

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Prime Minister)

**ABORIGINAL AND TORRES STRAIT ISLANDER
COMMISSION AMENDMENT BILL (NO. 2) 1993**

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(Prime Minister)

A BILL

FOR

An Act to amend the *Aboriginal and Torres Strait Islander Commission Act 1989*, and for related purposes

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title etc.

5 1.(1) This Act may be cited as the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 2) 1993*.

(2) In this Act, “**Principal Act**” means the *Aboriginal and Torres Strait Islander Commission Act 1989*¹.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

PART 2—AMENDMENT TO INSERT A DEFINITION OF “REGIONAL COUNCILLOR”

Interpretation

3. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition: 5

“‘**Regional Councillor**’ means a member of a Regional Council;”.

PART 3—AMENDMENTS RELATING TO REGIONAL COUNCIL ADVISORY COMMITTEES

Advisory committees

4. Section 96 of the Principal Act is amended by adding at the end the following subsections: 10

“(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*.”. 15

Insertion of new sections

5. After section 96 of the Principal Act the following sections are inserted:

Advisory committee—disclosure of interests at meetings 20

“96A.(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. 25

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

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

“96B.(1) This section applies to an advisory committee established under section 96 by a Regional Council. 30

“(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.

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

Advisory committee—resignation

5 “96C. 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.”

Application of amendments

10 6. The amendments made by this Part do not apply until immediately after the end of the election period for the round of Regional Council elections for 1993.

PART 4—AMENDMENTS RELATING TO WARDS

Interpretation

15 7. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“‘**designated number**’, in relation to a ward, has the meaning given by section 100A;

20 ‘**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;

‘**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;

25 ‘**ward**’ means a ward referred to in section 100A;”

Insertion of new section

8. After section 100 of the Principal Act the following section is inserted:

Regional Council wards

Rules may divide region into wards

30 “100A.(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.

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 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.”.

Persons entitled to vote at Regional Council elections

9. Section 101 of the Principal Act is amended:

- (a) by omitting “an election for the members of a Regional Council” and substituting “a Regional Council ward election”;
- (b) by omitting from subparagraph (b)(i) “the region for which the Regional Council is established” and substituting “the ward concerned”.

Persons qualified to be elected to Regional Councils

10. Section 102 of the Principal Act is amended:

(a) by omitting from subsection (1) “of a Regional Council” and substituting “for a Regional Council ward”;

5 (b) by omitting from paragraph (1)(a) “election” and substituting “ward election concerned”;

(c) by omitting from paragraph (1)(b) “region for which the Regional Council is established” and substituting “ward”.

Polling places

10 11. Section 105 of the Principal Act is amended by omitting from subsection (1) “region” and substituting “Regional Council ward”.

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

12. Section 106 of the Principal Act is amended:

15 (a) by inserting in subsection (3) “, (1A)” after “(1)”;

(b) by adding at the end of subsection (3) the following word and paragraph:

“; 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:

20 (i) the number of persons who will be entitled to vote at the forthcoming Regional Council ward election for that ward; and

25 (ii) the number of persons living in that ward who are Aboriginal persons or Torres Strait Islanders.”.

Repeal of section and substitution of new section

13. Section 107 of the Principal Act is repealed and the following section is substituted:

Effect of nominations

30 “107.(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.

35 “(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.”.

Counting of votes and election of candidates

14. Section 111 of the Principal Act is amended by omitting all the words after “and” (first occurring) and substituting “the candidate or candidates are to be elected, as provided in: 5

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

Rules for conduct of elections

15. Section 113 of the Principal Act is amended by inserting in subsection (3) “ward” after “Regional Council” (first and second occurring). 10

Constitution of Regional Councils

16. Section 115 of the Principal Act is amended by omitting paragraph (2)(a) and substituting the following paragraph: 15

- “(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”.

