducted because previous elections have been declared to be void); and

(b) the manner in which casual vacancies in the TSRA are to be filled (including, but not limited to, the holding of by-elections); and

(c) the manner of changing the membership of the TSRA to conform with changes in the eligible number (including, but not limited to, the holding of by-elections).

*Matters that may be dealt with in rules*

(2) The matters that may be dealt with in the rules include, but are not limited to, the following matters:

(a) the use of an electoral roll or voter cards to establish an entitlement to vote or to make a record of the people who have cast votes;

(b) the functions of Torres Strait Islander and Aboriginal liaison officers in connection with the determination of a person’s entitlement to vote;

(c) the nomination of candidates for election;

(d) ballot papers and forms;

(e) postal voting;

(f) mobile polling, including the appointment and duties of mobile polling teams and matters relating to polling by such teams;

(g) confidentiality of voting;

(h) the employment by the Australian Electoral Commission of staff, including polling staff, in connection with elections;
(i) the scrutiny and counting of votes;
(j) the declaration of the poll.

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

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

Penalties for breach of rules

(4) The rules may provide penalties for breaches of the rules not exceeding 10 penalty units.
Penalty under Commonwealth Electoral Act 1918 may be substituted for penalty under rules

(5) If:

(a) the rules create an offence in relation to TSRA elections (TSRA election offence) that corresponds to an offence under the Commonwealth Electoral Act 1918 (Commonwealth election offence); and

(b) the maximum pecuniary penalty for the Commonwealth election offence is more than the penalty that, by subsection (4), could be imposed for a breach of the rules;

the rules may provide a maximum penalty for the TSRA election offence not exceeding the maximum pecuniary penalty for the corresponding Commonwealth election offence. However, nothing in this subsection enables the rules to provide penalties of imprisonment.

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.
Section 143H

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.
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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.

(3) The TSRA must not elect a Commissioner to be the Chairperson or the Deputy Chairperson of the TSRA.

(4) At any other meeting of the TSRA, the TSRA must elect:
   (a) a new Chairperson if there is a vacancy in the office of Chairperson of the TSRA; and
   (b) a new Deputy Chairperson if there is a vacancy in the office of Deputy Chairperson of the TSRA.

(5) Elections under this section must be conducted in accordance with the regulations.

143M Acting appointments

(1) The Minister may, after consulting the TSRA, appoint a person to act in the office of a member of the TSRA during any period, or during all periods, when the member is absent from duty or from
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Section 143P

(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.

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(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.

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 or Commission

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

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.

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

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

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

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

143T  Recall of member of the TSRA

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

(2) In this section:
   
   eligible person means a person who would be entitled to vote at an election for that member of the TSRA.

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

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

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

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

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

(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.

(2) If the Chairperson of the TSRA becomes a Commissioner, he or she ceases to be the Chairperson of the TSRA.
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(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.

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.

(2) If the Deputy Chairperson of the TSRA becomes a Commissioner, he or she ceases to be the Deputy Chairperson of the TSRA.

(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.

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.
Section 144C

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.

Commissioner not to be elected as alternate

(2) The TSRA must not elect a Commissioner 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 ceases to hold office if he or she becomes a Commissioner

(4) If the alternate of the Deputy Chairperson becomes a Commissioner, he or she ceases to be the alternate of the Deputy Chairperson.

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

(c) during any period, or during all periods, when both of the following subparagraphs apply:
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(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

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(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.

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:
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(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.

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.

Certain members of the staff of the Commission to be treated as members of the staff of the TSRA

(6) For the purposes of this section, if a member of the staff of the Commission is covered by an arrangement made under section 144S, the member is taken to be a member of the staff of the TSRA.
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.
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(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.

(3) This Act does not prevent the Chief Executive Officer, or a member of the staff of the Commission, from acting as the TSRA General Manager.

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 or the Commission 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 or the Commission. The member is taken to have resigned from the TSRA on the date of the declaration (see subsections 143R(3) and (4)).

144S Arrangements for Commission staff to perform duties on behalf of the TSRA

The TSRA may make arrangements with the Chief Executive Officer for the performance of duties by the staff of the Commission on behalf of the TSRA.

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 or the Commission 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 or the Commission. The member is taken to have resigned from the TSRA on the date of the declaration (see subsections 143R(3) and (4)).
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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 Minister for Finance may give directions as to the amounts in which, and the times at which, money so appropriated is to be paid to the TSRA.

144U Application of money of the TSRA

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

(2) In this section:

money of the TSRA does not include:
   (a) money held in trust by the TSRA; or
   (b) money in the TSRA Housing Fund or the TSRA Land and Natural Resources Fund.

144V TSRA Housing Fund

(1) There is established by this subsection a fund to be known as the TSRA Housing Fund.

(2) The following amounts are to be paid into the TSRA Housing Fund:

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(a) such amounts as are paid to the TSRA as repayment of, or otherwise in respect of, housing loans made by the TSRA under section 142F or 142GA;
(b) such amounts as are paid to the TSRA by any other person for the purposes of the TSRA Housing Fund;
(c) such amounts of the TSRA’s money as the TSRA determines in writing.

(3) Money in the TSRA Housing Fund may only be applied:
(a) in making housing loans to individuals or bodies; or
(b) in making loans to individuals or bodies to enable the individuals or bodies to provide housing for Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; or
(c) in making grants of money for the purposes of enabling Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area to obtain housing loans from lenders operating on a commercial basis.

(3A) Subsection (3) does not prevent the investment of money under section 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.
Section 144X

(3) Money in the TSRA Land and Natural Resources Fund may be spent only:
   (a) in developing and implementing the marine strategy referred to in subsection 142D(3); or
   (b) in developing or maintaining real estate; or
   (c) in acquiring an interest in land under subsection 142F(3); or
   (d) in making a grant of money under section 142F or 142GA on condition that the money be spent for a purpose described in paragraph (a) or (b) or in acquiring an interest in land.

