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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aboriginal Affairs
the Honourable Gerry Hand, MP)

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ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1989
OUTLINE AND FINANCIAL IMPACT STATEMENT

The purpose of this Bill is to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies which affect them.

The central proposal that would be implemented by the Bill is the establishment of the Aboriginal and Torres Strait Islander Commission ('the Commission') by Part II of the Bill. The Commission would be established as a body corporate with responsibilities across the whole spectrum of Aboriginal and Torres Strait Islander affairs. The twenty Commissioners comprising the Commission would all be Aboriginal and Torres Strait Islander people, of whom 17 would be the elected representatives of the Aboriginal and Torres Strait Islander community. Special provision would be made to protect the position of the Torres Strait Islander people. The Commission would supersede the Department of Aboriginal Affairs and the Aboriginal Development Commission.

Part 3 of the Bill would also establish a system of Regional Councils which would comprise elected representatives of Aboriginal persons and Torres Strait Islanders. The Regional Councils would determine priorities and propose programs for their regions. They would also provide policy recommendations and advice to the Commission. The elected Commissioners would be elected from amongst the Regional Councillors.

Part 4 of the Bill would establish the Aboriginal and Torres Strait Islander Commercial Development Corporation (' the Corporation') which would have Commission representation on its Board of Directors. The Corporation would undertake commercial activities, and provide assistance for the economic development of the Aboriginal and Torres Strait Islander people through the accumulation and utilisation of a substantial capital asset for those people.

The Bill would also provide for Aboriginal Hostels Limited, a Commonwealth controlled company, to be staffed under the Public Service Act 1922. The company would otherwise be unaffected by the Bill.

The Bill would provide in Part 6 for the transfer of assets and liabilities between the Commission and the Corporation and the bodies which they would replace - the Department of Aboriginal Affairs and the Aboriginal Development Commission.

It is estimated that the costs directly attributed to this Bill will total in the order of $6 million. This includes the cost of extra statutory office-holders, costs of Board meetings and regional council meetings, and election costs.

Offsetting these direct costs will be significant savings from the amalgamation of the portfolio agencies and the consequent reduction in staff numbers. These savings will range between $6m and $15m depending on the long term staffing level approved for the Commission.

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1989

PART 1 - PRELIMINARY

CLAUSE 1 : SHORT TITLE

This clause would provide that the Act may be cited as the Aboriginal and Torres Strait Islander Commission Act 1989.

CLAUSE 2 : COMMENCEMENT

This clause would provide that the Bill will commence 6 months after the day on which the Bill receives the Royal Assent, or on a date proclaimed, if earlier.

CLAUSE 3 : OBJECTS

Clause 3 would set out the objects of the Bill as being in recognition of the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples, and their present disadvantaged position in Australian society:

(a) to ensure the maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them;

(b) to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;

(c) to further the economic, social and cultural development of Aboriginal persons and Torres Strait Islanders; and

(d) to ensure co-ordination in the formulation and implementation of policies affecting Aboriginal persons and Torres Strait Islanders by the Commonwealth, State,

Territory and local governments, without detracting from the responsibilities of State, Territory and local governments to provide services to their Aboriginal and Torres Strait Islander residents.

CLAUSE 4 : INTERPRETATION

Clause 4(1) would define a number of terms and expressions for the purposes of the Act.

Clause 4(2) would provide that the question of whether a company is a subsidiary of the Commission or the Corporation must be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the Companies Act 1981. This question is relevant to the clauses that deal with the audit of subsidiaries of the Commission and the Corporation; clauses 72, 184 and 194.

CLAUSE 5 : ACT BINDS THE CROWN

Clause 5(1) would provide that the Bill binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

Clause 5(2) would provide that nothing in the Bill renders the Crown in any of the capacities referred to in clause 5(1) liable to be prosecuted for an offence.

PART 2 - ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

DIVISION 1 - ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

CLAUSE 6 : ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

Clause 6(1) would establish the Commission.

Clause 6(2) would provide that the Commission:

(a) is a body corporate, with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name.

The common seal of the Commission would have to be kept as directed by the Commission, and used as authorised by the Commission; see clause 6(3). Clause 6(4) would require all courts, judges and persons acting judicially to take judicial notice of the imprint of the common seal of the Commission appearing on a document, and to presume that the seal was duly affixed.

DIVISION 2 - FUNCTIONS OF COMMISSION

CLAUSE 7 : FUNCTIONS OF COMMISSION

Clause 7 (1) would provide that the Commission has the following functions:

(a) to formulate and implement programs for Aboriginal persons and Torres Strait Islanders;

(b) to monitor the effectiveness of programs for Aboriginal persons and Torres Strait Islanders, including programs conducted by bodies other than the Commission;

(c) to develop policy proposals to meet national, State, Territory and regional needs and priorities of Aboriginal persons and Torres Strait Islanders;

(d) to assist, advise and co-operate with Aboriginal and Torres Strait Islander communities, organisations and

individuals at national, State, Territory and regional levels;

(e) to establish, where desirable, consultative arrangements with the Aboriginal people or the Torres Strait Islander people in addition to those that would be dealt with in the Bill;

(f) to advise the Minister on:

(i) matters relating to Aboriginal and Torres Strait Islander affairs, including the administration of legislation; and

(ii) the co-ordination of the activities of other Commonwealth bodies that affect Aboriginal persons or Torres Strait Islanders;

(g) when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister (including information about the Commission's expenditure);

(h) to take such reasonable action as it thinks necessary to protect Aboriginal and Torres Strait Islander cultural material and information, being material or information that is considered sacred or otherwise significant by Aboriginal persons or Torres Strait Islanders;

(j) without derogating from the functions or powers of the Australian Bureau of Statistics and without infringing the privacy of any individual, to collect and publish statistical information relating to Aboriginal persons and Torres Strait Islanders.

(k) such other functions as are conferred on the Commission by the Bill or any Act;

(m) such other functions as are conferred on the Commission by the Prime Minister by notices in force under clause 8;

(n) such other functions as are expressly conferred on the Commission by a law of a State or of the Northern Territory, the Australian Capital Territory or the Jervis Bay Territory and in respect of which there is in force written approval by the Minister under clause 9;

(o) to undertake such research as is necessary to enable it to perform any of its other functions;

(p) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

The information that the Minister could require under clause 7(1)(g) would include, but not be limited to information about the Commission's expenditure. Directions could not be given by the Minister in relation to the content of such information: see clause 7(3).

CLAUSE 8 : PRIME MINISTER MAY CONFER FUNCTIONS ON COMMISSION

Clause 8 would empower the Prime Minister to confer on the Commission, for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders, a function which has previously been performed by a Commonwealth Department. Functions would be conferred by notice published in the Gazette.

CLAUSE 9 : MINISTER MAY APPROVE PERFORMANCE OF FUNCTIONS UNDER STATE OR TERRITORY LAWS

Clause 9 would empower the Minister to approve, in writing, the performance by the Commission of a function expressly conferred on the Commission by a law of a State, or of the Northern

Territory, the Australian Capital Territory or of the Jervis Bay Territory. Where such a notice is in force in respect of a function, that function would be one of the functions of the Commission (see clause 7(n)), and the Commission would have power to perform that function (see clause 10).

CLAUSE 10 : POWERS OF COMMISSION

Clause 10(1) would provide that the Commission has power to do everything necessary or convenient to be done for or in connection with the performance of its functions.

Clause 10(2) would set out some of the powers that the Commission would have by virtue of clause 10(1), namely:

(a) to negotiate and co-operate with other Commonwealth bodies and with State, Territory and local government bodies;

(b) to enter into an agreement for the payment of a grant to a State, or the Northern Territory under clause 18;

(c) to enter into an agreement with a State or Territory, other than an agreement referred to in clause 10(2)(b); (these agreements could only be entered into with the written approval of the Minister (clause 10(3));

(d) to accept gifts, grants, bequests and devises made to it; and

(e) to act as trustee of money and other property vested in it on trust.

Clause 10(4) would provide that despite anything in the Bill, any money or other property that is held by the Commission on trust must be dealt with in accordance with the powers and duties of the Commission as trustee.

Clause 10(5) would provide that the powers of the Commission may be exercised within or outside Australia.

CLAUSE 11 : CORPORATE PLAN

Clause 11 would require the Commission to prepare, in consultation with the Minister, a corporate plan which would have to set out:

(a) a statement of the Commission's objectives;

(b) the strategies and policies that the Commission intends to adopt to achieve those objectives; and

(c) the criteria and the standard terms and conditions for the engagement of consultants by the Commission (see clause 54).

The corporate plan would have to be for a period of between three and five years, and the Commission would have to review its plan regularly in consultation with the Minister.

The corporate plan would have to be given to each Regional Council, and be available for inspection and purchase by the public at every office of the Commission. Notification of the publication of the corporate plan would be published in the Gazette.

CLAUSE 12 : DIRECTIONS BY MINISTER

Clause 12(1) would require the Commission to perform its functions and exercise its powers in accordance with such general directions as are given to it by the Minister in writing. By virtue of clause 12(2) the Minister would not be able to give directions to the Commission relating to the content of any advice, information or recommendation that may be given by the Commission to a Minister, Department or authority of the Commonwealth.

Clause 12(3) would also prevent the Minister from giving directions to the Commission relating to the content of any advice, information or recommendation that may be given by the Commission to a Minister, Department or authority of a State or a Territory, except for the purpose of protecting the confidentiality of information which has been given to the Commission by the Commonwealth or a Commonwealth authority.

The Minister would not be able to give directions under clause 12(1) as to any particular case.

Clause 12(4) would require the Minister to cause a copy of any direction given under clause 12(1) to be laid before each House of the Parliament within 15 sitting days of that House after the direction was given.

Clause 12(5) would prohibit the disclosure in a copy of a direction laid before the Parliament, of any matters which the Minister knows to be held sacred by Aboriginal persons or Torres Strait Islanders or by any particular community or group of Aboriginal persons or Torres Strait Islanders.

CLAUSE 13 : ADVISORY COMMITTEES

Clause 13(1) would empower the Commission to establish advisory committees to advise the Commission in relation to the performance of the Commission's functions.

By virtue of clause 13(2) a member of an advisory committee would be entitled to remuneration and allowances in accordance with clause 191.

CLAUSE 14 : GRANTS OF INTERESTS IN PROPERTY

Clause 14 would deal with the grant by the Commission of property Interests. 'Property interests' would be defined for the purposes of this clause in clause 14(4) as:

(a) an interest acquired by the Commission by agreement under clause 14(3);

(b) an interest in land or personal property transferred from the Aboriginal Development Commission to the Commission by virtue of the operation of Part 6 of the Bill; or

(c) any interest derived from such interests.

