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Aboriginal and Torres Strait Islander Commission Bill 1989

Date Introduced: 4 May 1989

House: House of Representatives

Presented by: Hon. Gerry Hand, M.P., Minister for Aboriginal Affairs

Digest of Bill

Purpose

To establish the Aboriginal and Torres Strait Islander Commission (ATSIC) as a corporation with responsibilities across the spectrum of Aboriginal and Torres Strait Islander affairs. The Bill will also establish the Aboriginal and Torres Strait Islander Commercial Development Corporation (the Corporation) to undertake commercial activities to advance Aboriginal and Torres Strait Islander participation in commercial enterprises.

Background

On 10 December 1987, in a statement to the House of Representatives entitled 'Foundations for the Future', the Minister for Aboriginal Affairs outlined the Government's proposal to replace the Department of Aboriginal Affairs and the Aboriginal Development Commission with an ATSIC. The Minister proposed establishing 28 Regional Councils, each consisting of one representative from each of the communities and organisations with the region. Each Council would send two representatives to a Zone Council. Six Zone Councils would consider policy proposals brought by Regional Councils and provide policy advice to the Minister and to a 12-person ATSIC. One Commissioner would be nominated by each of the six Zone Councils, one by the Torres Strait Islander community and five, including the chairperson, would be appointed by the Minister. The legislation establishing ATSIC would include a preamble recognising that Aboriginals and Torres Strait Islanders were the original owners of the land. The legislation would also provide for the establishment of an Aboriginal Development Corporation within the framework of the Commission and an Australian Council for Aboriginal Studies.

The proposals met resistance from the Aboriginal Development Commission (ADC). In March 1988, the ADC released a statement opposing the proposals. The ADC viewed ATSIC as increasing Ministerial interference in Aboriginal affairs and increasing the bureaucracy. The ADC continued its campaign against the proposals and on 27 May 1988 the Minister tabled a directive under the *Aboriginal Development Commission Act 1980* that required ADC Commissioners to co-operate in the introduction of ATSIC. The Commissioners refused to co-operate and began legal action seeking a determination that the direction was invalid (the directive was subsequently found to be valid). Subsequently, eight

of the ten ADC Commissioners, who had been appointed on a temporary basis, were dismissed. Following Senate Estimate's Committee allegations of financial mismanagement in the administration of Aboriginal Affairs, the Government in October and November 1988 initiated several inquiries, including an audit of the ADC after disclosures that the ADC spent more than \$2 million on loss-making enterprises, decisions by the ADC on the A.C.T. Woden Town Club, decisions by the ADC to transfer to a local Aboriginal corporation the Oasis Hotel at Walgett N.S.W., and the payment of more than \$835 000 for the Nardoola grazing property at Moree, N.S.W.

In April 1988, the Minister altered the initial ATSIC proposal. The number of proposed regions and Regional Councils was to be around 56. Regional Councils would comprise 20 members elected under a 'one person, one vote' system. There would be no Zone Councils. The number of proposed Commissioners was to be 15, of whom 12 would be elected by a postal ballot of Regional Councillors. Three Commissioners, including the Chairperson, would be appointed by the Minister. There would be an Office of Torres Strait Islander Affairs within ATSIC, a Torres Strait Islander Advisory Board and direct access to the Minister within the budget process for the Torres Strait Islander Council.

On 1 June 1988, the coalition and Australian Democrats combined in the Senate to force the establishment of a Senate Select Committee to review the proposed ATSIC Bill, the consultation undertaken by the Government with respect to ATSIC, the proposal of the ADC for an alternative strategy of Aboriginal self-management, and the dismissal of eight board members of the ADC. This meant that ATSIC, which was to have started on 1 January 1989, could not be established until the middle of 1989. On 24 August 1988, the 'ATSIC Bill 1988' was introduced. The Bill included some further changes to earlier ATSIC proposals, including an alteration to the working of the preamble to make it clear that it would not effect present or future land rights cases, and an increase in the number of Regional Council's from 56 to 60.