(4) Subsection (3) does not prevent the investment of money under section 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 Treasurer 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.

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 or Commission may ask TSRA for information

144ZE  Minister or Commission may ask TSRA for information

(1) The Minister or the Commission 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.

(3) The TSRA may give the Commission the information it 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; and
(d) does not have power to vote in a zone election.

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.
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144ZL  Other terms and conditions

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

144ZM  Disclosure of interests

(1) A TSRA Administrator must make to the Minister a written disclosure of:
   (a) the TSRA Administrator’s financial interests; and
   (b) the financial interests of the TSRA Administrator’s immediate family;
equivalent to the disclosure of financial interests required to be made by SES employees.

(2) A TSRA Administrator must make a disclosure under subsection (1) within one month after being appointed as a TSRA Administrator.

(3) A TSRA Administrator must from time to time make such further disclosures as are necessary to ensure that the information available to the Minister about the financial interests of the TSRA Administrator, and of the members of the TSRA Administrator’s immediate family, is up-to-date.

(4) In this section:

TSRA Administrator includes an acting TSRA Administrator.

144ZN  Termination of appointment

Minister may terminate TSRA Administrator’s appointment

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

(2) If a TSRA Administrator:
   (a) is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or
   (b) is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or
   (c) is absent from duty, except on leave of absence granted under section 144ZK, for 14 consecutive days or for 28 days in any period of 12 months; or
   (d) fails, without reasonable excuse, to comply with 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
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(c) the appointment had ceased to have effect; or
(d) the occasion to act had not arisen or had ceased.

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
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(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 referred to in subsection 7(1A) that:
   (a) the Commission has authorised Indigenous Business Australia to perform as an agent of the Commission; or
   (b) the Commission has delegated to Indigenous Business Australia.

148 Performance of functions

(1) In performing its functions, Indigenous Business Australia shall act in accordance with sound business principles.

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

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

(1) The Indigenous Business Australia Board shall give a copy of the corporate plan to the Commission.

(2) Indigenous Business Australia shall give a copy of the corporate plan to the Minister and may also give to the Minister a copy of any written comments by the Commission about the corporate plan.

(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 Powers of Minister

Except as expressly provided in this Act or the Commonwealth Authorities and Companies Act 1997, the Minister is not empowered to direct Indigenous Business Australia in relation to any of its activities.

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;
   (b) to invest money of Indigenous Business Australia;
   (c) to appoint agents and attorneys, and act as an agent for other persons;
   (d) to form, and participate in the formation of, companies;
   (e) to subscribe for and purchase shares in, and debentures and other securities of, companies;
   (f) to enter into partnerships;
   (g) to participate in joint ventures and arrangements for the sharing of profits;
   (h) to accept gifts, grants, bequests and devises made to it;
   (j) to act as trustee of money and other property vested in it on trust;
   (k) to charge for the provision of services by it.

(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.

(2) The operation of this section is subject to such limits as the Treasurer 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 or Commission may ask for information

(1) The Minister or the Commission 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.

(3) The Indigenous Business Australia Board may give the Commission the information it 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 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.

(4) At least one Indigenous Business Australia Director must be a Commissioner.

(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.
Part 4 Indigenous Business Australia
Division 3 Board of Directors of Indigenous Business Australia

Section 158

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:

(a) must consult Indigenous Business Australia about a suitable appointee; and

(b) may consult the Commission 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.
(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 the Commission and 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.

(3) If:
   (a) 3 of the Indigenous Business Australia Directors are Commissioners; and
   (b) a fourth Indigenous Business Australia Director becomes a Commissioner;
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that fourth Indigenous Business Australia Director ceases to be an Indigenous Business Australia Director.

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.
Divisions 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.

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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.
Part 4  Indigenous Business Australia
Division 7  Staff

Section 175

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.

176  Arrangements for Commission staff to perform duties on behalf of Indigenous Business Australia

The Indigenous Business Australia General Manager may make arrangements with the Chief Executive Officer for the performance of duties by the staff of the Commission on behalf of Indigenous Business Australia.

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.

Aboriginal and Torres Strait Islander Commission Act 1989
Section 178

(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

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.

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

Aboriginal and Torres Strait Islander Commission Act 1989
(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 Treasurer 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.

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

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.
Part 4 Indigenous Business Australia
Division 8 Finances

Section 187

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.
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.
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(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.

(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 Fund

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.
Part 4A  Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund

Division 1  Indigenous Land Corporation

Section 191B

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;
(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—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
Section 191D

(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;
(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.

*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.
(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.

(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.

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

(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

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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
Part 4A Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund

Division 2 Functions and powers of Indigenous Land Corporation

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(e) disseminating information (whether on a commercial basis or otherwise) about:
   (i) land management practices; and
   (ii) environmental management practices relating to land.

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;
   (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
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(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 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.
Part 4A Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund

Division 2 Functions and powers of Indigenous Land Corporation

Section 191I

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
       (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
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Section 191K

(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.

191K Commission may grant land to the Indigenous Land Corporation

Grant

(1) The Commission may grant an interest in land to the Indigenous Land Corporation.

Terms and conditions

(2) A grant is subject to such terms and conditions as are agreed between the Commission and the Indigenous Land Corporation.

Acquisition

(3) An interest in land granted to the Indigenous Land Corporation under this section is taken to have been acquired by the Indigenous Land Corporation under paragraph 191D(1)(b).

191L Powers of Minister

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.
Section 191N

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.