Clause 14(1) would empower the Commission to grant property interests on such terms and conditions as it determines to Aboriginal or Torres Strait Islander corporations. (See clauses 88 and 203 for the meaning of 'Aboriginal and Torres Strait Islander corporation'.)

Clause 14(2) would make it clear that no payment would be due to the Commission in respect of a grant made under clause 13(1).

Clause 14(3) would empower the Commission to acquire, by agreement, any interests in land or personal property for the purpose of making grants under clause 14.

By virtue of clause 14(4), property acquired under clause 14(3) for the purpose of making a grant in connection with a business enterprise could only be granted for that, and for no other purpose.

Clause 14(4)(b) would provide that property acquired under clause 14(3) for the purpose of granting that property to an Aboriginal or Torres Strait Islander corporation to enable or assist Aboriginal persons or Torres Strait Islanders to engage in business enterprises could only be so granted if the Commission is satisfied that, taking account of the particular circumstances of the enterprise, the enterprise is likely to become, or continue to be, commercially successful. The Commission would also have to take into account the employment and training implications of the enterprise when deciding whether or not to so grant property. However, if an enterprise is not likely to

become or remain commercially successful, no grant of property could be made, whatever the employment or training implications of the enterprise may be.

CLAUSE 15 : GRANTS FOR ACQUISITION OF PROPERTY

This clause would empower the Commission to make grants of money, on such terms and conditions as it determines, to Aboriginal or Torres Strait Islander corporations so that those corporations may use the money to acquire interests in:

(a) land; or

(b) both land and such personal property as the Commission considers appropriate.

It is intended that the personal property referred to in clause 15(b) would be personal property related to a non-residential use of the land, or a proposed non-residential use of the land, which is the subject of the same grant, and would not include household effects.

CLAUSE 16 : HOUSING LOANS AND GRANTS

Clause 16(1) would empower the Commission to make, on such terms and conditions as it determines, loans to Aboriginal persons and Torres Strait Islanders for the following purposes:

(a) the erection or purchase of dwellings or the purchase of land on which dwellings are to be erected or situated;

(b) the extension or modification of, or the making of additions to, dwellings;

(c) any purpose incidental to the purposes in paragraphs (a) and (b);

(d) the purchase of household effects;

(e) the repayment of existing debts incurred for any of the purposes in paragraphs (a), (b), (c) or (d).

Clause 16(2) would empower the Commission to make, on such terms and conditions as it determines, loans or grants to Aboriginal or Torres Strait Islander corporations so that those corporations may provide housing for Aboriginal persons or Torres Strait Islanders.

Clause 16(3) would empower the Commission to make payments for the purpose of enabling Aboriginal persons and Torres Strait Islanders to obtain loans, for any or all of the purposes referred to in clause 16(1), from lenders operating on a commercial basis.

Clause 16(4) would have the effect that:

- a loan may be made under clause 16(1);
- a loan or grant may be made under clause 16(2); or
- payments may be made under clause 16(3)

to or in respect of an Aboriginal person or a Torres Strait Islander jointly with his or her spouse, even though the spouse is not also an Aboriginal person or a Torres Strait Islander.

CLAUSE 17 : ENTERPRISE GRANTS AND LOANS

Clause 17(1) would provide that to enable or assist Aboriginal persons and Torres Strait Islanders to engage in business enterprises, the Commission may:

(a) make loans to Aboriginal persons and Torres Strait Islanders, and to Aboriginal or Torres Strait Islander corporations, on such terms and conditions as are determined by the Commission;

(b) subscribe for, or otherwise acquire, shares or stock in the capital of a company;

(c) make grants of money to Aboriginal or Torres Strait Islander corporations on such terms and conditions as are determined by the Commission; and

(d) make payments in respect of the investigation or supervision of, or the provision of accounting services, management advice or technical assistance for or in relation to, a commercial enterprise in connection with which:

(i) moneys have been or may be applied in accordance with clause 17(1)(a), (b) or (c);

(ii) property has been or may be acquired or otherwise dealt with pursuant to clause 14 or acquired pursuant to a grant under clause 15; or

(iii) a guarantee has been or may be given under clause 19.

Clause 17(2) makes it clear that the Commission may make loans under clause 17(1) for, amongst other things, funding the purchase from the Commission of shares or stock in a company.

Before making a loan, grant or payment or subscribing for or acquiring shares etc, under this clause, the Commission would have to be satisfied that, taking into account the particular circumstances of the enterprise, the enterprise is likely to become, or continue to be commercially successful. The Commission would also have to take into account the employment and training implications of an enterprise when deciding whether or not to exercise its powers under clause 17(1). However, if an enterprise is not likely to become or continue to be commercially successful no loan or grant etc, may be made, no matter what the employment or training implications of the enterprise may be. (See clause 17(3) and (4).)

CLAUSE 18 : LOANS OR GRANTS FOR SPECIFIC PURPOSES

Clause 18(1) would enable the Commission to make loans or grants of money, on such terms and conditions as it determines, to:

(a) the States;

(b) State, Territory and local government bodies;

(c) Aboriginal or Torres Strait Islander corporations; or

(d) any other incorporated bodies;

for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.

Clause 18(2) would prevent the Commission from making a loan or grant under clause 18(1) if the Commission could make the loan or grant under clauses 15, 16 or 17, as the case may be, and the Minister's prior written consent would be required for a loan or grant to a body under clause 18(1)(d). (See clause 18(3).)

CLAUSE 19 : GUARANTEES

Clause 19(1) would enable the Commission to guarantee the payment of moneys under a loan made or to be made to:

(a) an Aboriginal person or Torres Strait Islander;

(b) an Aboriginal or Torres Strait Islander corporation; or

(c) any other incorporated body;

if the loan is of a kind which the Commission could, in the performance of its functions, make to that borrower.

A guarantee could only be given under clause 19(1)(c) with the prior written consent of the Minister: clause 19(4).

Clause 19(2) would provide that clause 19 is subject to such limits as the Treasurer determines as to the total amount of money (other than interest) the payment of which may be the subject of guarantees under the clause.

Such guarantees could be given in respect of loans under clause 16(1) to Aboriginal persons or Torres Strait Islanders jointly with their spouses, even though the spouse may not be an Aboriginal person or a Torres Strait Islander.

Before making a guarantee under this clause in respect of a loan to assist Aboriginal persons or Torres Strait Islanders to engage in business enterprises the Commission would have to be satisfied that, taking into account the particular circumstances of the enterprise whose loan it is proposed should be guaranteed, the enterprise is likely to become, or continue to be commercially successful. The Commission would also have to take into account the employment and training implications of an enterprise when deciding whether or not to make such a guarantee. However, if an enterprise is not likely to become or continue to be commercially successful no loan to that enterprise could be guaranteed, no matter what the employment or training implications of the enterprise may be.

CLAUSE 20 : GRANTS AND LOANS TO BE REPAYABLE WHERE CONDITIONS BREACHED

Clause 20 would provide a means by which a person or body could be made liable to repay to the Commission an amount equal to the amount of a grant, or the outstanding balance of a loan (including interest) made by the Commission, or such part of that amount as the Commission determines, if the Commission is satisfied that the person or body has failed to fulfil a term or condition of the grant or loan.

CLAUSE 21 : RESTRICTION ON RIGHT TO DISPOSE OF PROPERTY

This clause would prevent the proposed disposal by a body of:

- an interest in land acquired under clause 14(1); or
- an interest in land acquired as a result of a grant under clause 15;

from taking effect unless the Commission has consented in writing to the disposal.

The clause would impose the same restriction on the disposal of interests in land, or in shares or stock in the capital of a company acquired by a body under section 27 of the Aboriginal Development Commission Act 1980, or as a result of a grant under section 23 of that Act. The restrictions would reflect those imposed by section 31 of the Aboriginal Development Commission Act 1980.

CLAUSE 22 : LOANS, GRANTS, ACQUISITIONS AND GUARANTEES NOT TO BE APPROVED WITHOUT WRITTEN ASSESSMENT

This clause would prohibit the Commission from approving a loan, grant, acquisition or guarantee under this Division without first considering a written assessment of the proposal to make the loan, grant or acquisition or to give the guarantee that has been:

(a) prepared by a member of the staff of the Commission; and

(b) endorsed by the Chief Executive Officer.

CLAUSE 23 : LOAN, GRANT AND GUARANTEE DOCUMENTS TO SHOW LEGISLATIVE AUTHORITY ETC.

This clause would require the Commission, when it approves a loan, grant or guarantee under this Division, to ensure that its

own records, and any documents that it issues in relation to that approval of that loan, grant or guarantee, set out:

(a) the provision of Division 2 of Part 2 of the Bill that authorises the making of the loan or grant or the giving of the guarantee; and

(b) which of the Commission's objectives, as set out in the corporate plan (see clause 11) , will be furthered by the making of the loan or grant or the giving of the guarantee.

This would require that the relevant section, subsection or paragraph authorising the loan etc., be identified.

CLAUSE 24 : GUIDELINES

This clause would require the Commission to formulate written guidelines, which would have to be consistent with the Bill, about the making of loans and the giving of guarantees under clauses 16, 17 and 19 in respect of individuals. The Commission would be able to revise the guidelines from time to time, and would be required to perform its functions and exercise its powers under clauses 16, 17 and 19 in respect of individuals in accordance with the guidelines.

Copies of the guidelines would have to be given to each Regional Council and made available to the public at the Commission's offices.

Notice of the making of the guidelines would have to be published in the Gazette.

CLAUSE 25 : REVIEW OF OPERATION OF ACT

Clause 25 would require the Commission to report, with any suggestions for legislative amendment, to the Minister within 2

years of the appointment of the first elected Commissioner on the following matters:

- any problems caused by the Commissioners having both executive and representative responsibilities;

- the operation of the provisions of the Bill and rules under the Bill dealing with elections; and in particular whether different methods of choosing Regional Councils may better serve the objects of the Bill having regard to the circumstances of different regions;

- any other problems related to the operation of the legislation;

The Minister would have to have copies of the report tabled in each House of the Parliament within fifteen sitting days of its receipt.

DIVISION 3 - CONSTITUTION OF COMMISSION

CLAUSE 26 : CONSTITUTION OF COMMISSION

Clause 21 would deal with the constitution of the Commission after the first year. The clause would provide that the Commission would consist of a Chairperson and 19 other Commissioners. The Chairperson and two of the other Commissioners would be chosen by the Minister. The other 17 Commissioners would be the persons elected by the members of Regional Councils to represent zones under Division 7 of Part 3 of the Bill.