Persons taken to have resigned from Regional Councils in certain circumstances

17. Section 121 of the Principal Act is amended:

- (a) by omitting from subsection (1) “of a Regional Council” and substituting “for a Regional Council ward”;
- (b) by omitting from paragraph (1)(a) “region” and substituting “ward”; 25
- (c) by omitting from paragraph (1)(b) “region” and substituting “ward”.

Schedule 2

18. Schedule 2 to the Principal Act is amended:

- (a) by omitting from the heading “REGIONAL COUNCIL ELECTIONS” and substituting “ELECTIONS FOR 2 OR MORE MEMBERS FOR A REGIONAL COUNCIL WARD”; 30
- (b) by omitting from clause 1 “election” and substituting “ward election for 2 or more members for the ward concerned”;
- (c) by omitting from clause 3 “prescribed number in relation to the Regional Council” and substituting “designated number in relation to the ward”; 35
- (d) by inserting “ward” after “Council” in the definition of “leading shortfall” in clause 24;

- (e) by inserting “ward” after “Council” in the definition of “shortfall” in clause 24;
- (f) by inserting “ward” after “Council” in the definition of “vacancy shortfall” in clause 24.

5 **Insertion of new Schedule**

19. After Schedule 2 to the Principal Act the following Schedule is inserted:

“SCHEDULE 2A

Section 111

**METHOD OF DETERMINING THE SUCCESSFUL CANDIDATE
AT AN ELECTION FOR A SINGLE MEMBER FOR A
REGIONAL COUNCIL WARD**

Absolute majority required for election

- 10 1. A candidate needs an absolute majority of votes to be elected.

Candidate with absolute majority of first preference votes elected

2. A candidate who receives an absolute majority of first preference votes is elected.

Distribution of preferences

- 15 3.(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.

- 20 (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.

- 25 (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, the rules made by the Minister under that section may include provisions about:

- (a) the determination of an absolute majority of votes; and
- 30 (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.”.

Application of amendments

20.(1) The amendments made by this Part (other than section 17) apply to the round of Regional Council elections for 1993 and to each later round.

(2) The amendments made by section 17 do not apply until immediately after the end of the election period for the round of Regional Council elections for 1993. 5

PART 5—AMENDMENTS RELATING TO REGIONAL COUNCILS

Interpretation

21. Section 4 of the Principal Act is amended by omitting from subsection (1) the definition of “Executive Committee”. 10

Persons qualified to be elected to Regional Councils

22. Section 102 of the Principal Act is amended:

- (a) by omitting “or” from the end of paragraph (1)(d);
- (b) by adding at the end of subsection (1) the following paragraphs: 15
 - “; (f) the person is bankrupt; or
 - (g) there is in operation a composition, deed of arrangement or deed of assignment with the person’s creditors under the law relating to bankruptcy.”.

Disclosure of interests 20

23. Section 119 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

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

- (a) unless the Minister otherwise determines in writing—be present during any deliberation of the Regional Council with respect to that matter; or 25
- (b) unless the Minister otherwise determines in writing—take part in any decision of the Regional Council with respect to that matter.

“(3) The Minister may, by writing, delegate to the Commission Chairperson any or all of the Minister’s powers under subsection (2). 30

“(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. 35

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

Persons taken to have resigned from Regional Councils in certain circumstances

24. Section 121 of the Principal Act is amended by inserting after subsection (1A) the following subsection:

“(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.”.

Persons cease to be members of Regional Councils in certain circumstances

25. Section 122 of the Principal Act is amended:

(a) by omitting “or” from the end of paragraph (1)(b);

(b) by inserting after paragraph (1)(c) the following paragraphs:

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

(e) has become bankrupt;

(f) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;

(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;”.

Insertion of new sections

26. After section 122 of the Principal Act the following sections are inserted:

Suspension and removal from office of Regional Councillor

Commission may suspend a Regional Councillor

“122A.(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.

5

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.

10

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.