Consultation on national indigenous land strategy

(3) In performing functions under this section, the Indigenous Land Corporation Board:
   (a) must have regard to the desirability of consulting the Commission about such matters as it considers appropriate; and
   (b) 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;

(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.

Aboriginal and Torres Strait Islander Commission Act 1989
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
Part 4A   Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund
Division 4   Dealings in land granted by Indigenous Land Corporation

Section 191T

(b) under section 191S;
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

Aboriginal and Torres Strait Islander Commission Act 1989
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) the Commission Chairperson;
(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 to ensure the proper and efficient performance of the functions of the
Section 191X

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 referred to in paragraph 191V(2)(a), (b), (d), (e), (f) or (g) 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 Commission and the Minister for Finance about the appointment.

Qualifications

(4) Each appointed 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 appointed ordinary members of the Board have experience in business or financial management.

Commissioner

(5) At least one appointed Indigenous Land Corporation Director must be a Commissioner. If such an Indigenous Land Corporation Director ceases to be a Commissioner, the Minister may terminate the appointment of the Director.
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 appointed 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 appointed 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.
Part 4A  Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund
Division 6  Administrative provisions

Section 192C

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.

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
Section 192F

(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.

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 appointed 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, after consulting the Commission, terminate the appointment of an appointed Indigenous Land Corporation Director because of misbehaviour or physical or mental incapacity.

Bankruptcy, conflict of interest etc.

(2) If an appointed 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 appointed 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.
Part 4A  Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund

Division 6  Administrative provisions

Section 192I

192I  Other terms and conditions

An appointed 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.
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.
Part 4A  Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund

Division 7  Operations of Indigenous Land Corporation Board

Section 192J

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.
Section 192K

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.
Section 192N

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.

260 Aboriginal and Torres Strait Islander Commission Act 1989
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.
Part 4A  Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Fund
Division 9  Staff

Section 192S

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 Commission staff or Indigenous Business Australia staff to perform duties on behalf of Indigenous Land Corporation

Commission staff

(1) The Indigenous Land Corporation General Manager may make arrangements with the Chief Executive Officer for the performance of duties by the staff of the Commission on behalf of the 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:

262  Aboriginal and Torres Strait Islander Commission Act 1989
Section 192V

(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.

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.
Part 4A  Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land
Fund
Division 10  Aboriginal and Torres Strait Islander Land Fund

Section 192W

Division 10—Aboriginal and Torres Strait Islander Land Fund

192W  Aboriginal and Torres Strait Islander Land Fund

   Land Fund

(1) A reserve called the Aboriginal and Torres Strait Islander Land Fund is established.

   Trust account

(2) The Land Fund is a component of the Reserved Money Fund.

(3) So far as practicable, money in the Land Fund that is not required for the purpose of making payments out of the Land Fund 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 money from the Land Fund, an amount equal to the income must be transferred to the Land Fund from the Consolidated Revenue Fund.

192X  Purpose of Land Fund

   The purpose of the Land Fund is the making of payments to the Indigenous Land Corporation and the Commission 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.

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

193  Credits to Land Fund 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 Fund the amount worked out using the formula:

\[ \text{Indexation factor} \times \$121 \text{ million} \]

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 Fund the amount worked out using the formula:

\[ \text{Indexation factor} \times \text{Previous year’s amount} \]

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 Fund under this section in the previous financial year.

*Note:*  *Business day* is defined by section 192Y.
Section 193AA

*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.

*Consolidated Revenue Fund to be debited*

(4) The Consolidated Revenue Fund is to be debited for the purposes of making a credit under this section.

*Standing appropriation*

(5) The Consolidated Revenue Fund is appropriated for the purposes of this section.

193AA **Credit to Land Fund 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 Fund immediately before the end of that year; and

(b) the amount that, in the opinion of the Minister for Finance, represents the market value of investments of the Land Fund (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 Minister for Finance, represents the book value of fixed-interest investments of the Land Fund 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 Fund 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:

\[ \text{Indexation factor} \times \$1,106 \text{ million} \]

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:

\[ \text{Indexation factor} \times \text{Previous year’s target amount} \]

where:

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.

Consolidated Revenue Fund to be debited

(4) The Consolidated Revenue Fund is to be debited for the purposes of making a credit under this section.

Moneys to be appropriated by another Act

(5) The Consolidated Revenue Fund is to be appropriated by the Parliament for the purposes of this section.

193A Payments out of Land Fund 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 Fund, $25 million. The payment is to be made on a business day nominated by the Minister. The
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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 Fund, 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 \( \times \) $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:

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

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:

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

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:

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

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.

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.
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193B Payments out of Land Fund to Commission—second and third category A years

Later category A years

(1) On the second business day in the second category A year or a later category A year, there is to be paid to the Commission, out of the Land Fund, an amount equal to the eligible funding amount for the year.

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

Note 2: Eligible funding amount is defined by subsections (3) and (4).

Eligible funding amount—second category A year

(3) For the purposes of this Division, the eligible funding amount for the second category A year is the amount worked out using the formula:

\[ \text{Indexation factor} \times \$21 \text{ million} \]

where:

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

Eligible funding amount—third category A year

(4) For the purposes of this Division, the eligible funding amount for the third category A year is the amount worked out using the formula:

\[ \text{Indexation factor} \times \text{Previous year’s eligible funding amount} \]

where:

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

Previous year’s eligible funding amount means the eligible funding amount for the previous category A year.
Rounding down

(5) If the result of applying the formula set out in subsection (3) or (4) is an amount of dollars and cents, the cents are to be disregarded.

Spending of payments by Commission

(6) In deciding how to spend money paid to the Commission under this section, the Commission is to have regard to the desirability of spending the money for purposes relating to land acquisition and land management.