CLAUSE 27 : CONSTITUTION OF COMMISSION IN FIRST YEAR

This clause would deal with the constitution of the Commission during its first year. During the period starting at the commencement of the Bill and ending on the day specified by the Minister for this purpose, which would have to be within 12

months of the commencement, the Commission would comprise a Chairperson, and four other members who would be appointed by the Minister.

The Chairperson could hold office for up to three years, but the Deputy Chairperson and the three other Commissioners appointed by the Minister would hold office for the period of up to twelve months referred to above.

CLAUSE 28 : VALIDATION OF APPOINTMENTS

Clause 28 would provide that the appointment of a Commissioner is not invalidated by reason of a defect or irregularity in his or her appointment.

CLAUSE 29 : BASIS OF HOLDING OFFICE

By virtue of this clause, the Chairperson of the Commission and the other two Commissioners who are chosen by the Minister under clause 26(2) could be appointed on either a full-time or a part-time basis. The first elected Commissioners (see clause 26(3)) would have to be appointed on a part-time basis (clause 29(2)). Generally speaking, so would all subsequent elected Commissioners unless the Minister is satisfied that it is necessary for the efficient performance of the Commission's functions that they be appointed on a full-time basis.

Special provision would be made for the Deputy Chairperson. The first Deputy Chairperson would have to be appointed on a part-time basis. After that, if the Commission so requests, the Minister would be able to direct that a Commissioner elected under clause 31 to be Deputy Chairperson who has been appointed on a part-time basis, shall be taken to have been appointed on a full-time basis. If such a Commissioner later ceases to be the Deputy Chairperson, he or she would revert to a part-time basis. (Unless, of course, he or she has been appointed by the Minister on a full-time basis under clause 29(1) or (4), as the case may be.) See clause 29(5), (6) and (9).

CLAUSE 30 : QUALIFICATIONS FOR APPOINTMENT AS COMMISSIONER

Clause 30(1) would have the effect that only Aboriginal persons and Torres Strait Islanders could be appointed as Commissioners.

By virtue of clause 30(2) a person could not be appointed as a Commissioner if the person has been convicted of, and is under sentence for, an offence punishable under the law of the Commonwealth or of a State or Territory by imprisonment for 5 years or longer.

CLAUSE 31 : DEPUTY CHAIRPERSON OF COMMISSION

Under this clause the Commissioners would have to elect one of their number to be Deputy Chairperson at the first meeting of the Commission held after the first elected Commissioners are appointed. A Deputy Chairperson would also have to be elected when a Deputy Chairperson's term of office expires, or when there is, for any other reason, a vacancy in the office of Deputy Chairperson. A Deputy Chairperson would hold office as such until the first meeting after the anniversary of his or her election to that office, or until he or she ceases to be a Commissioner, whichever first occurs.

A Deputy Chairperson could not be re-elected as Deputy Chairperson until after the next round of zone elections (other than elections for casual vacancies) held after the person stops being Deputy Chairperson.

DIVISION 4 - ADMINISTRATIVE PROVISIONS

CLAUSE 32 : PERIOD OF APPOINTMENT

By virtue of clause 32(1) the Chairperson, and the two other Commissioners chosen by the Minister would hold office for such period of 2 years or more, but not exceeding 3 years, as is specified in, or as may be worked out from, their instrument of appointment. This provision would make it possible for the Chairperson and the two other Commissioners chosen by the

Minister to be appointed either for fixed periods, or for periods that would reflect the periods for which the other 17 Commissioners would hold office.

Clause 32(2) would provide that a Commissioner elected to represent a zone holds office until another person is appointed as a Commissioner after having been elected to represent that zone.

CLAUSE 33 : REMUNERATION AND ALLOWANCES

Clause 33 would provide that a Commissioner would be entitled to remuneration and allowances in accordance with clause 191.

CLAUSE 34 : LEAVE OF ABSENCE

Clause 34(1) would empower the Minister to grant to a Commissioner leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

Clause 34(2) would provide that the maximum continuous period of leave of absence which could be granted to Commissioners under this clause is 6 months, unless longer leave is required or expressly permitted by any other Commonwealth law.

Clause 34(3) would empower the Minister to delegate to the Commission Chairperson the power to grant leave of absence to the other Commissioners.

CLAUSE 35 : ACTING APPOINTMENTS

By virtue of clause 35(1), the Deputy Chairperson of the Commission would act as the Commission Chairperson:

(a) during a vacancy in the office of Commission Chairperson, whether or not an appointment had previously been made to that office; or

(b) during any period, or during all periods, when the Commission Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Clause 35(2) would empower the Minister to appoint a person to act in the office of a Commissioner chosen by the Minister (other than the Commission Chairperson):

(a) during a vacancy in that office, whether or not an appointment had previously been made to the office; or

(b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Clause 35(3) would prevent a person appointed to act during a vacancy from continuing so to act for more than 6 months.

Clause 35(4) would enable the Minister to appoint a person to act for up to 6 months in the office of an elected Commissioner during any period, or during all periods, when the elected Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of office. Such a person could not be immediately re-appointed to act in the same office.

Clause 35(5) would have the effect that the Minister could only appoint or re-appoint a person to act in the office of a Commissioner if that person is qualified under clause 23 to be appointed as a Commissioner.

Clause 35(6) would ensure that if a person is appointed to act in the office of the Commissioner who is also the Deputy Chairperson, the person would not be able to act as Deputy Chairperson because of that appointment.

Clause 35(7) would provide that anything done by or in relation to a person purporting to act pursuant to an appointment made under that clause would not be invalid merely because:

(a) the occasion for the appointment had not arisen;

(b) there was a defect or irregularity in connection with the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

CLAUSE 36 : DISCLOSURE OF INTERESTS

Clause 36(1) would require a Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, as soon as possible after the relevant facts have come to the Commissioner's knowledge, to disclose the nature of the interest at meeting of the Commission.

By virtue of clause 36(2), a disclosure made under clause 29(1) would have to be recorded in the minutes of the meeting of the Commission and the Commissioner would then not be able:

(a) to be present during any deliberation of the Commission with respect to that matter; or

(b) to take part in any decision of the Commission with respect to that matter.

CLAUSE 37 : RESIGNATION

Clause 37(1) would provide that a Commissioner could resign by writing signed by him or her and sent to the Minister.

Clause 37(2) would provide that an elected Commissioner shall be taken to have resigned if:

(a) the Commissioner resigns from the Regional Council of which he or she was a member when elected to represent the zone; or

(b) under clause 117, the Commissioner is to be taken to have resigned from that Regional Council.

CLAUSE 38 : TERMINATION OF APPOINTMENT

Clause 38(1) would provide that after the Minister has consulted the Commission on the matter, the Minister could suspend a Commissioner from office because of the Commissioner's misbehaviour or physical or mental incapacity. By virtue of clause 38(2), the Minister would then be required to cause a statement identifying the Commissioner and setting out the ground of the suspension to be laid before each House of Parliament within 7 sitting days of that House after the suspension.

Where such a statement is laid before a House of the Parliament, that House, within 15 sitting days of that House after the day on which the statement has been laid before it, would be able, by virtue of clause 38(3), by resolution, to declare that the Commissioner ought to be restored to office. If each House so resolves, the Minister would have to terminate the suspension. If, however, either of the Houses of Parliament does not pass such a resolution within the 15 sitting day period, the Minister would be able to terminate the appointment of the Commissioner. (See clause 38(4).)

Clause 38(5) would provide that if an elected Commissioner ceased to be a member of a Regional Council otherwise than by resigning from the Regional Council, the Minister would be able to terminate the appointment of the Commissioner.

Clause 38(6) would require the Minister to terminate the appointment of a Commissioner if that Commissioner:

(a) is convicted and is under sentence for an offence punishable under the law of the Commonwealth or of a State or Territory by imprisonment for 5 years or longer;

(b) is a full-time Commissioner and is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months;

(c) is a part-time Commissioner, and is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Commission; or

(d) fails, without reasonable excuse, to comply with clause 36(1) or (2), which relate to the disclosure of interests.

Clause 38(7) would provide that if a Commissioner votes in favour of or knowingly participates in a contravention of:

(a) a direction lawfully given to the Commission, by the Minister under clause 12(1);

(b) a direction as to the financial administration of the Commission lawfully given to the Commission by the Minister under clause 73; or

(c) a direction lawfully given to the Commission by the Minister under any other provision of the Bill;

the Commissioner will be regarded as having been guilty of misbehaviour for the purposes of clause 38. The Commissioner could then be suspended from office (clause 38(1)), and could possibly have his or her appointment as Commissioner terminated (clause 38(4)).

A person whose appointment as a Commissioner has been terminated for misbehaviour would be ineligible to stand for election as a Commissioner at the next round of elections: Clause 128(2).

CLAUSE 39 : RECALL OF COMMISSIONER

This clause would provide a means by which persons who would be entitled to vote at elections in relation to Regional Councils in a zone, could require the termination of the appointment of the Commissioner who represents that zone.

The Minister would be required to terminate the appointment of a Commissioner upon receipt of a valid petition calling for the termination of the appointment of the Commissioner. The requirements for a valid petition are set out in clause 39(2) : the signatures on the petition must be less than six months old; the petition must contain certain information, and must contain a minimum number of signatures. The persons who could validly sign such a petition would be the persons who, at the time at which they sign the petition, would be able to vote at an election for a Regional Council in the zone represented by the Commissioner in question.

The number of signatures that would be required by clause 39 for a valid petition is 66% of the sum of all the 'electorate numbers' for the regions in the zone in question.

The 'electorate number' in relation to a region would be:

(a) if the boundaries of the region have not been changed since the last round of Regional Council elections, - the number that was last published in respect of that region in a notice under clause 103(3) as the Minister's estimate of the number of persons who would be entitled to vote at a forthcoming poll; or

(b) if the boundaries of the region have been changed since the last round of Regional Council elections - the

number set out in the notice published by the Minister at the time at which the boundaries were changed as the Minister's estimate under clause 89(4)(b) of the number of persons who would be entitled to vote at the next election for the Regional Council for the region under the new boundaries.

CLAUSE 40 : COMMISSIONERS NOT PERSONALLY LIABLE

This clause would provide that a Commissioner would not be personally liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:

(a) by the Commission; or

(b) by the Commissioner in the capacity of the Commissioner.

