THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COORDINATOR-GENERAL FOR REMOTE INDIGENOUS SERVICES
BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP)
OUTLINE

This bill establishes a statutory position of Coordinator-General for Remote Indigenous Services (Coordinator-General).

The bill specifies the functions and powers of the Coordinator-General and provides for appointment by the Governor-General. The bill also provides for the terms and conditions under which the Coordinator-General will hold office, the way in which the Coordinator-General may obtain the assistance of staff and reporting procedures for the Coordinator-General.

In November 2008, the Council of Australian Governments (COAG) signed a National Partnership Agreement on Remote Service Delivery. Through this agreement, the Commonwealth, the States and the Northern Territory made a commitment to work together with Indigenous communities to improve Indigenous Australians’ access to government services, including early childhood, health, housing and welfare services through a single government interface.

The role of Coordinator-General is to provide strategic central leadership and coordination of the overall Remote Service Delivery Strategy in Indigenous communities specified by the Minister. The Coordinator-General will cut through administrative barriers and ensure that services are delivered effectively.

Financial impact statement

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NOTES ON CLAUSES

PART 1 – PRELIMINARY

Clause 1 – Short title

This clause provides for the Act to be cited as the Coordinator-General for Remote Indigenous Services Act 2009.

Clause 2 – Commencement

This clause provides that the bill will commence on the day on which it receives the Royal Assent.

Clause 3 – Object of Act

This clause specifies that the object of the Act is to provide for a Coordinator-General for Remote Indigenous Services, who will monitor, assess, advise in relation to, and drive the development and delivery of services and facilities by governments, in each remote location specified by the Minister, to a standard comparable with that in non-Indigenous communities of a similar size, location and needs elsewhere in Australia.

Clause 4 – Definitions

This clause provides for the definition of some terms used in the Act. In particular:

*Agency Head* means the same as the use of that term in the *Public Service Act 1999*;

*Closing the Gap targets* means the six targets in the *National Indigenous Reform Agreement* as described in the definition;

*Coordinator-General* means the office of Coordinator-General for Remote Indigenous Services created under clause 7;

*government service* (in a community) refers to any service or facility provided by any level of government in the community to either Indigenous persons or the whole population of the community;

*head* (of a service agency) means the Agency Head, or the person holding or performing the duties of the principal office, or an individual, or chief executive officer (however described);
**Indigenous** means a member of the Aboriginal race of Australia or a descendant of the Indigenous inhabitants of the Torres Strait Islands;

**Local Implementation Plans** has the meaning given by the National Partnership Agreement on Remote Service Delivery;

**member of the Coordinator-General's staff** means APS employees provided by arrangement with the Secretary of the Department;

**National Partnership Agreement on Remote Service Delivery** means the National Partnership Agreement on Remote Service Delivery that took effect on 27 January 2009;

**non-Indigenous community** means a community of which no significant proportion is Indigenous;

**remote location** means a Remote Indigenous Location (within the meaning given by the National Partnership Agreement on Remote Service Delivery);

**service agency** means a department, agency or authority of the Commonwealth, State or Territory;

**specified remote community** means a community in a remote location specified under clause 5.

**Clause 5 – Specified remote community**

This clause enables the Minister to specify a community in a remote location in relation to which the Coordinator-General's functions and powers operate.

Under subclause (2), the Minister may, by notice in the Gazette, specify a remote location if that location is categorised as Remote or Very Remote Australia (which is based on the definition of Remote Indigenous Location in the National Partnership Agreement on Remote Service Delivery) and a significant proportion of the population is Indigenous.

Subclause (3) has been added to assist readers as such instruments are not legislative instruments as described in section 5 of the Legislative Instruments Act 2003.

**Clause 6 – Act binds Crown**

This clause provides that the Act binds the Crown, but does not make the Crown liable to prosecution for an offence.
PART 2 – ESTABLISHMENT AND FUNCTIONS OF COORDINATOR-GENERAL FOR REMOTE INDIGENOUS SERVICES

Division 1 – Establishment of Coordinator-General for Remote Indigenous Services

Clause 7 – Coordinator-General for Remote Indigenous Services

This clause provides for the statutory position of Coordinator-General for Remote Indigenous Services.