193C Payments out of Land Fund 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 Fund, 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 Fund 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.
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).
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*second June year* means the period of 12 months immediately before the first June year.

**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.

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**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 Land Fund**

(2) An advance is to be paid out of the Land Fund.

**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...
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Corporation under section 193A or 193C during that financial year, the Corporation is liable to pay to the Commonwealth the amount of the excess.

Note: Under section 81 of the Constitution, amounts paid by the Indigenous Land Corporation under subsection (3) of this section must be paid into the Consolidated Revenue Fund.

Credits to Land Fund

(4) If the Indigenous Land Corporation pays an amount under subsection (3), an amount equal to that amount is to be:
   (a) debited to the Consolidated Revenue Fund; and
   (b) credited to the Land Fund.

Standing appropriation

(5) The Consolidated Revenue Fund is appropriated for the purposes of subsection (4).

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 Fund

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 Fund; and
(c) such other persons (if any) as the Minister considers appropriate;
for the purpose of discussing the investment policy of the Land Fund.

Minister may attend meeting

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

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 Fund. 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

The Commission must keep accounts, and prepare financial statements, in such form as the Minister for Finance determines, in respect of the Land Fund.

193I Annual report about Land Fund

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 Fund, 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 Fund during the financial year;
(b) particulars of amounts paid out of the Land Fund during the financial year;
(c) particulars of investments of the Land Fund;
(d) the realised real return on investments of the Land Fund in respect of the financial year;
(e) such other information (if any) as is specified in the regulations.

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.
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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.
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Section 193L

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 $100

where:

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

\[
\text{Indexation factor} \times \text{Previous year’s borrowing limit}
\]

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:

\[
\text{Indexation factor} \times \$200 \text{ million}
\]

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:

\[
\text{Indexation factor} \times \text{Previous year’s borrowing limit}
\]

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.
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Section 193M

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

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.

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
(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
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(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:

\[ \text{Indexation factor} \times 100 \text{ million} \]

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:

\[ \text{Indexation factor} \times \text{Previous year’s guarantee limit} \]

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.

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.
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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.

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.

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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.
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Division 12 Exemption from stamp duty etc.

Section 193R

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

(e) the grant of an interest in land by the Commission under section 191K; 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).
Section 193R

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

(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
(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

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(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

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(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

   (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.
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Division 14 Delegation

Section 193T

**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 5—Miscellaneous

193U Telephone access to ATSIC offices

The Commission shall make provision for the development of a service which will enable a person to make a telephone call to the nearest regional office of the Commission, at no greater cost than the cost of a local telephone call.

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.

194A Global limit on remuneration and allowances payable to certain office holders

Object

(1) The object of this section is to enable the Commission to set a global limit on the remuneration and allowances payable to the
holders of certain offices. The purpose of the global limit is to assist the Commission to manage its finances effectively.

**Bodies to which this section applies**

(2) This section applies to the following bodies:
   (a) an advisory committee established under section 13;
   (b) the Torres Strait Islander Advisory Board established under section 82;
   (c) an advisory committee established under section 96;
   (d) a Regional Council.

**Opening remuneration credit**

(3) The Commission may make a written determination fixing an opening remuneration credit of a specified body for a specified period. Subject to subsection (9), the period must not begin before the determination is made.

**When opening remuneration credit arises**

(4) The opening remuneration credit of the body arises, or is taken to have arisen, at the start of the period.

**Supplementary remuneration credit**

(5) The Commission may make a written determination fixing a supplementary remuneration credit of the body for the period.

**When supplementary remuneration credit arises**

(6) A supplementary remuneration credit arises at the start of the day specified in the determination. The day must be within the period. The day must not be earlier than the day on which the determination is made.

**Remuneration debit**

(7) If, on a particular day in the period, an entitlement to remuneration or allowances accrues to a member of the body in that capacity, there arises, or is taken to have arisen, at the end of that day, a remuneration debit of the body equal to the amount of that entitlement.
Section 194A

No entitlement to remuneration if total debits are equal to or more than total credits

(8) If, on a particular day in the period, the total of the body’s remuneration debits arising before that day and during that period is equal to or more than the sum of:

(a) the body’s opening remuneration credit arising before that day and during that period; and

(b) each of the body’s supplementary remuneration credits (if any) arising before that day and during that period;

no entitlement to remuneration or allowances accrues, or is taken to have accrued, to a member of the body in respect of anything done by that member in that capacity on that day.

Retrospective operation of first determination

(9) If, at its first meeting after the commencement of this section, the Commission makes a determination fixing an opening remuneration credit of a body for a period, the period may be expressed to start at a time before the commencement of this section. The time must not be earlier than the start of 19 August 1993.

Section has effect despite any other provision

(10) This section has effect despite anything in this Act or in any other law of the Commonwealth.

Commission must give copy of determination to body

(11) If the Commission makes a determination under this section in relation to a body, the Commission must give a copy of the determination to the body as soon as practicable after the determination is made.

Meaning of remuneration and allowances

(12) In this section, a reference to remuneration or allowances is a reference to remuneration or allowances to which a member of a body is entitled in that capacity in accordance with section 194, but does not include a reference to the remuneration payable to the Chairperson of a Regional Council.
Section 194A

Example of operation of section

(13) The following is an example of the operation of this section:

(a) On 1 December 1993, the Commission makes a determination fixing an opening remuneration credit of $1,000 of body “A” for the period 1 December 1993 to 31 December 1993.

(b) On 3 December 1993, “A” holds a meeting. The total remuneration and allowances to which the members of A are entitled in respect of the meeting is $400.

(c) On 7 December 1993, “A” holds another meeting. The entitlements of members amount to $400.