CLAUSE 41 : OTHER TERMS AND CONDITIONS

This clause would provide that a Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by the Bill as may be determined by the Minister by notice published in the Gazette.

DIVISION 5 - OPERATIONS OF COMMISSION

CLAUSE 42 : MEETINGS OF COMMISSION

Clause 42(1) would require the Commission Chairperson to convene such meetings of the Commission as, in the Chairperson's opinion, are necessary for the efficient performance of its functions.

By virtue of clause 42(2) the Minister would be able, at any time, to convene a meeting of the Commission. This provision would ensure that meetings of the Commission could still be convened if, for example, the Chairperson was unable to do so, and the Deputy Chairperson was also unable to act in the office of the Chairperson (see clause 35(1)).

Clause 42(3) would require the Commission Chairperson to convene a meeting of the Commission upon receipt of a written request for a meeting signed by a least 4 Commissioners.

Clause 42(4) would provide that at a meeting of the Commission a quorum is constituted by 12 Commissioners. However, under clause 42(5) where:

(a) a Commissioner who is present at a meeting is required by clause 36 (which deals with disclosure of interests) to leave the meeting during the deliberations, or not to take part in any decision, of the Commission with respect to a particular matter; and

(b) when the Commissioner leaves the meeting there are less than 12 Commissioners present;

a quorum would be constituted by the remaining Commissioners for the purpose of any deliberation or decision at that meeting with respect to that matter, though there would always have to be at least 8 Commissioners present.

(See clause 202 for details of the quorum required until all Commissioners are appointed.)

Clause 42(6) would require the Commission Chairperson to preside at all meetings of the Commission at which he or she is present. If the Commission Chairperson is not present at a meeting of the Commission, then by virtue of clause 42(7) :

(a) if the Deputy Chairperson of the Commission is present, he or she would have to preside at the meeting; and

(b) in any other case, the Commissioners present would have to elect one of their number to preside at the meeting.

Clause 42(8) would provide that questions arising at a meeting of the Commission must be determined by a majority of the votes of

the Commissioners present and voting, and by virtue of clause 42(9), the person presiding at a meeting of the Commission would have both a deliberative vote and, if the votes are equal, a casting vote.

Clause 42(10) would give the Commission the power to regulate the conduct of proceedings at its meetings as it thinks fit, and would require that it cause minutes of those proceedings to be kept.

Because Commissioners would be living in all parts of Australia it may prove difficult for all Commissioners to attend meetings (for example, urgent meetings at short notice). Clause 42(11), therefore, would provide that if the Commission so determines, a Commissioner may participate in, and form part of a quorum at, a meeting of the Commission by means of:

(a) telephone;

(b) closed circuit television; or

(c) any other method of communication determined by the Commission.

Such determinations of the Commission could be made in respect of a particular meeting, or in respect of all meetings, of the Commission, by virtue of clause 42(12), and a Commissioner who so participates in a meeting would be taken for the purposes of clauses 36 and 42 to be present at the meeting by virtue of clause 42(13).

CLAUSE 43 : DELEGATION TO CHIEF EXECUTIVE OFFICER OR STAFF MEMBERS

This clause would empower the Commission to delegate, by instrument under its seal, most of its functions and powers to the Chief Executive Officer, or to a member of the Commission's

staff. The functions and powers which the Commission would not be able to delegate in this way would be:

- the power to give consent to the disposal of property for the purposes of clause 21

- its power to make declarations under clause 88, which deals with the declaration of bodies incorporated under certain Acts to be, or to have ceased to be, Aboriginal or Torres Strait Islander corporations for the purposes of the Bill

- its power to make declarations under clause 117 which deals with the making of a declaration by the Commission in relation to members of Regional Councils who live outside the region for the Council of which they are a member. Where the Commission makes a declaration under clause 117 about a member of a Regional Council, the member would be taken to have resigned on the date of the declaration

- the power to reconsider matters under clause 192 which provides for the review by the Commission of decisions of its delegates

- the power to make declarations under clause 203 which would deal with the declaration of bodies incorporated under State and Territory laws, and who have received grants from the Department of Aboriginal Affairs or the Aboriginal Development Commission since 1 July 1987, to be Aboriginal or Torres Strait Islander corporations for the purposes of the Bill.

The first, second and fifth limitations on delegation reflect existing limits on delegation of the powers and functions for the Aboriginal Development Commission.

DIVISION 6 - CHIEF EXECUTIVE OFFICER

CLAUSE 44 : CHIEF EXECUTIVE OFFICER

Clause 44 would create the office of Chief Executive Officer of the Commission who would be appointed by the Minister, after consulting the Commission, to manage the day-to-day administration of the Commission. In doing so, and in exercising any powers conferred on him or her by the Bill, the Chief Executive Officer would be required by the clause to act in accordance with any policies determined, and any directions given, by the Commission in writing. (The Minister would not have to consult the Commission about the appointment of the first Chief Executive Officer).

CLAUSE 45 : PERIOD OF APPOINTMENT

By virtue of clause 45(1) the Chief Executive Officer would hold office for such period as is specified in the instrument of his or her appointment.

Unless clause 45(2) prevented it, the Chief Executive Officer would have to be appointed for a minimum of 2 years. The maximum period of appointment for the first Chief Executive Officer would also be two years and for subsequent appointees, five years.

Clause 45(3) would prohibit the appointment as the Chief Executive Officer of a person who has attained the age of 65 years, and would also prohibit the appointment of a person as the Chief Executive Officer for a period that extends beyond the day on which the person will attain the age of 65 years.

CLAUSE 46 : REMUNERATION AND ALLOWANCES

This clause would provide that the Chief Executive Officer is entitled to remuneration and allowances in accordance with clause 191.

CLAUSE 47 : LEAVE OF ABSENCE

Clause 47 would empower the Minister to grant leave of absence to the Chief Executive Officer on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

CLAUSE 48 : ACTING CHIEF EXECUTIVE OFFICER

Clause 48 would enable the Minister to appoint a person to act as the Chief Executive Officer:

(a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment had previously been made to the office; or

(b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy would not be able to continue to so act for more than 6 months.

Clause 48(2) is a saving provision which would provide that anything done by or in relation to a person purporting to act as the Chief Executive Officer pursuant to an appointment made under clause 48, would not be invalid merely because:

(a) the occasion for the appointment had not arisen;

(b) there was a defect or irregularity in connection with the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

CLAUSE 49 : DISCLOSURE OF INTERESTS

This clause would require the Chief Executive Officer to give written notice to the Minister of all direct or indirect pecuniary interests that the Chief Executive officer has or acquires in any business, or in any body corporate that carries on a business.

The Chief Executive Officer would also have to disclose to the Commission Chairperson, as soon as possible after the relevant facts come to his or her attention, the nature of any direct or indirect pecuniary interest that the Chief Executive Officer may have in a matter considered or about to be considered by the Commission.

CLAUSE 50 : RESIGNATION

Clause 50 would provide that the Chief Executive officer may resign by writing signed by him or her sent to the Minister.

CLAUSE 51 : TERMINATION OF APPOINTMENT

Clause 51(1) would confer on the Minister the power, after consulting with the Commission, to terminate the appointment of the Chief Executive Officer because of his or her incompetence, misbehaviour or physical or mental incapacity.

By virtue of clause 51(2), if the Chief Executive Officer:

(a) is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months;

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(c) fails, without reasonable excuse, to comply with clause 49; or

(d) engages in paid employment outside the duties of the office of Chief Executive Officer without the written consent of the Minister (which could only be given after the Minister has consulted the Commission);

the Minister would have to terminate the appointment of the Chief Executive Officer.

CLAUSE 52 : OTHER TERMS AND CONDITIONS

By virtue of clause 52 the Chief Executive officer would hold office on such terms and conditions (if any) in respect of matters not provided for by the Bill as are determined by the Minister by notice published in the Gazette.

DIVISION 7 - STAFF

CLAUSE 53 : STAFF

Clause 53(1) would require that, apart from persons engaged as consultants to the Commission under clause 54, the staff required to assist the Commission in the performance of its functions must be persons appointed or employed under the Public Service Act 1922.

Clause 53(2) would confer on the Chief Executive Officer all the powers exercisable by a Secretary under the Public Service Act 1922, so far as those powers relate to the branch of the Australian Public Service comprising the staff of the Commission (other than consultants), as if that branch were a separate Department of the Australian Public Service.

CLAUSE 54 : CONSULTANTS

Clause 54(1) would empower the Commission to engage persons having suitable qualifications and experience as consultants to

the Commission. By virtue of clause 54(2) the terms and conditions of engagement of consultants would be as determined by the Commission in writing.

DIVISION 8 - FINANCES

A major object of the Bill is to provide Aboriginal persons and Torres Strait Islanders with the opportunity to participate directly in the allocation of resources. The legislative scheme outlined below provides that opportunity.

Each year, when the Commission is able to make an informed estimate of the amount that the Parliament will appropriate for the purposes of the Commission for the next financial year, and when the Regional Councils are in a position to make reasonably detailed and realistic proposals for regional expenditure in the next financial year, the Commission must prepare a draft budget (clause 61).

The Commission's draft budget would set out full details of the Commission's anticipated budget for the next financial year under the headings shown in clauses 61(4) and (5). The Commission would also prepare a statement for each Regional Council setting out, amongst other things, the amount which it is proposed should be allocated by the Regional Council in respect of its region: see clause 61(1)(b).

The Commission is required to send copies of the draft budget and the regional statements to the Minister who, before endorsing or varying them, must consult certain Torres Strait Islander representatives on the amount which it is proposed to allocate to the Regional Council for the Torres Strait region. Provision would be made for that amount to be varied if appropriate. (See clauses 61(6), (7) and (8).) Copies of the draft budget would then be given to the Regional Councils, together with any guidelines that the Commission wants the Regional Councils to consider in preparing their draft budgets. (See clauses 61(9), (10), (11) and (12).)

Regional Councils would then be required to prepare detailed draft budgets for their regions, considering any guidelines given by the Commission (clause 95(1) and (2)). The Regional Councils would be able to prepare a draft budget in respect of:

- the allocation of money to the Regional Land Fund
- clause 14 expenditure
- clause 15 grants
- clause 16 grants
- any other matters which the Regional Councils are not excluded from dealing with in draft budgets in the following paragraph.

Clause 95(5) would exclude from Regional Councils' draft budgets:

- loans or payments under clause 16, as these would be made by the Commission from the Housing Fund - see clause 65(3))
- loans, grants etc, under clause 17
- administrative expenses of the Commission and Regional Councils
- the Community Development Employment Program
- guarantees under clause 19
- additional capital for the Corporation
- a specific program to which funds have been allocated under any heading in the Commission's draft budget approved by the Minister under clause 61(5)(a) or 61(5)(d).