15

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

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“(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.

25

Regional Council may recommend that action be taken against Regional Councillor

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

30

“(2) The Commission must consider the recommendation.”.

Chairperson and Deputy Chairperson

27. Section 127 of the Principal Act is amended:

- (a) by omitting from subsection (1) “and thereafter at the next meeting held after each anniversary of that first meeting”;

35

(b) by omitting paragraph (1)(b) and substituting the following paragraph:

“(b) a Deputy Chairperson.”;

(c) by inserting in subsection (1A) “or Deputy Chairperson” after “Chairperson”;

(d) by omitting subsection (2);

(e) by omitting paragraph (3)(b) and substituting the following paragraph:

“(b) must elect a new Deputy Chairperson if there is a vacancy in the office of Deputy Chairperson of the Regional Council.”;

(f) by adding at the end the following subsection:

“(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.”.

15 **Suspension and removal from office of Chairpersons**

28. Section 127C of the Principal Act is amended:

(a) by omitting from paragraph (2)(a) “giving” and substituting “given”;

(b) by omitting from subsections (5), (6) and (7) “terminate the Chairperson’s appointment” and substituting “remove the Chairperson from office”;

(c) by omitting from subsection (6) “may” and substituting “must”;

(d) by omitting from subsection (8) “terminates the appointment of the Chairperson” and substituting “removes a person from the office of Chairperson”;

(e) by omitting from subsection (8) “termination” (first occurring) and substituting “removal”;

(f) by omitting from paragraph (8)(b) “his or her appointment has been terminated” and substituting “he or she has been removed from office”;

(g) by omitting from paragraph (8)(c) “termination” and substituting “removal from office”.

Insertion of new sections

29. After section 127D of the Principal Act the following sections are inserted:

Term of office of Deputy Chairperson

“127E.(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, he or she ceases to be the Deputy Chairperson of the Regional Council.

Resignation of Deputy Chairperson

“127F.(1) The Deputy Chairperson of a Regional Council may resign by writing signed by him or her and sent to the Minister. 5

“(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. 10

Suspension and removal from office of Deputy Chairperson

Minister may suspend Deputy Chairperson

“127G.(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. 15

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 20
- (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. 25

Deputy Chairperson must be restored to office if declaration made by both Houses of Parliament 30

“(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. 35

Minister may remove Deputy Chairperson from office if no declaration made

5 “(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 Regional Councillor

10 “(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.

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

15 “(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:

- 20 (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.

Acting appointments

“127H.(1) The Deputy Chairperson of a Regional Council is to act as the Chairperson of the Regional Council:

- 25 (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.

30 “(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.

Alternate Deputy Chairperson

Election of alternate

35 “127J.(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 5
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,
he or she ceases to be the alternate of the Deputy Chairperson. 10

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 15
- (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: 20

- (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: 25
 - (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 30
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 35
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
 - 5 (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.
- 10

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.

15 *Removal of alternate from office*

“(8) The Regional Council may remove the alternate of the Deputy Chairperson from office.

Resignation of alternate

20 “(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.”.

Meetings of Regional Councils

30. Section 128 of the Principal Act is amended by omitting subsection (7) and substituting the following subsection:

- 25 “(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
 - 30 (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;
- 35 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.”.

Regulations

31. Section 201 of the Principal Act is amended by inserting in paragraph (2)(b) “or 127J” after “127”.

5

Application of amendments

32.(1) The amendments made by this Part (other than section 22) do not apply until immediately after the end of the election period for the round of Regional Council elections for 1993.

(2) The amendments made by section 22 apply to the round of Regional Council elections for 1993 and to each later round.

10

PART 6—AMENDMENTS RELATING TO THE TORRES STRAIT REGIONAL COUNCIL

Insertion of new section

33. After section 104 of the Principal Act the following section is inserted:

15

Election for Torres Strait Regional Council deferred from 1993 to 1994

Exemption from 1993 round of elections

“104A.(1) The Torres Strait Regional Council is exempt from the 1993 round of Regional Council elections.

