EXPLANATORY STATEMENT

Issued by the Minister for Families, Community Services and Indigenous Affairs

Aboriginal and Torres Strait Islander Act 2005

Torres Strait Regional Authority Election Amendment Rule 2012 (No. 1)

Section 143G of the Aboriginal and Torres Strait Islander Act 2005 (the Act) provides that the Minister may make rules not inconsistent with the Act prescribing, amongst other matters, the manner in which the Torres Strait Regional Authority (TSRA) elections are to be conducted. The Torres Strait Regional Authority Election Rules 1996 (the Rules) are made under that section.

The Rules currently provide for direct election of only some TSRA members. Under the Torres Strait Regional Authority Section 142S Declaration 2008 (the TSRA Declaration), made by the Minister under section 142S of the Act, most TSRA members are councillors elected to the Torres Strait Island Regional Council or the Northern Peninsula Area Regional Council under Queensland local government legislation.

Amendments to the Act which came into effect on 5 November 2011 removed the connection between Queensland local government legislation and the appointment of TSRA members with the intention that from the forthcoming TSRA election, all TSRA members would be directly elected under the Rules.

Amendments to the Rules are consequently required to create new wards to allow for direct election of all members. The Torres Strait Regional Authority Election Amendment Rule 2012 (No. 1) (the Amendment Rule) effects those amendments, while envisaging the revocation of the TSRA Declaration by the Torres Strait Regional Authority Section 142S Revocation Declaration 2012.

The changes will also ensure that the Torres Strait Regional Authority Election (Casual Vacancies) Rules 1998, made by the Minister under section 143G of the Act, will apply to all TSRA members.

Notes on provisions

Section 1 – specifies the name of the Amendment Rule.

Section 2 - provides that the Amendment Rule commences on the day after registration on the Federal Register of Legislative Instruments.

Section 3 - provides that the Rules are amended in accordance with Schedule 1.
Schedule 1

Item [1] - the definition of Authority is omitted from subrule 2(1), the general definitions provision of the Rules, because the Act already defines TSRA, and that term will now be applied, for consistency, in the Rules.

Item [2] - a definition of collection district is inserted in subrule 2(1). It has the effect of linking the number of any particular collection district referred to in new rule 2B (which identifies TSRA ward boundaries), with the number of the collection district shown on the relevant map published by the Australian Bureau of Statistics (ABS) on 24 August 2005.

Item [3] - the definition of ward is omitted from subrule 2(1), because the new TSRA wards are now specified in new rule 2A.

Item [4] - the following new rules are substituted for old rule 2A which dealt with old wards.

New rule 2A specifies the new TSRA wards, as permitted under paragraph 142TA(1)(a) of the Act, for the Torres Strait area.

New rule 2B sets out the boundaries of the new TSRA wards mentioned in rule 2A, as permitted under paragraph 142TA(1)(b) of the Act. It does so by reference to the boundaries of collection districts shown on ABS maps published on 24 August 2005.

New rule 2C fixes the designated number for each ward, specified in rule 2A, as 1. This means that there is to be single member of the TSRA for each new ward.

Item [5] - mentions of 'Authority' are replaced with 'TSRA', following the omission of the definition of Authority and the application of TSRA, as defined in the Act, for the purposes of the Rules.

Consultation

The TSRA was consulted about this Amendment Rule given the Amendment Rule’s relevance to the constitution of the TSRA. The AEC was consulted about this Amendment Rule given its responsibility for conducting elections under the Rules.

Section 143G of the Act requires that the Minister consult both the TSRA and the Electoral Commissioner when making rules under that section. The Minister has undertaken that consultation before making the Amendment Rule.

Human Rights Compatibility

A Statement of Compatibility with Human Rights is attached.

The Amendment Rule is a legislative instrument subject to disallowance.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Torres Strait Regional Authority Election Amendment Rule 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

Section 143G of the Aboriginal and Torres Strait Islander Act 2005 (the Act), provides that the Minister may make rules not inconsistent with the Act prescribing, amongst other matters, the manner in which the Torres Strait Regional Authority (TSRA) elections are to be conducted.

The Torres Strait Regional Authority Election Amendment Rule 2012 (No.1) (the Amendment Rule) amends the Torres Strait Regional Authority Election Rules 1996.

Currently, most TSRA members are councillors elected to the Torres Strait Island Regional Council or the Northern Peninsula Area Regional Council under Queensland local government legislation. Following the changes effected by the Amendment Rule all members of the TSRA will be elected directly to the TSRA in elections conducted by the Australian Electoral Commission.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Minister for Families, Community Services and Indigenous Affairs