In February 1989, the report of the Senate Select Committee was tabled in the Senate. The majority recommendations of the Committee included: that the board of ATSIC should not be able to approve substantial expenditure (grants, loans or guarantees) without an assessment of proposals; electoral boundaries for ATSIC be regularly reviewed; the preamble be put to the Parliament as a separate resolution with the ATSIC Bill; and ATSIC draw up and publish criteria controlling the employment of consultants. The general thrust of the Government's response to the majority recommendations was to accept them. However, the Government did not accept the recommendations that the preamble be put to the Parliament as a separate resolution, and removal of the requirements that the Aboriginal Economic Development Corporation pay dividends and taxation on profits or income generated by the Capital Fund.

Main Provisions

Clause 4 contains the circular definitions of an Aboriginal person as a person of the Aboriginal race of Australia, and of a Torres Strait Islander (Islander) as a descendant of an indigenous inhabitant of the Torres Strait Islands.

Part 2 of the Bill (clauses 6 – 88) establishes ATSIC as a corporation with responsibilities across the spectrum of Aboriginal and Islander affairs. The functions and powers of ATSIC are contained in clauses 7 and 10 and include: to formulate and implement programs for Aborigines and Islanders, develop policy proposals, advise the Minister on matters relating to Aboriginal and Islander affairs, functions conferred on ATSIC by the Prime Minister under clause 8, accept gifts, grants, bequests, gifts of land, and act as trustee of money and other property. ATSIC, with Ministerial approval, may also have such other functions as are conferred on it by a State or Territory law (clause 9).

ATSIC, in consultation with the Minister, is to prepare three, four, or five year corporate plans, which are to define ATSIC's objectives, the strategies and policies that ATSIC intends to adopt to achieve those objectives, and the terms and conditions for engagement of consultants (clause 11).

The Minister may give directions to ATSIC on the performance and exercise of its functions and powers. However, the Minister is not to give directions relating to the content of any advice, information or recommendation that may be given by ATSIC to a Minister, Department, Commonwealth Authority, or their State or Territory counterparts, except in the latter case, if it is for protecting the confidentiality of information given to ATSIC by the Commonwealth (clause 12).

Clauses 14 – 19 provide that ATSIC may grant property interests to Aboriginal or Islander corporations; make grants to such corporations for the purchase of land and such personal property as ATSIC considers appropriate; and make loans or grants to such corporations or Aborigines or Islanders for the erection or purchase of homes, or land on which homes are to be built, for the extension and modification of homes, any purposes incidental to the latter two purposes, purchase of household goods, and repayment of debts associated with homes. In addition ATSIC may make loans and grants to help Aborigines and Islanders engage in business enterprises; make loans or grants to the States, Territories, local government bodies, Aborigines or Islander corporations, or any other corporation; and guarantee loans made to Aborigines, Islanders, or corporations. ATSIC is not to guarantee loans to non – Aboriginal or Islander corporations without Ministerial approval.

ATSIC is not to grant property interests to Aboriginal or Islanders or their corporations, or make loans, grants, or guarantees for Aboriginal or Islander business enterprises, unless they are likely to be commercially successful (clauses 14, 17 and 19).

Where ATSIC gives notice to a person or corporation that they have breached a condition of a loan or grant, they may be liable to repay so much of the amount owing as ATSIC specifies (clause 20).

Aboriginal or Islander corporations which have acquired an interest in land under clauses 14 and 15 (see above) are not to dispose of it without ATSICs permission (clause 21).

ATSIC is to formulate guidelines for the making of loans and granting of guarantees to individuals. The Chief Executive Officer is to ensure that the guidelines are given to each Regional Council, made available to the public, and are published in the *Gazette* (clause 24).