Division 2 – Functions and general powers of Coordinator-General

Clause 8 – Functions of Coordinator-General

This clause specifies the functions of the Coordinator-General.

The clause provides that the Coordinator-General will monitor, assess, advise in relation to, and drive:

(a) the development and delivery of government services in specified remote communities to a standard broadly comparable with that in non-Indigenous communities of similar size, location and need elsewhere in Australia; and

(b) progress towards achieving the Closing the Gap targets in the specified remote communities.

Clause 9 – Powers of Coordinator-General

This clause provides the Coordinator-General with the power to do everything necessary or convenient in order to perform the functions of the office.

Without limitation, this includes the power to:

• request the production of information and documents (clause 10);
• request the attendance of persons at meetings;
• request assistance from service agencies; and
• report failures to comply with requests, including to the Minister (clause 16).
Division 3 – Monitoring

Clause 10 – Coordinator-General may request persons to provide information and documents etc.

This clause gives the Coordinator-General the power to request a person to give specified information, produce specified documents or attend before the Coordinator-General to answer questions at a specified place or time. The request must be complied with within the period specified by the Coordinator-General.

Subclause (2) provides limited protection to persons providing information to the Coordinator-General. Paragraph (2)(a) protects a person who, in good faith, complies with a request, from proceedings for contravening any other law so that, for example, documents which might otherwise be prevented from being disclosed by another law will be made available to the Coordinator-General.

Paragraph (2)(b) provides that civil proceedings cannot be brought against a person who, in good faith, complied with a request under subclause (1), which may have caused another person loss, damage or injury.

Clause 11 – No loss of legal professional privilege

This clause provides that legal professional privilege in a piece of information or a document is not waived or lost simply by the act of disclosure in response to a request made under clause 10 by the Coordinator-General. The disclosure could be by a document or by a response to a question from the Coordinator-General.

Clause 12 – Coordinator-General may make and keep copies of documents

The Coordinator-General may make and keep copies of documents produced in response to requests under clause 10.

Clause 13 – Limitation of powers under this Division

This clause recognises the constitutional limitations of the Coordinator-General’s functions and powers, particularly in relation to the States. The Coordinator-General must not perform functions or exercise powers in a manner that would impair the capacity of a State to exercise its constitutional powers.

Division 4 – Local Implementation Plans

Clause 14 – Local Implementation Plans

Local Implementation Plans are defined in clause 4 to assist readers.
Subclause (1) provides that the Coordinator-General may comment on draft Local Implementation Plans as they are developed in relation to the specified remote communities.

Subclause (2) provides that the Coordinator-General must monitor the implementation of each Local Implementation Plan. This will enable the Coordinator-General to ascertain if services are being delivered in an effective and timely manner.

Division 5 – Reporting

Clause 15 – Regular reports on government services in specified remote localities

Clause 15 provides that the Coordinator-General must provide reports to the Minister twice each year (or as otherwise required by the Minister).

Each report must contain information on the progress of the delivery of government services in each of the specified remote communities, including comment on the improvements to the coordination of the development and delivery of services, and reforms to the development and delivery of such services.

Progress that has been made towards achieving the Closing the Gap targets in the specified remote localities must also be reported on.

Clause 16 – Reports on failures to comply with requests

Subclause 16(1) provides that this clause applies if the Coordinator-General makes a request for attendance at a meeting; the provision of information and documents; the assistance of a service agency; or the cooperation of an Agency Head or APS employee and there is a failure to comply with that request.

Subclause 16(2) provides that the Coordinator-General may discuss such a failure to comply with persons the Coordinator-General considers appropriate.

Subclause 16(3) provides that the Coordinator-General may report discussions to the head of the relevant service agency if there is no satisfactory result to discussions under subclause 16(2).

Subclause 16(4) provides that the Coordinator-General may report unsatisfactory responses from the heads of service agencies to the Minister and also the Prime Minister if the Coordinator-General considers it necessary.