- programs to be conducted by a State or the Northern Territory, or by State or Northern Territory authorities

- programs to be conducted by Aboriginal Hostels Limited

- programs to be conducted by the Institute of Aboriginal and Torres Strait Islander Studies.

The Regional Councils would then submit their draft budgets to the Commission, which would be able to ask Regional Councils to reconsider their budgets, although they would not be obliged to change them. The Commission would then submit a copy of its own draft budget to the Minister, together with copies of the original or revised Regional Council draft budgets (clause 61(6)).

In addition to its draft budget, the Commission must also prepare estimates of the receipts and expenditure of the Commission for the next financial year. Those estimates would include estimates in respect of expenditure and receipts relating to Regional Council programs, that is programs in respect of which Regional Councils may prepare draft budgets. Generally speaking, the money of the Commission could not be spent except in accordance with the estimates of expenditure which the Minister has approved: see clause 59(2). Before approving estimates, however, the Minister must consult the Regional Council for the Torres Strait region and the Commissioner for the Torres Strait zone : clause 78.

The estimates approved by the Minister under clause 59 would not necessarily be consistent with the draft budgets prepared by the Regional Councils, though it is expected that this will usually be the case. However, if the estimates approved by the Minister relating to a particular Regional Council are inconsistent with that Regional Council's draft budget, and the Regional Council has not approved that inconsistency, the Minister would have to cause documents to be laid before each House of the Parliament identifying and providing the reasons for the inconsistency.

One area which falls partly outside this scheme is the Housing Fund, which allows the Commission to set aside moneys for the purpose of making loans or payments under clause 16. Moneys appropriated to the Commission could be allocated under the clause 59 estimates to the Housing Fund, but would be spent from that fund under different arrangements. (See clause 65.)

Similarly, the Regional Land Fund provides a mechanism for Regional Councils to dedicate moneys solely to the acquisition of land for the purposes of clause 14, and the making of grants under clause 15. Moneys would be paid into the Regional Land Fund under the 'estimates procedure', but would be spent outside that procedure. (See clause 66.)

Provision is made in clause 57 for the provision of estimates etc., in the period before Regional Councils are elected.

Detailed notes on the clauses of Division 8 are as follows.

CLAUSE 55 : MONEY PAYABLE TO COMMISSION

This clause would provide that there is payable to the Commission such money as is appropriated from time to time by the Parliament for the Commission. The Minister for Finance would be empowered by the clause to give directions as to the amounts in which, and the times at which, money so appropriated is to be paid to the Commission.

CLAUSE 56 : MONEY APPROPRIATED TO COMMISSION FOR PURPOSES OF OTHER BODIES

This clause would require the Commission to pay to the Corporation, the Institute of Aboriginal and Torres Strait Islander Studies or Aboriginal Hostels Limited any money appropriated to the Commission for the purposes of those bodies.

CLAUSE 57 : ESTIMATES BEFORE REGIONAL COUNCILS ELECTED

The estimates procedures in this clause would apply only in any financial year which starts when the Commission is in operation but before the Regional Councils have taken office. The clause would require the Commission to prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if the Minister so directs, for any other period specified by the Minister. The Commission would have to submit the estimates to the Minister not later than the date directed by the Minister.

The Commission would only be able to spend its money in accordance with estimates of expenditure approved by the Minister. Although the amount spent by the Commission in relation to matters could differ from the amount allocated in respect of that matter in the estimates by up to 1%, or by $250,000 (or such other amount as may be prescribed), whichever is the larger. However, the total expenditure could not exceed that approved by the Minister in estimates.

CLAUSE 58 : ESTIMATING PROCEDURES AFTER REGIONAL COUNCILS ELECTED

This clause would have the effect that the procedures for estimates etc., set out in clauses 59 to 63 would have to be followed for each financial year starting after Regional Councils take office.

CLAUSE 59 : ESTIMATES

Clause 59(1) would require the Commission to prepare estimates of the Commission's receipts and expenditures for each financial year, and, if the Minister so directs, for any other period specified by the Minister. The Commission would have to submit such estimates to the Minister on or before the date directed by the Minister.

Some money of the Commission could be spent outside the clause 59 estimates scheme.

Money of the Commission that is held in trust would have to be spent in accordance with the terms of the relevant trust, and could be spent otherwise than in accordance with estimates approved by the Minister: see clauses 10(4), 59(7) and 205(2)(a).

Money of the Commission that is appropriated to the Commission for the purposes of Aboriginal Hostels Limited, the Institute of Aboriginal and Torres Strait Islander Studies or the Corporation would have to be paid to the relevant body : clause 56. Such money could then be spent by those bodies otherwise than in accordance with estimates approved under clause 59(2) by the Minister: see clause 59(7).

Money of the Commission that is held in the Housing Fund could only be spent in accordance with estimates approved under clause 65(5). The separate estimates procedure would reflect the fact that the moneys in the Housing Fund would comprise not only moneys appropriated by the Parliament for the Commission, but also income from certain loans (see clause 65(2)(a) and (b)). (The Commission's draft budget would, therefore, show the amounts which are to be allocated to the Housing Fund from moneys appropriated to the Commission by the Parliament, but expenditure from the Fund would be administered by the Commission outside the clause 59 estimates, and clause 61 draft budget, schemes.)

Money of the Commission that is held in the Regional Land Fund could also be spent otherwise than in accordance with estimates approved under clause 59(2) : see clause 59(7). (Provision about the spending of such money would be made in clause 66.)

The expenditure of money from the Regional Land Fund would be outside the estimates procedure for two reasons. Firstly, it would give Regional Councils greater flexibility in the timing of purchases from the Regional Land Fund. Secondly, consistent with the thrust of the Bill to devolve responsibility to Regional Councils, the Minister's powers would be limited to consenting or

not consenting to particular proposals from Regional Councils : see clause 66(3).

All other money of the Commission would have to be spent, or paid into the Housing Fund or the Regional Land Fund, in accordance with estimates of expenditure approved by the Minister under clause 59(2), although it would be possible, to a limited extent, for money to be spent differently. Thus, clause 59(5) would provide that if the Regional Council concerned so directs, the amount spent by the Commission or paid into the Regional Land Fund in relation to a regional program may differ from the amount allocated in respect of that program by up to 10%. This would not, however, enable Regional Councils to increase the amount that is to be spent in relation to the Regional Council's programs beyond the total amount that has been allocated in respect of those programs in estimates approved under clause 59(2) : see clause 59(6).

Some flexibility would also be provided by clause 59(3) under which the amount spent by the Commission in relation to a matter would be able to differ from the amount allocated in respect of that matter in the estimates approved by the Minister. The amount spent could differ from the amount allocated in respect of any matter by up to 1%, or $250,000 or such larger amount as may be prescribed, whichever is the larger. Though the total expenditure could not exceed the total expenditure shown in the estimates approved by the Minister. This power would not, of course, apply in respect of Regional Council estimates, the flexibility necessary in respect of which would be provided by clause 59(5).

CLAUSE 60 : FORM OF ESTIMATES

Clause 60(1) would require the Commission to prepare estimates using the same headings as those required for the preparation of draft budgets - see clause 61(4) and (5).

Under the heading "amount for allocation by Regional Councils" the estimates would have to set out detailed estimates of

expenditure for each region covering the matters which may or must be covered in Regional Council draft budgets : see clause 60(2). Those matters are set out in clause 95.

Apart from the requirements set down in clause 60(1) and (2), the Commission would have to prepare estimates in such form as the Minister directs : clause 60(3)

Clause 60(4) would make it clear that the Minister could, despite the other provisions of clause 60, direct the Commission to prepare a second set of estimates in a different form.

CLAUSE 61 : COMMISSION TO PREPARE DRAFT BUDGET

This clause would deal with the form and content of, and the procedure for the preparation of, the Commission's draft budgets. The Commission would be required by clause 61(1) to prepare for the next financial year:

(a) a draft budget; and

(b) a statement for each Regional Council.

Each Regional Council statement would have to set out:

(i) the amount that the Commission proposes should be allocated by the Regional Council concerned;

(ii) the amount the Commission proposes should be allocated for the administrative expenses of the Regional Council;

(iii) the amount that the Commission proposes should be allocated in grants under clause 18 to the State or Territory, and to authorities of the State of Territory in which the region, or most of it, is located; and

(iv) the amount proposed to be spent out of the Housing Fund.

Under clause 61(2), the Commission would not be required to prepare more than one draft budget in respect of any financial year, and would only be able to prepare a draft budget when the Commission considers that:

(a) it can make an informed estimate of the amount that might be appropriated by the Parliament for the Commission for the next financial year; and

(b) the Regional Councils will be able to make reasonably detailed and realistic proposals for expenditure in their regions for the next financial year.

Clause 61(3) would require that a draft budget show:

(a) the amount that the Commission estimates might be appropriated by the Parliament for the Commission for the next financial year, having regard to:

(i) the amount appropriated for the current year;

(ii) an appropriate inflation factor; and

(iii) any other matters the Commission thinks relevant; and

(b) how it is proposed that the draft budget be allocated, in accordance with clause 61(4) and (5).

Clause 61(4) would require that the Commission's draft budget allocate money under the following headings:

(a) amount for allocation by Regional Councils

(b) expenditure under clause 14, other than amounts under that clause to be allocated by Regional Councils;

(c) grants under clause 15 other than amounts under that clause to be allocated by Regional Councils;

(d) amount to be paid into the Housing Fund;

(e) grants under clause 16, other than amounts to be allocated under that clause by Regional Councils;

(f) loans, grants and other expenditure under clause 17;

(g) grants to the States and the Northern Territory and their authorities, under clause 18;

(h) administrative expenses of the Commission and Regional Councils;

(i) Community Development Employment Program;

(j) Aboriginal Hostels Limited;

(k) Institute of Aboriginal and Torres Strait Islander Studies.

Clause 61(5) would provide that the following headings could be used in the Commission's draft budget:

(a) programs appropriately conducted on a national basis;

(b) expenditure in respect of guarantees under clause 19;

(c) additional capital for the Corporation;

(d) any other heading approved by the Minister.

Clause 61(6) and (7) would require the Commission to give the Minister copies of the draft budget and the regional statements for a financial year, which the Minister would have to consider.