(d) On 9 December 1993, the Commission makes a determination fixing a supplementary remuneration credit determination of $200.

(e) On 12 December 1993, “A” holds another meeting. The entitlements of members amount to $400.

(f) On 15 December 1993, “A” holds another meeting. The entitlements of members amount to $400.

The following table illustrates the effect of each of these events:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Rem’n credit $</th>
<th>Rem’n debit $</th>
<th>Remuneration balance Start of day</th>
<th>Remuneration balance End of day</th>
<th>Effect on entitlement to remuneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Dec</td>
<td>Opening remuneration</td>
<td>1,000</td>
<td></td>
<td>1,000</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>credit determined</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Dec</td>
<td>Meeting of “A”</td>
<td>400</td>
<td>1,000</td>
<td>600</td>
<td>Members of “A”</td>
<td>entitled to remuneration</td>
</tr>
<tr>
<td>7 Dec</td>
<td>Meeting of “A”</td>
<td>400</td>
<td>600</td>
<td>200</td>
<td>Members of “A”</td>
<td>entitled to remuneration</td>
</tr>
<tr>
<td>9 Dec</td>
<td>Supply’ remuneration</td>
<td>200</td>
<td>400</td>
<td>400</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>credit determined</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Aboriginal and Torres Strait Islander Commission Act 1989
195 **Review by Commission of delegates’ decisions**

(1) If a delegate of the Commission:

(a) refuses a housing loan under section 14 to an individual; or

(b) refuses a loan under section 14 to an individual, a body corporate or an unincorporated body to enable the individual or body to engage in a business enterprise; or

(c) refuses to give a guarantee under section 15 in respect of a housing loan made or to be made to an individual; or

(d) refuses to give a guarantee under section 15 in respect of a loan made or to be made to an individual, a body corporate or an unincorporated body, where the purpose of the loan is to enable the individual or body to engage in a business enterprise;

the individual or body may, within 30 days after being notified of the refusal or decision, request the Commission to reconsider the matter.

(2) Where a request is made under subsection (1), the Commission shall reconsider the matter and shall decide whether to make the loan or to give the guarantee.

(3) If the Commission has delegated its powers to reconsider a matter and make a decision under subsection (2), subsection (1) does not apply to a refusal or decision by the delegate made in the exercise of those powers.
Section 195A

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.

196 Review by Administrative Appeals Tribunal

(1) An application may be made to the Administrative Appeals
    Tribunal for review of:
    (a) a decision made by the Commission to refuse a housing loan
        under section 14 to an individual; or
    (aa) a decision made by the Commission to refuse a loan under
         section 14 to an individual, a body corporate or an
         unincorporated body to enable the individual or body to
         engage in a business enterprise; or
    (ab) a decision made by the Commission to refuse to give a
         guarantee under section 15 in respect of a housing loan made
         or to be made to an individual; or
    (b) a decision made by the Commission to refuse to give a
         guarantee under section 15 in respect of a loan made or to be
         made to an individual, a body corporate or an unincorporated
         body, where the purpose of the loan is to enable the
         individual or body to engage in a business enterprise; or
    (c) a decision made by the Commission to give notice to a
         person or body under subsection 20(1) or (3); or
    (f) a decision of the Commission to make a declaration under
         subsection 121(1); or
    (fa) a decision of the Commission under section 123A to:
        (i) remove Regional Councillors from office; and
        (ii) appoint an Administrator to administer the affairs of a
             Regional Council; or

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Section 196A

(g) any other decision of the Commission included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section; or
(h) any decision made under the Regional Council election rules or the zone election rules included in a class of decisions declared by the regulations to be reviewable decisions for the purposes of this section.

(2) Where the Commission notifies a person of a decision of a kind referred to in subsection (1), the notice shall 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 Commission means:
(a) a decision made by the Commission itself; or
(b) a decision made by a delegate of the Commission upon a reconsideration of a decision made by another delegate of the Commission.

196A  Review by Administrative Appeals Tribunal

(1) An application may be made to the Administrative Appeals Tribunal for review of:
(a) a decision made by the TSRA to refuse a loan under section 142F to an individual; or
(b) a decision made by the TSRA to refuse to give a guarantee under section 142G in respect of a loan made or to be made to an individual; or
(c) a decision made by the TSRA to give notice to a person or body under subsection 142H(1) or (3); or
(d) a decision of the TSRA to make a declaration under subsection 143R(1) or (1A); or
Part 5  Miscellaneous

Section 197

(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:

\textit{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

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(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.

(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, the TSRA election rules or the zone 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*;
being an offence that relates to this Act, the regulations, the Regional Council election rules, the TSRA election rules or the zone 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.
Section 200

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).
201 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, the Regional Council election rules, the TSRA election rules or the zone 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:
(a) provide for notices given to the Commission under subsection 93(2) to be available for public inspection;
(b) make provision in relation to the conduct of elections for the purposes of section 127, 127J, 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 195(1) or subsection 195A(1) and the reconsideration of matters under subsection 195(2) or 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:


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 new 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.

new Commission means the Aboriginal and Torres Strait Islander Commission.

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
Transitional provisions  **Part 6**  
Preliminary  **Division 1**  

**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.
Part 6  Transitional provisions
Division 3  Transitional provisions relating to Aboriginal Development Commission and Department of Aboriginal Affairs

Section 204

Division 3—Transitional provisions relating to Aboriginal Development Commission and Department of Aboriginal Affairs

204  Quorum until all Commissioners appointed

(1) Until appointments have been made to all the offices of Commissioner, the quorum at a meeting of the new Commission is constituted by a majority of the number of Commissioners holding office on the day of the meeting.

(2) Subsection 44(4) has effect subject to this section.