Clause 17 – Other reports

Clause 17 provides that the Coordinator-General may make other reports to the Minister as required.
Clause 18 – Criticism of service agencies

Clause 18 provides that, if the Coordinator-General proposes to include material in a report under this division that is critical of a service agency, or part of that agency, then the Coordinator-General must consult with the head of that service agency.

It is intended that the head of a service agency will have the opportunity to respond to material in a report that is critical of that agency. Nevertheless, consistent with the purposes for the creation of the position of Coordinator-General, the processes have not been specified in detail so that maximum flexibility is available to the Coordinator-General to achieve results.
Clause 19 – Appointment

This clause provides for the appointment of the Coordinator-General as a full-time statutory office-holder by the Governor-General for a fixed term specified in the instrument of appointment and not exceeding five years.

Subclause (4) allows the Governor-General to determine terms and conditions (if any) on which the Coordinator-General will hold office, but only in relation to matters not covered by this Bill. This subclause should be read in conjunction with clause 22, which allows the Minister to determine some terms and conditions.

Clause 20 – Acting appointments

This clause deals with arrangements for acting appointments, including allowing the Minister to appoint a person to act as the Coordinator-General when the office is vacant. This provision is to be read in conjunction with subclause 19(2), which requires that, whenever a vacancy occurs in the office of Coordinator-General, a permanent appointment must be made as soon as practicable.

Clause 21 – Remuneration

The remuneration for the Coordinator-General is to be determined by the Remuneration Tribunal, with provision for remuneration to be prescribed by the regulations in the absence of such determination. Allowances may also be prescribed by the regulations.

Clause 22 – Leave of absence

The Coordinator-General’s recreation leave entitlements are to be determined by the Remuneration Tribunal. The Minister may grant the Coordinator-General other leave on terms and conditions determined by the Minister.

Clause 23 – Engaging in other paid work

The Coordinator-General cannot engage in other paid employment without the Minister’s approval.

Clause 24 – Disclosure of interests to the Minister

The Coordinator-General must notify the Minister in writing of any potential conflicts of interest. Failure to provide such notification, without reasonable excuse, is a ground for dismissal of the Coordinator-General by the Governor-General pursuant to clause 26.
Clause 25 – Resignation

The Coordinator-General may resign by giving written notice to the Governor-General. The resignation takes effect on the day it is received by the Governor-General, or if a later day is specified in the resignation, on that later day.

Clause 26 – Termination of appointment

Clause 26 provides that the Governor-General can only terminate the appointment of the Coordinator-General on the grounds specified. The Governor-General has the discretion to dismiss the Coordinator-General for misbehaviour or physical or mental incapacity or if the performance of the Coordinator-General has been unsatisfactory. The Governor-General must dismiss the Coordinator-General in situations such as bankruptcy, unauthorised absence from office, engaging in unauthorised paid employment outside the office of Coordinator-General (in breach of clause 23) and/or failing to disclose conflicts of interest (in breach of clause 24).

Subclauses (3) and (4) clarify the effect of the Coordinator-General being dismissed from office on the grounds of physical or mental incapacity for the operation of Commonwealth superannuation schemes of which the Coordinator-General may be a member without a certificate being given by the relevant Board. These are the usual provisions applied to statutory office holders.

Clause 27 – Coordinator-General’s staff

Clause 27 provides that the Coordinator-General may arrange with the Secretary of the Department for APS employees in the Department to be made available to the Coordinator-General.
PART 4 – OTHER MATTERS

Clause 28 – Annual reports

Clause 28 provides for the Coordinator-General to prepare an annual report on the operations of the office of the Coordinator-General, and requires the Minister to table the report in each House of Parliament within 15 sitting days of receiving the report.

Clause 29 – Delegation of certain powers by Coordinator-General

Clause 29 provides that the Coordinator-General may delegate powers granted under this Act to a staff member with the exception of the power to make arrangements with the Secretary to make staff available.

Clause 30 – Regulations

Clause 30 provides for the Governor-General to make regulations covering matters required or permitted to be prescribed in the Act, or matters that would be necessary or convenient to prescribe for the purposes of the Act.