20

Deferral of election until 1994

“(2) Unless the Parliament otherwise provides, the election for the Torres Strait Regional Council that would otherwise have been held in 1993 must be held in 1994.

25

Date of 1994 election

“(3) Unless the Parliament otherwise provides, the polling day or days for the 1994 election for the Torres Strait Regional Council must be not later than the day in 1994 on which the triennial election is held for an Island Council under the Queensland Act.

30

Modification of references to 1993 round of elections

“(4) A reference in a provision of this Act (other than this section), or in a provision of any other law of the Commonwealth, to:

- (a) the end of the election period for the round of Regional Council elections for 1993; or
- (b) the end of the round of Regional Council elections for 1993; has effect, for the purposes of the application of that provision to the Torres Strait Regional Council, as if it were a reference to:
- (c) the end of the election period for the Torres Strait Regional Council election for 1994; or
- (d) the end of the Torres Strait Regional Council election for 1994; as the case requires.

10 *1994 election to be treated as a round in its own right*

“(5) The following provisions apply in relation to the Torres Strait Regional Council election for 1994 as if that election were a round in its own right:

- (a) definition of ‘election period’ in subsection 4(1);
- 15 (b) paragraph 91(7)(b);
- (c) paragraph 100A(5)(b);
- (d) subsection 104(2);
- (e) subsection 130(3);
- (f) paragraph 132(1)(b);
- 20 (g) section 133.

Start of election period for 1994

“(6) Subsection 106(1A) applies in relation to the Torres Strait Regional Council as if a reference in that subsection to the round of Regional Council elections for 1993 were a reference to the Torres Strait Regional Council election for 1994.

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Application of amendments

“(7) Subsections 20(1) and 32(2) of the *Aboriginal and Torres Strait Islander Commission Amendment Act (No. 2) 1993* apply in relation to the Torres Strait Regional Council as if a reference in the subsection to the round of Regional Council elections for 1993 were a reference to the Torres Strait Regional Council election for 1994.

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Zone election

“(8) Division 7 applies in relation to the zone election for the Torres Strait zone that is required to be held as soon as practicable after the Torres Strait Regional Council election for 1994 as if the zone election were a round in its own right.

35

Definition

“(9) In this section:

‘**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.”.

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PART 7—AMENDMENTS RELATING TO THE REMUNERATION AND ALLOWANCES PAYABLE TO CERTAIN OFFICE HOLDERS

Insertion of new section

34. After section 194 of the Principal Act the following section is inserted:

10

Global limit on remuneration and allowances payable to certain office holders

Object

“194A.(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.

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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.

20

Opening remuneration credit

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“(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

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“(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.

35

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.

5 *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.

10 *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:

- 15 (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;

20 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

25 “(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

30 “(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. 5

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. 10
- (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. 15
- (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. 20
- (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 | | | | | | |
|--------|--|---------------------------|--------------------------|-----------------------------------|--|---|
| Date | Event | Rem'n credit \$ | Rem'n debit \$ | Remuneration balance \$ | | Effect on entitlement to remuneration |
| | | | | Start of day | End of day | |
| | | | | 1 Dec | Opening remuneration credit determined | |
| 3 Dec | Meeting of 'A' | | 400 | 1,000 | 600 | Members of 'A' entitled to remuneration |
| 7 Dec | Meeting of 'A' | | 400 | 600 | 200 | Members of 'A' entitled to remuneration |
| 9 Dec | Suppl'y remuneration credit determined | 200 | | 400 | 400 | |
| 12 Dec | Meeting of 'A' | | 400 | 400 | 0 | Members of 'A' entitled to remuneration |
| 15 Dec | Meeting of 'A' | | | 0 | 0 | Members of 'A' not entitled to remuneration |

PART 8—AMENDMENTS RELATING TO THE MEANING OF “MISBEHAVIOUR”

5 **Interpretation**

35. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:

“**‘misbehaviour’** has a meaning affected by section 4A;”.