205  New Commission shall declare certain bodies to be Aboriginal or Torres Strait Islander corporations

As soon as practicable after the commencement, the new Commission shall declare each body corporate:

(a) that has, at some time since 1 July 1987, received a grant from the old Department or the old Commission; and

(b) in relation to which the new Commission is satisfied that all the members of the body corporate are Aboriginal persons or Torres Strait Islanders;

to be an Aboriginal or Torres Strait Islander corporation for the purposes of this Act.

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 the new Commission or to Indigenous Business Australia.

(2) Where the Minister makes a declaration under subsection (1), the asset specified in the declaration becomes an asset of the new Commission or of Indigenous Business Australia, as provided by the declaration.

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Transitional provisions Part 6

Transitional provisions relating to Aboriginal Development Commission and Department of Aboriginal Affairs Division 3

Section 207

(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 the new Commission or of Indigenous Business Australia.

(4) Where the Minister makes a declaration under subsection (3), the liability specified in the declaration becomes a liability of the new Commission or of Indigenous Business Australia, as provided by the declaration.

(5) Liabilities of the Commonwealth that have become liabilities of the new Commission or of Indigenous Business Australia because of subsection (4) shall, after the commencement, be taken to be liabilities incurred by the new Commission, or by Indigenous Business Australia, as the case may be, in the performance of its functions and the exercise of its powers.

207 Transfer of assets and liabilities of old Commission

(1) Subject to section 208 and any declaration under subsection 209(1), at the commencement, the assets and liabilities of the old Commission become assets and liabilities of the new Commission.

(2) The following provisions apply to assets and liabilities that have become assets and liabilities of the new Commission because of subsection (1):

(a) an asset that was, immediately before the commencement, held by the old Commission on trust shall, after the commencement, be held by the new Commission on trust and subject to the terms of the trust on which the asset was so held by the old Commission;

(b) investments of the old Commission shall, after the commencement, be deemed to have been duly made in accordance with section 63E of the Audit Act 1901;

(c) liabilities of the old Commission to make payments shall, after the commencement, be taken to be liabilities incurred by the new Commission in the performance of its functions and the exercise of its powers.
Part 6  Transitional provisions
Division 3  Transitional provisions relating to Aboriginal Development Commission
and Department of Aboriginal Affairs

Section 209

209  Minister may declare specified liabilities transferred to Commonwealth instead of new Commission

(1) The Minister may, after consulting the Minister for Finance, declare in writing that a specified liability of the old Commission does not become a liability of the new Commission.

(2) Where the Minister makes a declaration under subsection (1), the liability concerned becomes a liability of the Commonwealth.

210  Minister may direct transfer of money etc. from new Commission to Indigenous Business Australia

(1) The Minister may from time to time direct, in writing, that:
   (a) all or a specified part of the money transferred from the old Commission to the new Commission by section 207 should be paid by the new Commission to Indigenous Business Australia; or
   (b) all the other assets, or specified assets, transferred from the old Commission to the new Commission by section 207 should be transferred by the new Commission to Indigenous Business Australia.

(2) The new Commission shall comply with any direction given by the Minister under subsection (1).

(3) Where assets are transferred by the new Commission to Indigenous Business Australia pursuant to a direction given under subsection (1), any liabilities of the new Commission that are associated with those assets, being liabilities specified in the direction, become liabilities of Indigenous Business Australia.

211  Old Commission instruments

(1) An old Commission instrument continues to have effect after the commencement but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring after that commencement, has effect as if a reference in the instrument to the old Commission were a reference to the appropriate new body.

308  Aboriginal and Torres Strait Islander Commission Act 1989
(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 previously in force or because of section 210, 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), become a liability of the Commonwealth—the Commonwealth; or
   (c) in any other case—the new Commission.

212 Pending proceedings

Where, immediately before the commencement, proceedings to which the old Commission was a party were pending in any court or tribunal, the new Commission is, after the commencement, substituted for the old Commission as a party to the proceedings and has the same rights in the proceedings as the old Commission had.

213 Final report and financial statement for old Department

(1) As soon as practicable after the commencement the Chief Executive Officer shall:
   (a) prepare and give to the Minister a report on the operations of the old Department during the period (in this section called the pre-commencement period) commencing on 1 July 1989 and ending at the commencement; and
   (b) prepare and give to the Auditor-General a financial statement that relates to the old Department during the pre-commencement period and that satisfies the requirements of section 50 of the Audit Act 1901 as that section applies in relation to the financial year that commenced on 1 July 1989.
(2) The Chief Executive Officer may, in discharging his or her obligations under subsection (1), rely on accounts and records of the old Department that are in the possession of the new Commission or to which the Chief Executive Officer is allowed access and on any other information provided to the Chief Executive Officer by any person who held an office, or was employed, in the old Department.

(3) A report prepared and given to the Minister in accordance with paragraph (1)(a) shall, for the purposes of the *Public Service Act 1922*, be taken to have been prepared and given to the Minister under subsection 25(6) of that Act.

(4) A financial statement prepared and given to the Auditor-General in accordance with paragraph (1)(b) shall, for the purposes of the *Audit Act 1901*, be taken to have been prepared and given to the Auditor-General under section 50 of that Act as that section applies in relation to the financial year that commenced on 1 July 1989.

(5) The Auditor-General may, in discharging his or her obligations under section 50 of the *Audit Act 1901* as it applies because of subsection (4), rely on accounts and records of the old Department that are in the possession of the new Commission or to which the Chief Executive Officer is allowed access and on any other information provided to the Chief Executive Officer by any person who held an office, or was employed, in the old Department.

