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Torres Strait Fisheries Amendment Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 23 2002–03

Torres Strait Fisheries Amendment Bill 2002

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Torres Strait Fisheries Amendment Bill 2002

Date Introduced: 19 June 2002

House: Senate

Portfolio: Agriculture, Fisheries and Forestry

Commencement: The day after Royal Assent

Purpose

To amend the *Torres Strait Fisheries Act 1984* to allow for the appointment of the Chair of the Torres Strait Regional Authority as a full member of the Torres Strait Protected Zone Joint Authority.

Background

The Torres Strait Treaty was entered into by Australia and Papua New Guinea on 15 February 1985. It is concerned with sovereignty and maritime boundaries in the area between the two countries and the protection of the way of life and livelihood of traditional inhabitants and the marine environment. The Treaty also establishes the Torres Strait Protected Zone in which each country exercises sovereign jurisdiction for swimming fish and sedentary species on the respective sides of the agreed jurisdiction lines.¹ The Commonwealth Parliament passed the Torres Strait Fisheries Act in 1984 and it came into force on the same day as the Treaty. The purpose of this Act is to give effect, in Australian law, to the fisheries elements of the Treaty. Significantly, section 8 of the Act specifies that in the administration of the Act, 'regard shall be had to the rights and obligations conferred on Australia by the Torres Strait Treaty and in particular to the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing'.

The Protected Zone Joint Authority (PZJA) is established under the Torres Strait Fisheries Act and is responsible for management of commercial and traditional fishing in the Australian area of the Torres Strait Protected Zone and designated adjacent Torres Strait waters. In this role, the PZJA must have regard to the rights and obligations conferred on Australia by the Torres Strait Treaty, in particular the protection of the traditional way of life and livelihood of the traditional inhabitants, including their traditional fishing.²

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Currently, the PZJA is made up of the Commonwealth Minister for Forestry and Conservation, acting as Chair, and the Queensland Minister for Primary Industries and Rural Communities. The Chair of the Torres Strait Regional Authority (TSRA), Mr Terry Waia, has been representing Torres Strait Islander interests at recent meetings, although this has been in an advisory capacity rather than as a full member.³

The Bill will change this arrangement and will allow the Chairman of the TSRA to become a full member of PZJA. The TSRA is a Commonwealth statutory authority established in 1994 under the *Aboriginal and Torres Strait Islander Commission Act 1989*. TSRA has functions akin to ATSIC in discharging its responsibilities for indigenous people living in the Torres Strait area. Its stated objectives are to: 'strengthen the economic, social and cultural development of the Torres Strait to improve the lifestyle and wellbeing of the Torres Strait Islanders and Aboriginal people living in the region'⁴.

Main Provisions

Schedule 1 of the Bill proposes amendments to the *Torres Strait Fisheries Act 1984* (the Act).

Items 1 and 2 insert relevant definitions into subsection 28(1) of the Torres Strait Fisheries Act. The Chairperson of the Torres Strait Regional Authority (TSRA) is defined as either:

- the person holding that office according to section 143L of the *Aboriginal and Torres Strait Islander Commission Act 1989*, or
- the person acting as Chairperson of the TSRA.

The acronym TSRA is defined as the Torres Strait Regional Authority established by section 142 of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

Section 30 of the Act sets out the membership and functions of the Protected Zone Joint Authority. **Item 3** repeals and replaces subsection 30(2) in order to reflect the proposed membership change of the Authority. Under **proposed subsection 30(2)** the Authority is to consist of the Commonwealth Minister, the Queensland Minister and the Chairperson of the TSRA.

Item 4 inserts **proposed subsection 30(5A)** through to **proposed subsection 30(5D)**. **Proposed subsection 30(5A)** gives the Chairperson of the TSRA the power to formally appoint by writing a deputy or deputies to represent him at PZJA meetings. This power is identical to that provided to the other PZJA members (subsections 30(4) and 30(5)).

Proposed subsections 30(5B) and (5C) attempt to clarify the status of deputies when acting as Chairperson. A deputy who is acting Chairperson can not perform the duties of a

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deputy, however he or she may appoint a deputy providing such an appointment is only for the period of acting.

Proposed subsection 30(5D) provides that instruments appointing deputies may specify the conditions as to when a particular person/s appointed are to perform the duties of the deputy.

Section 40 of the Act deals with the procedure for PZJA meetings. **Item 5** repeals and replaces paragraphs 40(1)(a), (b) and (c) to set out who will preside over meetings of the PZJA under the new arrangements. If the Commonwealth Minister is present—he or she is to preside; if the Commonwealth Minister is not present then responsibility will pass first to the Queensland Minister, then to the Chairperson of the TSRA and finally the deputy of the Commonwealth Minister (**proposed paragraphs 40(1)(a)-d**).

Items 6-9 make minor consequential amendments to section 40 to reflect the new membership of the PZJA.

Note: There appears to be a typing error in the Explanatory Memorandum in relation to Schedule 1. It refers to all item or clause numbers as clause 1.

Concluding Comments

Over the past 18 months indigenous groups have expressed increasing concern about the depletion of the dwindling sea resources in the Torres Strait with calls for an end to non-indigenous fishing in the region.⁵ TSRA chairperson Terry Waia has played an active role in representing indigenous interests, calling for a review of the Torres Strait Fisheries Act⁶ and participating in negotiations between interested groups to change the current arrangements regarding the crayfish industry in the sea.⁷ Presumably the Bill will assist in facilitating further dialogue between the TSRA, and the Commonwealth and Queensland Governments about these matters.

While the stated purpose of the Bill is to give full membership status to the Chairperson of the TSRA, it is of note that the Minister in his second reading speech, emphasised that the Chair of the PZJA, (ie the Commonwealth Minister), will retain certain select roles and responsibilities that will be distinct from the other two members. The Minister goes on:

as the joint authority is established by an arrangement entered into by the Commonwealth and Queensland Governments, the TSRA Chairperson will not be empowered by the Act to terminate the PZJA arrangement.⁸

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Endnotes

- 1 Torres Strait Protected Zone Joint Authority, *Annual report 1999-00*, p. 1.
- 2 *ibid.*, p. 4.
- 3 Joint Statement by the Federal Minister for Forestry and Conservation, and Minister responsible for Commonwealth Fisheries, Wilson Tuckey Queensland Minister for Primary Industries and Rural Communities, Henry Palaszczuk, 3 October 2001:
http://www.affa.gov.au/ministers/tuckey/releases/01/01_61tu.html
- 4 Torres Strait Regional Authority, *Facts about the TSRA*:
<http://www.tsra.gov.au/AboutTSRA.htm>
- 5 'Rising tide of fear leads Torres fishermen to take up arms', *Sydney Morning Herald*, 12 March 2002; 'Straits of strife', *Courier Mail*, 31 March 2001.
- 6 Torres Strait Regional Authority, *TSRA urges Fisheries Ministers to visit Torres Strait to address fisheries issues*, Press release, 28 March 2001:
<http://www.tsra.gov.au/PR%20Fisheries%20Issues.pdf>
- 7 Joint Statement, Torres Strait Regional Authority, Australian Fisheries Management Authority, Torres Strait Fisheries Taskforce, *Torres Strait Cray Industry to be protected*, 9 October 2001:
<http://www.tsra.gov.au/PR%20Fisheries%20Joint%20Statement.pdf>
- 8 Senate, *Parliamentary Debates (Hansard)*, 19 June 2002, p. 2099.

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