Clauses 26 – 54 provide for ATSIC's constitution, administration, operations and staffing. ATSIC is to consist of a Chairperson and 19 Commissioners appointed by the Minister. The Chairperson and two other Commissioners will be chosen by the Minister. The other 17 Commissioners will be persons elected by the members of Regional Councils to represent the zones (clause 26). Clause 27 provides for an interim membership for a maximum of 12 months. Only Aboriginals and Islanders may be appointed as Commissioners. A person convicted or under sentence for an offence punishable by imprisonment for five years or more will not be qualified to be appointed as a Commissioner (clause 30). The Minister may, subject to Parliamentary review, suspend a Commissioner from office because of misbehaviour, physical, or mental incapacity. The Minister may terminate the appointment of a Commissioner where a Commissioner ceases to be a member of a Regional Council, otherwise than by resigning from a Regional Council, is convicted or under sentence for an offence punishable by imprisonment for five years or more, is absent from duty for extended periods, or fails without reasonable excuse to disclose a pecuniary interest in a matter being considered, or about to be considered, by ATSIC (clause 38). The Minister is to appoint a Chief Executive Officer of ATSIC who will manage the administration of ATSIC (clause 44).

Division 8 of Part 2 of the Bill (clauses 55 – 73) deals with finances. ATSIC is to prepare estimates of receipts and expenditures for each financial year and for any other period specified by the Minister (clause 59), and a draft budget (clause 61). A Housing Fund is to be established (clause 65), as is a Regional Land Fund (clause 66). ATSIC is to be exempt from all Commonwealth, State, and Territory taxes (clause 69). ATSIC will be subject to the *Audit Act 1901*, and the Minister may direct that subsidiary companies of ATSIC be audited (clauses 71 and 72).

An Office of Evaluation and Audit (OEA) will be established by clause 74. The functions of the OEA will include to regularly evaluate and audit the operations of ATSIC and to tell the Minister and ATSIC about problems that have arisen or may arise in relation to the operation of ATSIC or any other body that performs functions or receives money under this Bill (clause 75).

Clauses 78 – 87 provide for consultation in the budget process between the Minister and Islander representatives; for the establishment of an Office of Torres Strait Islander Affairs within ATSIC to monitor programs which affect Islanders; and for the establishment of a Torres Strait Islander Advisory Board to advise the Minister, ATSIC and the Regional Council for the Torres Strait on matters related to the social, economic and cultural advancement of Islanders.

To qualify under this Bill as a Aboriginal or Islander corporation, ATSIC will have to be satisfied that a majority of the members of the corporation are Aboriginals or Islanders and the corporation is controlled by them (clauses 88).

Part 3 of the Bill (clauses 89 – 140) establishes a system of 60 Regions and Regional Councils comprised of elected representatives of Aboriginals and Islanders. The functions and powers of Regional Councils are contained in clauses 92 and 93 and include: to formulate a regional plan for improving the economic, social and cultural status of Aboriginal and Islander residents of a region; to represent the Aboriginals and Islanders of a region and to act as an advocate of their interests; and to pass on the views of Aborigines and Islanders of a region on the activities of ATSIC, Commonwealth bodies, State, Territory, and local government bodies. The Regional Councils will also be required to prepare draft budgets (clause 95).

Clause 99 provides that a person will be entitled to vote at a Regional Council election if they are an Aboriginal or Islander and are on the Commonwealth electoral roll with an address within a region. A person is not qualified to stand for election if the person is not entitled to vote at the election for that region's Council, is a member of the staff of, or a consultant to ATSIC, or is a person convicted or under sentence for an offence punishable by imprisonment for five years or longer (clause 100). Clauses 101 – 110 provide for Regional Council elections to be held between 1 July and 31 December every three years. Voting will not be compulsory and the first election is to be held no later than 8 months after the Bill comes into effect.