Insertion of new section

10 36. After section 4 of the Principal Act the following section is inserted:

Minister may make determinations about what constitutes misbehaviour

“4A.(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*.” 5

**PART 9—AMENDMENTS TO SUBSTITUTE A NEW
SCHEDULE 1 (ZONES AND REGIONS)**

Repeal of Schedule and substitution of new Schedule

37. Schedule 1 to the Principal Act is repealed and the following Schedule is substituted: 10

“**SCHEDULE 1** Subsections 91(1) and 130(1)

ZONES AND REGIONS

| <i>Column A</i> <i>Zone</i> | <i>Column B</i> <i>Places included in regions</i> |
|--------------------------------|--|
| New South Wales (East) | Coffs Harbour Tamworth |
| New South Wales (Metropolitan) | Sydney |
| New South Wales (West) | Bourke Wagga Wagga Queanbeyan |
| Northern Territory (North) | Katherine Jabiru Nhulunbuy Darwin |
| Northern Territory (Central) | Alice Springs Tennant Creek Apatula |
| Queensland (Far North West) | Cooktown Mt Isa |
| Queensland (Metropolitan) | Brisbane |
| Queensland (North) | Cairns Townsville |
| Queensland (South) | Roma Rockhampton |
| South Australia | Adelaide Port Augusta Ceduna |
| Tasmania | Hobart |
| Torres Strait | Thursday Island |
| Victoria | Wangaratta Ballarat |
| Western Australia (South West) | Perth Narrogin |

SCHEDULE 1—continued

| <i>Column A Zone</i> | <i>Column B Places included in regions</i> |
|--------------------------------|--|
| Western Australia (North) | Derby Kununurra Broome |
| Western Australia (Central) | South Hedland Geraldton |
| Western Australia (South East) | Kalgoorlie Warburton |

”

Application of amendments

38. Section 24 of the *Aboriginal and Torres Strait Islander Commission Amendment Act 1993* has effect as if the amendments made by this Part had been made by section 23 of that Act.

**PART 10—TRANSITIONAL PROVISIONS RELATING TO THE
REPLACEMENT OF 59 ORIGINAL REGIONAL COUNCILS BY
35 NEW REGIONAL COUNCILS**

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This Part does not apply to Torres Strait Regional Council

39. This Part does not apply to the Torres Strait Regional Council.

Object of Part

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40. The object of this Part is to facilitate the transition from 59 original Regional Councils to 35 new Regional Councils. The *Aboriginal and Torres Strait Islander Commission Amendment Act 1993* provided for a reduction in the number of Regional Councils.

Definitions

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41. In this Part:

“**new Regional Council**” means a Regional Council consisting of members elected in the round of Regional Council elections for 1993 (ignoring any member who fills a casual vacancy);

“**old Regional Council**” means a Regional Council consisting of members elected in the first round of Regional Council elections (ignoring any member who fills a casual vacancy);

20

“**transition time**” means the end of the election period for the round of Regional Council elections for 1993.

Minister may make transitional determinations

42.(1) The Minister may make written determinations containing such provisions as the Minister thinks necessary relating to the transition from the 59 old Regional Councils to the 35 new Regional Councils.

- 5 (2) Without limiting subsection (1), a determination may provide that:
- (a) specified Regional Council estimates for one or more specified old Regional Councils have effect, after the transition time, as if they were a single set of Regional Council estimates for a specified new Regional Council; or
- 10 (b) a specified thing done by or in relation to one or more old Regional Councils has effect, after the transition time, as if it had been done by or in relation to a specified new Regional Council.

(3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

NOTE

1. No. 150, 1989, as amended. For previous amendments, see No. 122, 1991; and No. 26, 1993.