The Minister would then be required to consult the Commissioner representing the Torres Strait zone, and the executive Committee of the Regional Council for the Torres Strait region as to whether the amount proposed to be allocated by the latter Regional Council is appropriate. If satisfied that the amount is not appropriate, the Minister would be empowered to vary that amount to an appropriate amount, and would have to vary the draft budget to keep the total expenditure the same. (Clause 61(8))

Having either varied or not varied the draft budget, the Minister would advise the Commission accordingly, and the Commission would then forward to Regional Councils the amended or unamended draft budget, together with the regional statements, showing any necessary alterations as the case may be. (See clause 61(9), (10) and (11).) At the same time, the Commission would also be able to give Regional Councils copies of guidelines that the Commission wants the Regional Councils to consider in preparing the Regional Councils' draft budgets. (Clause 61(12).)

CLAUSE 62 : COMMISSION TO GIVE DRAFT BUDGETS TO MINISTER

This clause would require the Commission to give the Minister a copy of each draft budget or revised draft budget that the Commission receives from Regional Councils. This would ensure that the Minister would not approve estimates without being aware of the views of Regional Councils.

CLAUSE 63 : MINISTER TO EXPLAIN INCONSISTENCIES BETWEEN APPROVED ESTIMATES AND REGIONAL COUNCIL DRAFT BUDGETS

Under this clause, if Regional Council estimates included in estimates approved under clause 59 are inconsistent with the Regional Council's draft budget that was given to the Minister under clause 62, the Minister must cause to be laid before each House of the Parliament, within 15 sitting days of that House after the estimates are approved, a document:

(a) identifying the inconsistency between the Regional Council estimates and the draft budget; and

(b) giving the Minister's reasons for approving Regional Council estimates that are inconsistent with the draft budget.

The Minister is not required to do so, however, if an inconsistency between Regional Council estimates and the draft budget of a Regional Council has been approved by the Regional Council in writing. (Clause 63(2).)

CLAUSE 64 : APPLICATION OF MONEY HELD BY COMMISSION

This clause would provide that money of the Commission, apart from the money that is:

- held on trust by the Commission;
- in the Housing Trust or the Regional Land Fund; or
- money appropriated for the purposes of the Corporation, the Institute of Aboriginal and Torres Strait Islander Studies, or Aboriginal Hostels Limited,

must be applied only:

(a) in payment or discharge of the costs, expenses and other obligations incurred by the Commission in the performance of its functions or the exercise of its powers under the Bill or any other law;

(b) in payment of any remuneration and allowances payable to any person under the Bill or any other law; and

(c) in making any other payments which the Commission is authorised or required to make under the Bill or any other law.

Money held on trust would have to be dealt with in accordance with the terms of the trust: clauses 10(4), 59(7) and

205(2)(a). Money held in the Housing Fund and the Regional Land Fund would have to be dealt with in accordance with clauses 65 and 66 respectively. Money appropriated for the Corporation, the Institute and Aboriginal Hostels Limited would have to be paid to those bodies: clause 56.

CLAUSE 65 : HOUSING FUND

This clause would establish a fund to be known as the Housing Fund which would, by virtue of clause 65(2) comprise:

(a) such amounts as are appropriated to the Commission from time to time by the Parliament for the purposes of the Housing Fund; and

(b) such amounts as are paid to the Commission as repayment of, or otherwise in respect of:

(i) loans made by the Commission under clause 16;

(ii) loans made by the Aboriginal Development Commission under section 25 of the Aboriginal Development Commission Act 1980; or

(iii) loans made by the Aboriginal Loans Commission under section 25 of the Aboriginal Loans Commission Act 1974.

The Commission would have to prepare estimates of the receipts of, and expenditure from, the Housing Fund for each financial year. The Minister could also require estimates to be prepared for other periods. The estimates would have to be given to the Minister by the date set by the Minister. (Clause 65(4).)

The money in the Housing Fund would only be able to be spent in accordance with estimates approved by the Minister. (Clause 65(5).)

Clause 65(3) would provide that money in the Housing Fund may only be applied in making loans under clause 16(1) or (2) or payments under clause 16(3).

Money in the Housing Fund that is not immediately required for the purposes of the Housing Fund could, by virtue of clause 65(6) be invested:

(a) on deposit with an approved bank;

(b) in Commonwealth securities; or

(c) in any other manner approved by the Treasurer.

CLAUSE 66 : REGIONAL LAND FUND

Clause 66 would establish a fund to be known as the Regional Land Fund, which would comprise money paid into the Regional Land Fund from the money of the Commission in accordance with the amounts allocated to the Regional Land Fund in approved Regional Council estimates, subject to any variations made under clause 59(5).

Money in the Regional Land Fund could only be applied in acquiring land under clause 14 or in making grants under clause 15 in accordance with a proposal relating to an acquisition of specified land made by a Regional Council and approved by the Minister. (See clause 59(2).) The spending of money from the Regional Land Fund would, therefore, fall outside the 'estimates' procedures established by clauses 59 and 60. However, proposed allocations to the Regional Land Fund would have to be shown in the Regional Councils' draft budgets.

If the Minister were to refuse to approve a Regional Council's proposal for the acquisition of land from the Regional Land Fund, the Minister would have to lay before each House of the Parliament a document giving his reasons for doing so. (See clause 66(4).)

The total amount of money spent from the Land Fund time to time to time on:

(a) land in a region; and

(b) grants under clause 15 in connection with the acquisition of interests in land in the region

could not exceed the sum of:

(c) the total amount of money paid, or taken to have been paid, from time to time into the Regional Land Fund by the Commission by virtue of Regional Council estimates for the region concerned; and

(d) such proportion as the Commission determines is a fair share for that region of the income earned by the Regional Land Fund through investments.

The reference in paragraph (c) to money taken to have been paid into the Regional Land Fund is a reference to the amounts which are to be taken to have been paid in relation to a region under clause 89(4)(a) where there are changes in regional boundaries.

Clause 66(6) would provide that money in the Regional Land Fund that is not immediately required for the purposes of the Regional Land Fund could be invested:

(a) on deposit with an approved bank;

(b) in Commonwealth securities; or

(c) in any other manner approved by the Treasurer.

The Commission would also be able to undertake its own land acquisition program independently of the Regional Councils.

CLAUSE 67 : BORROWING ON OVERDRAFT TO MEET TEMPORARY DEFICIT

This clause would empower the Commission, for the purposes only of meeting a temporary deficit in the money of the Commission, to borrow money on overdraft from an approved bank. However, the Commission would only do so subject to such limits as the Treasurer determines as to:

(a) the total amount of money (other than interest) that may be owed by the Commission at any time as a result of borrowings under clause 67; and

(b) the periods for which money may be borrowed under the clause.

CLAUSE 68 : LIMITS ON COMMISSION'S POWERS

The Commission would be prohibited by this clause from borrowing money except in accordance with clause 67, and would also be prohibited from raising money except by borrowing. This clause would not, however, prevent the Commission from earning interest or otherwise acquiring money by making investments, or by taking other action expressly authorised by the Bill, but would prevent the Commission from raising money by, for example, issuing securities.

CLAUSE 69 : EXEMPTION FROM TAXATION

Clause 69 would exempt the Commission from taxation (including taxation under the Debits Tax Act 1982) under any law of the Commonwealth or of a State or Territory.

CLAUSE 70 : ANNUAL REPORT AND FINANCIAL STATEMENTS

This clause would require the Commission to prepare annual reports and financial statements. The Auditor-General would be required to report on the financial statements to the Minister, and the Minister would be required to lay the annual reports, the financial statements and the Auditor-General's reports before

each House of the Parliament. The Minister would also be able to require the Commission to obtain more regular expenditure reports upon request under clause 7(1)(g). The annual report would have to contain details of any consultants engaged under clause 54, and details of directions given under clause 12 and of any statements tabled in the Parliament under clauses 63 or 66.

In addition, the Commission would have to include in the annual report, a report from the Office of Evaluation and Audit established by clause 74. (see clause 76(3)).

By virtue of clause 70(6) the annual report would also have to draw attention to any significant differences between the actual terms and conditions of engagement of any consultant under clause 54 and the standard terms and conditions set out in the corporate plan (see clause 11).

CLAUSE 71 : APPLICATION OF DIVISION 2 PART XI OF AUDIT ACT

This clause would declare that the Commission is a public authority to which Division 2 of Part IX of the Audit Act 1901 applies, and would apply that Division as if section 63H of that Act were omitted. Division 2 of part XI of the Audit Act 1901 would then provide for, amongst other things, the audit of the Commission.

The effect of clause 71(2)(a) would be that the Commission would not be required to prepare financial statements under section 50 of the Audit Act 1901 in addition to those that would be required by clause 70.

CLAUSE 72 : AUDIT OF SUBSIDIARY BODIES BY AUDITOR-GENERAL

This clause would empower the Minister, with the consent of the Auditor-General, to direct in writing, that:

(a) a specified company that is a subsidiary of the Commission; or

(b) all companies that are subsidiaries of the Commission;

shall be audited by the Auditor-General. While such a direction is in force, clause 194 would apply to each company to which the direction relates. That clause sets out detailed provisions for audit.

CLAUSE 73 : MINISTERIAL FINANCE DIRECTIONS

This clause would require the Minister to give to the Commission written directions, not inconsistent with the Bill or regulations made under the Bill, about the administration of the Commission's finances.

The Commission would have to comply with a Ministerial Finance Direction that is in force even if it is inconsistent with:

(a) the provisions of the corporate plan (see clause 11); or

(b) a guideline in force under clause 24.

If required, it would be possible for some or all of the Finance Directions made under the Audit Act 1901 to be incorporated in the Ministerial Finance Directions by reference.

Notice of the making of Ministerial Finance Directions would have to be published in the Gazette, and copies would have to be made available for inspection or purchase by the public at each of the Commission's offices.

DIVISION 9 - OFFICE OF EVALVATION AND AUDIT

CLAUSE 74 : OFFICE OF EVALUATION AND AUDIT

Clause 74 would establish an Office of Evaluation and Audit within the Commission.

CLAUSE 75 : FUNCTIONS OF OFFICE

Clause 75 would provide that the functions of the Office of Evaluation and Audit would be:

- to undertake the regular evaluation and audit of Commission projects, programs and procedures;

- to undertake special evaluation exercises as requested by the Commission or the Minister;

- to report in writing to the Minister and Commission at least every 3 months;

- to advise the Commission and the Minister, of Commission projects or programs, or organisations dealing with the Commission, that are experiencing problems.

CLAUSE 76 : DIRECTOR OF EVALUATION AND AUDIT

This clause would establish the statutory office of Director of Evaluation and Audit, who would be appointed by the Minister after consultation with the Commission to head the Office of Evaluation and Audit.