### 214 Final report and financial statements for old Commission

(1) Subject to this section, the Chief Executive Officer shall, as soon as practicable after the commencement, prepare and give to the Minister:

   (a) a report on the operations of the old Commission during the period (in this section called the *pre-commencement period*) commencing on 1 July 1989 and ending at the commencement; and

   (b) financial statements that relate to the old Commission during that period in such form as the Minister for Finance approves.
Section 214

(2) The report prepared by the Chief Executive Officer in accordance with paragraph (1)(a):
   (a) shall include particulars of any general directions given to the old Commission during the pre-commencement period under section 11 of the ADC Act; and
   (b) shall not disclose any matters known to the Chief Executive Officer to be held sacred by Aboriginal persons or Torres Strait Islanders or by a particular community or group of Aboriginal persons or Torres Strait Islanders.

(3) Before giving financial statements to the Minister under subsection (1), the Chief Executive Officer shall give them to the Auditor-General, who shall report to the Minister:
   (a) whether, in the Auditor-General’s opinion, the statements are based on proper accounts and records;
   (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 old Commission;
   (c) whether, in the Auditor-General’s opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the old Commission during the pre-commencement period were in accordance with the ADC Act; and
   (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4) The Chief Executive Officer and the Auditor-General may, in discharging their obligations under this section, rely on accounts and records of the old Commission that are in the possession of the new Commission or to which the Chief Executive Officer is allowed access and on any other information provided to the Chief Executive Officer by any person who was a member of the old Commission or of the staff of the old Commission.

(5) The Minister shall cause copies of the report and financial statements together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.
Part 6  Transitional provisions
Division 3  Transitional provisions relating to Aboriginal Development Commission
and Department of Aboriginal Affairs

Section 215

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, an asset or liability of the new Commission;
   (b) an asset or liability specified or described in the certificate became, because of section 208 of this Act as previously in force, 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.

(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.

217 Ombudsman investigations

Where:
   (a) before the commencement, a complaint was made to the Ombudsman, or the Ombudsman commenced an investigation, under the Ombudsman Act 1976 in relation to action taken by the old Commission or the old Department; and

Aboriginal and Torres Strait Islander Commission Act 1989
(b) immediately before the commencement, the Ombudsman had not finally disposed of the matter in accordance with the Ombudsman Act 1976; the Ombudsman Act 1976 applies after the commencement as if that action had been taken by the new Commission.
Part 6  Transitional provisions
Division 4  General transitional provisions

Section 218

Division 4—General transitional provisions

218  Transfer of appropriated money

(1) For the purposes of the operation of an Appropriation Act after the commencement, this section applies to references in that Appropriation Act referred to in subsections (2) to (5), inclusive.

(2) References to the old Department shall be read as references to the new Commission.

(3) References to the old Commission shall be read as references to the new Commission.

(4) References to a repealed Act shall be read as references to this Act.

(5) References to the Aboriginal Entitlement Account—General Fund shall be read as references to the new Commission.

(6) In this section:

Appropriation Act means an Act appropriating money for expenditure in respect of a financial year and includes an Act appropriating money, by way of interim provision, for such expenditure.

repealed Act means an Act repealed by section 203.

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 new 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 new 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.


221 Contracts of employment not preserved

Nothing in this Part preserves a contract of employment entered into by the old Commission.
Part 6  Transitional provisions
Division 4  General transitional provisions

Section 222

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—Zones and regions

Subsections 91(1) and 130(1)

<table>
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<tr>
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Aboriginal and Torres Strait Islander Commission Act 1989 317
## Schedule 1  Zones and regions

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<thead>
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<td>Warburton</td>
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318  *Aboriginal and Torres Strait Islander Commission Act 1989*
Schedule 2—Method of counting votes and determining successful candidates at elections for 2 or more members for a Regional Council ward or TSRA ward

Sections 111 and 143E

1. In a Regional Council ward election or 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.
Schedule 2  Method of counting votes and determining successful candidates at elections for 2 or more members for a Regional Council ward or TSRA ward

(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.

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

322  Aboriginal and Torres Strait Islander Commission Act 1989
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;

Aboriginal and Torres Strait Islander Commission Act 1989
(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 Regional Council ward election or 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 Regional Council ward election or 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 Regional Council ward election or 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.
Schedule 2A—Method of determining the successful candidate at an election for a single member for a Regional Council ward or 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 113 or 143G, the rules made by the Minister under either of those sections may include provisions about:
Schedule 2A  Method of determining the successful candidate at an election for a single member for a Regional Council ward or TSRA ward

Clause 3

(a) the determination of an absolute majority of votes; and
(b) the method of choosing between 2 or more candidates, each of whom has the same number of votes, in order to work out which candidate to exclude; and
(c) determining when a ballot paper is exhausted.

328  Aboriginal and Torres Strait Islander Commission Act 1989
Schedule 3—Method of determining successful candidates at zone elections

Section 137

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 shall be excluded, and each of that candidate’s ballot papers shall 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, shall 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 138, the rules made by the Minister under that section may include provisions about:

(a) the determination of an absolute majority of votes;
(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
Schedule 3  Method of determining successful candidates at zone elections

Clause 3

(c) determining when a ballot paper is exhausted.

330  Aboriginal and Torres Strait Islander Commission Act 1989
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 Regional Council election, a TSRA election or a zone 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, the Regional Council election rules, the TSRA election rules or the zone 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*, the Regional Council election rules, the TSRA election rules or the zone election rules shall be deemed to have contravened that provision.
Schedule 4  Disputes about electoral matters
Part 2  Disputed elections

Clause 2

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:

(a) a round of Regional Council elections; or
(b) a round of zone elections; or
(c) a TSRA election for all wards.