Clauses 111 – 126 provide for the constitution, administration, and operations of Regional and Torres Strait Regional Councils. A Regional Council may consist of up to 20 elected members. The Minister may, where there are fewer than seven members of a Regional Council, remove them from office and appoint an Administrator to run the Regional Council's affairs (clause 111). The Minister may remove all the members of a Regional Council from office and appoint an Administrator to run the Regional Council's affairs where 25% of the eligible voters in a region give the Minister a petition calling for the suspension of a Regional Council (clause 119). A Torres Strait Regional Council may be established where the Minister is satisfied it would best be able to represent Islanders and Aboriginals living in the Torres Strait region. A Torres Strait Regional Council will consist of 20 members (clause 112).

Clause 127 divides Australia into 17 zones and clause 128 requires members of the Regional Councils of the regions in a zone to elect one of their number to represent the zone on ATSIC.

Part 4 of the Bill (clauses 141 – 188) deals with the establishment of a Aboriginal and Torres Strait Islander Commercial Development Corporation (the Corporation). The purpose of the Corporation, which will be established by clause 143, is to advance the commercial and economic interests of Aborigines and Islanders by accumulating and using a substantial capital asset for their benefit (clause 142).

The functions and powers of the Corporation are contained in clauses 143, 148, and 149, and include: to engage in commercial activities, enter into contracts, form companies, enter into partnerships, invest the money of the Corporation, and guarantee loans which are to be used to further the commercial or economic development of Aborigines or Islanders. In performing its functions the Corporation is to act in a sound business manner, have regard to encouraging and facilitating Aboriginal and Islander participation in commercial enterprises, and promote the development of commercial activities that are likely to have a significant impact on Aboriginal and Islander interests (clauses 143 – 144). The Corporation is to prepare three, four or five year corporate plans, which are to define the Corporation's objectives and strategies for achieving those objectives (clause 145).

The Corporation's Board of Directors is to consist of a Chairperson, Deputy Chairperson, and seven other members (clause 151). The Directors will be appointed by the Minister on a part – time basis, the Chairperson and at least four other Directors will be Aborigines or Islanders, and at least three of the Directors will be ATSI Commissioners. A Director, who is not a Commissioner, is to be a person whom the Minister is satisfied has experience and expertise in industry, commerce, or finance (clause 153). The Minister may terminate the appointment of a Director because of misbehaviour or physical or mental incapacity (clause 161). A General Manager of the Corporation is to be appointed by the Corporation Board to manage the day – to – day administration of the Corporation (clause 164).

The Corporation's funds will consist of any amount appropriated by Parliament and funds payable under clause 206 (i.e. the capital of the ADC) (clause 175). The Corporation Board is not to approve a proposal for the Corporation to spend money (other than money spent for the day – to – day administration of the Corporation) without first considering an assessment of the proposal that has been prepared by a member of its staff and endorsed by the General Manager (clauses 178). The Treasurer may limit the Corporation's borrowings (clause 179). Clause 182 provides for the payment of annual dividends to the Commonwealth for 1993 – 94 and subsequent financial years. Clause 184 provides that the Minister may direct that subsidiaries of the Corporation be audited. Clause 186 provides that Corporation is to be subject to Commonwealth, State, and Territory taxes.

A person who has been refused a loan under clauses 16 or 17 (see above), or a guarantee under clause 19, may request ATSI to reconsider the matter (clause 192).

Clause 193 provides for review by the Administrative Appeals Tribunal of certain administrative decisions; including, refusing a loan to a person under clauses 16 and 17, refusing to give a guarantee to a person under clause 19, refusing to declare a corporation to be an Aboriginal or Islander corporation, and any decisions prescribed to be reviewable.

Part 6 of the Bill (clauses 200 – 230) provides for the transfer of assets and liabilities from the Department of Aboriginal Affairs and the ADC to the bodies which are replacing them, and repeals and amends relevant Acts.

For further information, if required, contact the Education and Welfare Group.

18 May 1989

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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