Clause 76(3) would require the Director of the Office of Evaluation and Audit to give to the Commission a report about the operation of the Office of Evaluation and Audit for inclusion in the Commission's annual report.

CLAUSE 77 : DESIRABILITY OF REGULAR EVALUATIONS

This clause would require the Director of the Office of Evaluation and Audit, in directing the operation of the Office, to have regard to the desirability of evaluating and auditing:

- every program that is conducted or funded under the Bill; and

. the operations of every office of the Commission once every three years at least

DIVISION 10 - SPECIAL PROVISIONS RELATING TO TORRES STRAIT ISLANDER AFFAIRS

CLAUSE 78 : MINISTER TO CONSULT WITH TORRES STRAIT REPRESENTATIVES BEFORE APPROVING ESTIMATES

Clause 78 would require the Minister to consult the Commissioner representing the Torres Strait zone, and the Executive Committee of the Regional Council for the Torres Strait region, before the Minister approves estimates for the purpose of clause 59. This provision gives a further formal opportunity for the views of Torres Strait Islanders to be considered in the 'budget process'. An earlier opportunity is afforded by clause 61(8).

CLAUSE 79 : OFFICE OF TORRES STRAIT ISLANDER AFFAIRS

An Office of Torres Strait Islander Affairs would be established within the Commission by this clause.

CLAUSE 80 : FUNCTIONS OF OFFICE

Clause 80(1) would confer on the Office of Torres Strait Islander Affairs the following functions:

(a) to monitor the conduct of programs which affect Torres Strait Islanders by the Commission, by other Commonwealth bodies and by State, Territory and local government bodies, and to evaluate the extent to which those programs meet the needs of Torres Strait Islanders;

(b) to monitor the development of programs and policies which affect Torres Strait Islanders by the Commission, by Regional Councils and by other Commonwealth bodies, and to evaluate the extent to which those programs and policies are likely to meet the needs of Torres Strait Islanders;

(c) to report to the Torres Strait Islander Advisory Board, the Commission, and the Minister, as appropriate, on the results of the performance of the functions set out in paragraphs (a) and (b).

Clause 80(2) and (3) would require the Office, in performing its functions, to pay particular attention to the needs of Torres Strait Islanders who live on the Australian mainland, and to consult the Advisory Board from time to time in relation to the performance of the Office's functions.

CLAUSE 81 : TORRES STRAIT ISLANDER ADVISORY BOARD

This clause would establish a Torres Strait Islander Advisory Board.

CLAUSE 82 : FUNCTION OF ADVISORY BOARD

The Advisory Board would have the function of providing advice to the Minister, the Commission and the Regional Council for the Torres Strait region, for the purpose of furthering the social, economic and cultural advancement of Torres Strait Islanders. The Advisory Board would be able to provide advice of its own inititative or at the request of the Minister, the Commission or the Regional Council, as the case requires.

CLAUSE 83 : CONSTITUTION OF ADVISORY BOARD

By virtue of this clause, the Advisory Board would consist of:

(a) a Chairperson, who would be the elected Commissioner representing the Torres Strait zone; and

(b) 6 other members, who would be Torres Strait Islanders appointed by the Minister to represent Torres Strait Islanders living in the following areas:

(i) New South Wales and the Australian Capital Territory;

(ii) Victoria and Tasmania;
(iii) Queensland;
(iv) Western Australia;
(v) South Australia;
(vi) the Northern Territory.

The members of the Advisory Board would hold office on a part-time basis and, apart from the Chairperson, would do so for such periods, not exceeding 3 years, as are specified in their instruments of appointment.

CLAUSE 84 : REMUNERATION AND ALLOWANCES

Clause 84 would provide that a member of the Advisory Board is entitled to remuneration and allowances in accordance with clause 191.

CLAUSE 85 : OTHER TERMS AND CONDITIONS

This clause would provide that a member of the Advisory Board holds office on such terms and conditions (if any) in respect of matters not provided for by the Bill as are determined by the Minister by notice published in the Gazette.

CLAUSE 86 : MEETINGS OF ADVISORY BOARD

Clause 86(1) would require the Chairperson of the Advisory Board to convene at least 4 meetings of the Advisory Board in each calendar year, and would enable the Chairperson to convene such other meetings of the Advisory Board as, in the Chairperson's opinion, are necessary for the efficient performance of its functions. The Minister or the Chief Executive Officer would also be able, at any time, to convene a meeting of the Advisory Board by virtue of clause 86(2).

The Advisory Board would be able to regulate the conduct of proceedings at its meetings as it thinks fit and, if the Advisory Board so determined, a member of the Advisory Board would be able to participate in a meeting of the Advisory Board by means of

telephone, closed circuit television, or by any other method of communication determined by the Advisory Board. A determination of the Advisory Board allowing a member to participate in a meeting in such a manner could be made in respect of a particular meeting, or in respect of all meetings, of the Advisory Board. (See clause 86(4) and (5).)

CLAUSE 87 : REVIEW OF OPERATION OF DIVISION

This clause would require that within six months of receiving the report of the Commission following its review of the operation of the Act under clause 25, the Minister must meet with the Regional Council for the Torres Strait region, and the Torres Strait Advisory Board to review the operation of the Bill as it affects Torres Strait Islanders.

DIVISION 11 - MISCELLANEOUS

CLAUSE 88 : ABORIGINAL OR TORRES STRAIT ISLANDER CORPORATIONS

To be eligible for the various grants, guarantees and loans which may be given or made under Division 2 of Part 2 a corporation must be an Aboriginal or Torres Strait Islander corporation. By virtue of clause 4(1):

(a) Aboriginal Councils established by Part IV of the Aboriginal Councils and Associations Act 1976;

(b) Aboriginal associations incorporated under Part III of the Aboriginal Councils and Associations Act 1976;

(c) corporations that were, immediately before the commencement of Part 6 of the Bill, Aboriginal Corporations within the meaning of the Aboriginal Development Commission Act 1980;

would be Aboriginal or Torres Strait Islander corporations when the Bill comes into operation. Clause 88 would also establish a mechanism by which application may be made by other bodies

corporate to the Commission for declaration of those bodies as Aboriginal and Torres Strait Islander corporations. If, upon application, the Commission is satisfied that:

(a) all the members of a body corporate are Aboriginal persons or Torres Strait Islanders; or

(b) a substantial majority of the members of a body corporate are Aboriginal persons or Torres Strait Islanders and the body corporate is controlled by Aboriginal persons or Torres Strait Islanders;

the Commission would be required by clause 88(2) to declare, by notice published in the Gazette, the body corporate in question to be an Aboriginal or Torres Strait Islander corporation for the purposes of the Bill.

Clause 88(3) would also require the Commission, if it is satisfied that an Aboriginal or Torres Strait Islander corporation no longer satisfies either of the qualifying conditions referred to in paragraphs (a) and (b) above, to declare, by notice published in the Gazette, that the body corporate has ceased to be such a corporation for the purposes of the Bill. The powers under clause 88(3) would be exercisable in respect of Aboriginal Councils or Associations established or incorporated under the Aboriginal Councils and Associations Act 1976, and also in respect of corporations that were, immediately before the commencement of Part VI of the Bill, Aboriginal corporations within the meaning of the Aboriginal Development Commission Act 1980, as well as in respect of other bodies declared to be Aboriginal or Torres Strait Islander corporations under clause 88(2). Decisions under this clause would be reviewable: see clause 193. (See also clause 203 for the declaration of bodies incorporated under State and Territory laws as Aboriginal or Torres Strait Islander corporations.)

PART 3 - REGIONS AND ZONES

DIVISION 1 - REGIONS

CLAUSE 89 : REGIONS

For the purposes of the Bill, clause 89(1) would divide Australia into the 60 regions set out in Schedule 1. The regions would be identified by reference to places to be located within the regions. These places have no significance beyond their function of identifying an essentially arbitrary location within each region. The regional boundaries would be as determined from time to time by the Minister by notice published in the Gazette. (See clause 91 for Regional Council names.)

Clause 89(2) would prevent the Minister from changing boundaries without first inviting the Commission to provide him or her with written advice about the proposed new boundaries. The Minister would also be prohibited from changing boundaries between 31 March and 31 December in a Regional Council election year, by virtue of clause 89(3).

Clause 89(4) would empower the Minister to re-allocate moneys in the Regional Land Fund, and to re-distribute assets and liabilities as between Regional Councils affected by boundary changes. The Minister would have to consult the Commission and the Regional Councils concerned before re-distributing assets or liabilities.

The Minister would also be required by clause 89(4)(b) when changing boundaries, to publish estimates of the number of persons who would be entitled to vote at the next elections unde the changed boundaries, and the number of persons living in that region who are Aboriginal persons or Torres Strait Islanders. The estimate of potential voters would be relevant to clauses 39 119 and 138, which deal with the recall of Commissioners, the removal of Regional Councils and a petition to convene a Review Panel respectively. The estimate of the Aboriginal and Torres Strait Islander population would be relevant to determining the number of Regional Councillors that would comprise the Regional Council (see clause 111) and the definitions of 'estimated population' and 'prescribed number' in clause 4(1).

So far as Regional Council elections are concerned, changes to boundaries would take effect for the next Regional Council elections held after the notice determining the changes is published. Variations to moneys in the Regional Land Fund, and to assets and liabilities would not take effect until new Regional Councils take office.

DIVISION 2 - REGIONAL COUNCILS

CLAUSE 90 - REGIONAL COUNCILS

Clause 90 would establish the Regional Councils for the regions. Each Regional Council would:

(a) be a body corporate, with perpetual succession;

(b) have a common seal;

(c) be able to acquire, hold and dispose of real and personal property; and

(d) be able to sue and be sued in its corporate name.

The common seals would have to be kept as the Regional Councils direct, and used as authorised by the Regional Councils: clause 90(3). All courts, judges and persons acting judicially would be required by clause 90(4) to take judicial notice of the imprint of the common seal of a Regional Council appearing on a document, and to presume that it was duly affixed. The Regional Councils would consist of the members elected in accordance with Division 4 of part III of the Bill: see clause 111

CLAUSE 91 : NAMES OF REGIONAL COUNCILS

This clause would empower the Regional Councils to determine their names. The Regional Councils would also be able to change their names. A Regional Council would have to give the Commission written notice of any name or new name determined by

the Regional Council, and the most recent name in such a notice would be the corporate name of the Regional Council. If no name is determined by a Regional Council its name would be the Regional Council for the relevant place or places in Column B of Schedule 1 of the Bill: see clause 89(1).