4 Deposit as security for costs

At the time of filing an election petition the petitioner shall deposit with the 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.
Clause 8

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;
Clause 11

(e) to declare that any person who was returned was not duly elected;
(f) to declare any candidate duly elected who was not returned;
(g) to declare the election absolutely void;
(h) to dismiss or uphold the petition in whole or in part;
(j) to make any order, or give any direction, that the Court thinks is necessary or convenient for the purpose of giving effect to any declaration or other decision of the Court in the proceedings;
(k) to award costs;
(m) to punish any contempt of its authority by fine or imprisonment.

(2) The Court may exercise all or any of its powers under this clause on such grounds as the Court in its discretion thinks just and sufficient.

(3) Without limiting the powers conferred by this clause, it is hereby declared that the power of the Court to declare that any person who was returned was not duly elected, or to declare an election absolutely void, may be exercised on the ground that illegal practices were committed in connection with the election.

(4) The power of the Court under paragraph (1)(k) to award costs includes the power to order costs to be paid by the Commonwealth where the Court considers it appropriate to do so.

11 Inquiries by Court

The Court shall inquire whether or not an election petition is duly signed, and so far as rolls and voting are concerned may inquire into the identity of persons, and whether their votes were improperly admitted or rejected, assuming the Commonwealth Electoral Roll to be correct, but the Court shall not inquire into the correctness of the Commonwealth Electoral Roll.

12 Voiding election for illegal practices

(1) If the Court finds that a candidate at an election has committed or has attempted to commit bribery or undue influence, the
Schedule 4  Disputes about electoral matters
Part 2  Disputed elections

Clause 13

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.
Clause 15

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, the Regional Council election rules 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 whichever of the Regional Council election rules, the TSRA election rules and the zone election rules is applicable, relative to voting by electors in so far as he or she was permitted so to do.

16 Deposit applicable for costs

If costs are awarded to any party against a petitioner, the deposit shall be applicable in payment of the sum ordered, but otherwise the deposit shall be repaid to the petitioner.
Part 3—Qualifications and vacancies

17  Reference of question as to qualification or vacancy

(1) Any question respecting:
   (a) the qualifications of a member of a Regional Council; or
   (b) a vacancy in a Regional Council; or
   (c) the qualifications of a member of the TSRA; or
   (d) a vacancy in the TSRA;
   may be referred to the Court by the Minister.

(2) The Court has jurisdiction to hear and determine the question.

(3) The jurisdiction of the Court to hear and determine questions may
    be exercised by a single Judge of the Court.

18  Minister to state case

Where the Minister refers a question to the Court under this Part,
the Minister shall also give to the Court a statement of the question
upon which the determination of the Court is desired, and any
documents relating to the question that are in the Minister’s
possession.

19  Parties to the reference

(1) The Court may:
   (a) allow any person who, in the Court’s opinion, is interested in
       the determination of a question to be heard on the hearing of
       the reference; or
   (b) direct notice of a reference to be served on any person.

(2) A person who is:
   (a) allowed to be heard under paragraph (1)(a); or
   (b) directed to be served under paragraph (1)(b);
   is a party to the reference.
20 References to be heard in open court

When hearing a reference, the Court shall sit as an open court.

21 Powers of Court

The powers of the Court in hearing a reference include, but are not limited to, the following powers:
(a) the powers conferred on the Court under clause 10, so far as they are applicable;
(b) the power to declare that any person was not qualified to be a member of a Regional Council;
(c) the power to declare that there is a vacancy in a Regional Council;
(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, Commission, TSRA and Regional Council affected

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
(b) the Commission; and
(c) if the reference relates to a Regional Council—the Regional Council; 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.

(2) The validity of anything done by the Commission, or by the person in the capacity of a Commissioner, is not affected by the fact that a person appointed as a Commissioner has since ceased to hold office as a Commissioner because of a declaration of the Court under this Schedule.

Aboriginal and Torres Strait Islander Commission Act 1989
Disputes about electoral matters  

Schedule 4

General  

Part 4

Clause 28

(3) The validity of anything done by the Commission or by a Regional Council is not affected by the fact that a person has since ceased to be a member of a Regional Council because of a declaration of the Court under this Schedule.

(4) The validity of anything done by the TSRA is not affected by the fact that a person has since ceased to be a member of the TSRA because of a declaration of the Court under this Schedule.

28  Power to make Rules of Court

(1) The judges of the Court or a majority of them may make Rules of Court not inconsistent with this Act, the Regional Council election rules, the TSRA election rules and the zone 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.
Notes to the Aboriginal and Torres Strait Islander Commission Act 1989

Note 1

The Aboriginal and Torres Strait Islander Commission Act 1989 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.

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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 Commission Act 1989 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.

Items 1 and 3–5 are taken to have commenced immediately after the commencement of the Aboriginal and Torres Strait Islander Commission Act 1989. 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 Commission Act 1989 came into operation on 5 March 1990 (see Gazette 1990, No. S48).


(d) The Aboriginal and Torres Strait Islander Commission Act 1989 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 Commission Act 1989 received the Royal Assent on 27 November 1989.

Section 79 commenced on 1 July 1994.

Aboriginal and Torres Strait Islander Commission Act 1989
Notes to the *Aboriginal and Torres Strait Islander Commission Act 1989*

**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 Commission Act 1989* 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 section, this Act commences at the commencing time.

(i) The *Aboriginal and Torres Strait Islander Commission Act 1989* 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 Commission Act 1989* 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, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

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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**

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**PART 1  NEW SOUTH WALES**

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#### 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.
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.
### Table A

#### 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.

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**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:

374 Aboriginal and Torres Strait Islander Commission Act 1989
(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;
Notes to the  *Aboriginal and Torres Strait Islander Commission Act 1989*

### 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).