DIVISION 3 - FUNCTIONS OF REGIONAL COUNCILS

CLAUSE 92 : FUNCTIONS OF REGIONAL COUNCILS

Each Regional Council would have the following functions:

(a) to formulate, and revise from time to time, a regional plan for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents of its region;

(b) to assist, advise and co-operate with the Commission, and with other Commonwealth bodies, State, Territory and local government bodies in the implementation of its regional plan;

(c) to make proposals in accordance with clause 95 for Commission expenditure in relation to its region;

(d) to receive, and to pass on to the Commission, the vie of Aboriginal persons and Torres Strait Islanders abo the activities, in the region, of the Commission and other Commonwealth bodies, and of State, Territory an local government bodies;

(e) to represent Aboriginal and Torres Strait Islander residents of the region and to act as an advocate of their interests;

(f) such other functions as would be conferred on the Regional Council by the Bill;

(g) to do anything incidental or conducive to the

performance of any of the preceding functions.

CLAUSE 93 : POWERS OF REGIONAL COUNCILS

This clause would empower Regional Councils to do all things that are necessary or convenient to be done for in connection with the performance of their functions.

By virtue of clause 93(2) Regional Councils would not, however, be able to engage staff without the written approval of the Commission.

CLAUSE 94 : ADVISORY COMMITTEES

Regional Councils would be able to establish an advisory committee, or advisory committees, which could include members of the Regional Councils, to advise the Regional Councils in relation to the performance of the Regional Councils' functions.

CLAUSE 95 : REGIONAL COUNCILS TO PREPARE DRAFT BUDGETS

Where the Commission has given a Regional Council a copy of the Commission's draft budget for a financial year (together with the relevant Regional Council statement) under clause 61, the Regional Council would be required by clause 95(1) to prepare and give to the Commission, within the time specified by the Commission, a draft budget for the Regional Council. In preparing its budget a Regional Council would have to consider any guidelines given to it by the Commission under clause 61(12).

The draft budget would have to show the Regional Council's priorities for expenditure of the amount which the Commission has proposed should be allocated for the region concerned. (See clause 95(3) and 61(1)(b)(i).)

Regional Council draft budgets would have to allocate all the amount, or so much of the amount that is not allocated to the Regional Land Fund, among programs conducted or to be conducted in the region concerned, including programs which extend beyond

the region. The draft budgets would also have to show, in relation to each program, the organisation or organisations conducting or proposing to conduct those programs. A draft budget could allocate some of the amount to the Regional Land Fund.

Clause 95(5) would exclude from Regional Council draft budgets:

- loans or payments under clause 16 as these would be made by the Commission from the Housing Fund - see clause 65(3)
- loans, grants etc., under clause 17
- administrative expenses of the Commission and Regional Councils
- the Community Development Employment Program
- guarantees under clause 19
- additional capital for the Corporation
- a specific program to which funds have been allocated under any heading in the Commission's draft budget which has been approved by the Minister under clause 61(5)(a) or 61(5)(d).
- programs to be conducted by a State or the Northern Territory, or by State or Northern Territory authorities
- programs to be conducted by Aboriginal Hostels Limited
- programs to be conducted by the Institute of Aboriginal and Torres Strait Islander Studies

Having received a copy of a Regional Council's draft budget, the Commission would be able to ask the Regional Council, in writing,

to reconsider the draft budget, and to change it in specified respects: clause 95(6). A Regional Council that is so requested must reconsider its draft budget, but would not have to change it. The Regional Council would also, within such time as the Commission directs, have to notify the Commission, in writing, that it has not changed its draft budget, or give the Commission a copy of its changed budget, as the case requires.

CLAUSE 96 : REGIONAL COUNCIL TO ADVISE COMMISSION

This clause would empower the Commission to ask, from time to time, a Regional Council for advice in such form (if any) as the Commission specifies, about any matter. The Regional Council would have to give the Commission its advice on that matter.

CLAUSE 97 : ANNUAL REPORT

This clause would require each Regional Council, as soon as practicable after 30 June each year and, in any event, before 31 October in each year, to prepare and give to the Commission a report about its operations and the implementation of the regional plan (see clause 92(a)) during the year ended on that 30 June. Such an annual report given to the Commission before 31 December of that year. The Chairperson of the Regional Council would also have to make copies of each annual report available for inspection by residents of the region at all Commission offices serving that region within 7 days after the Regional Councils gives the annual report to the Commission.

DIVISION 4 - REGIONAL COUNCIL ELECTIONS

CLAUSE 98 : REGIONAL COUNCIL ELECTIONS

Clause 98 would require Regional Council elections to be conducted by the Australian Electoral Commission in accordance with:

(a) the provisions of the Bill; and

(b) the Regional Council election rules that are in force on the day on which the Minister fixes the date or dates of the elections under clause 101. Regional Council election rules would be made under clause 109.

CLAUSE 99 : PERSONS ENTITLED TO VOTE AT REGIONAL COUNCIL ELECTIONS

Clause 99 would provide that a person would be entitled to vote at an election for the members of a Regional Council if and only if:

(a) the person is an Aboriginal person or a Torres Strait Islander; and

(b) the person's name is on the Commonwealth Electoral Roll at an address which is in the region for which the Regional Council is established.

CLAUSE 100 : PERSONS QUALIFIED TO BE ELECTED TO REGIONAL COUNCILS

By virtue of this clause, a person would not be qualified to stand for election, or to be elected, as a member of a Regional Council if the person:

(a) is not entitled to vote at the Regional Council elections;

(b) the person does not live in the region for which the Regional Council is established;

(c) is a member of the staff of, or a consultant to, the Commission; or

(d) has been convicted and is under sentence for an offence punishable under the law of the Commonwealth or of a State or Territory by imprisonment for 5 years or longer.

CLAUSE 101 : TIMING OF REGIONAL COUNCIL ELECTIONS

By virtue of clause 101, the initial Regional Council elections would be held no later than 8 months after the Bill comes into effect. After that, elections would be held in accordance with the Regional Council election rules every three years between 1 July and 31 December. Dates for the elections would be fixed by the Minister by notice in writing, a copy of which must be notified in the Gazette; see clause 103.

CLAUSE 102 : POLLING PLACES

The Australian Electoral Commission would be required by clause 102(1), by notice in writing, to appoint by name such polling places as it considers necessary for each region. A copy of such a notice must be published in the Gazette. (See clause 103(3)(a) and (4).) Polling places would have to be appointed :

(a) for the first Regional Council elections - as soon as practicable after the commencement of the Bill; and

(b) for subsequent Regional Council elections - between 1 April and 31 May in each year those elections are to be held.

The Australian Electoral Commission would also be required by clause 88(3) to give a copy of the most recent clause 88(1) notice appointing polling places for a region to the Minister and also to the Aboriginal and Torres Strait Islander Commission, which would have to ensure that a copy of that notice is available for inspection at each of its offices that serves that region.

CLAUSE 103 : FIXING OF ELECTION DAYS, AND LOCATION OF POLLING PLACES, TO BE NOTIFIED IN GAZETTE

Clause 103(1) would require the Minister to cause a copy of the notice fixing a day or days for the first elections for Regional Councils to be published in the Gazette before the day, or the first of the days, so fixed.

The Minister would also be required by clause 103(2) to give 90 days notice of any subsequent elections for Regional Councils by publishing in the Gazette a copy of the notice fixing the day or days for elections.

Together with the copy of a notice fixing the day on which the initial elections are to be held, the Minister would have to publish in the Gazette:

(a) a copy of the most recent notice appointing polling places under clause 102; and

(b) a notice setting out an estimate by the Minister, in relation to each region, of the number of persons who will be entitled to vote at the Regional Council elections for that region, and the number of persons living in that region who are Aboriginal persons or Torres Strait Islanders.

(See clause 103(3).) The estimate of the number of persons who will be entitled to vote would be relevant to clause 39, which would provide for the recall of Commissioners, to clause 119, which would provide for the removal of Regional Councils and also to clause 138 which relates to the convening of a Review Panel. The estimate of the Aboriginal and Torres Strait Islander population of the region would be relevant to determining the number of Regional Councillors that would comprise the Regional Council: see clause 111 and the definitions of 'estimated population' and 'prescribed number' in clause 4(1).

A failure by the Minister to comply with clause 103 would not invalidate the fixing of the day or days, or the appointing of the polling places. (See clause 103(4).)

CLAUSE 104 : EFFECT OF NOMINATIONS

If the number of candidates nominated for election to a Regional Council is not greater than the maximum number of Regional Councillors for that Regional Council (see clause 111), the authorised electoral officer would have to declare the candidates nominated to be duly elected. (See clause 104(1).) If more than the maximum number of candidates are nominated for election to a Regional Council, however, a poll would be held.

CLAUSE 105 : VOTING NOT COMPULSORY

This clause would provide that voting at Regional Council elections is not compulsory.

CLAUSE 106 : VOTING

Clause 106(1) would require a voter to cast a vote at a Regional Council election by marking the ballot paper so as to show the order of his or her preference for the candidates. By virtue of clause 106(2), a ballot paper would be formal if and only if :

(a) the authorised electoral officer is satisfied that it is an authentic ballot paper;

(b) it indicates the voter's first preference for one, and only one, candidate; and

(c) it does not have upon it any identifying mark.

Clause 106(3) would require that a formal ballot paper must be given effect according to the voter's intention so far as that intention is clear.

Clause 106(4) would define what an identifying mark would be for the purposes of clause 106.

CLAUSE 107 : COUNTING OF VOTES AND ELECTION OF CANDIDATES

This clause would require that votes cast at a Regional Council election be counted, and that candidates be elected, as provided in Schedule 2 to the Bill and in accordance with the Regional Council election rules (see clause 109). The method of counting votes and determining successful candidates in Regional Council elections that would be provided for in Schedule 2 would be the same method as is currently in use in respect of Senate elections.

CLAUSE 108 : GENERAL OBLIGATION TO INFORM VOTERS ABOUT ELECTIONS

This clause would oblige the Australian Electoral Commission, in addition to its specific obligations in relation to Regional Council elections, to take such steps as it considers reasonable to inform persons who are or may be entitled to vote at Regional Council elections about :

(a) eligibility to vote;

(b) the dates and times fixed for polling;

(c) the locations of polling places; and

(d) any other matters related to the conduct of Regional Council elections that the Australian Electoral Commission considers significant.

CLAUSE 109 : RULES FOR CONDUCT OF ELECTIONS

Clause 109(1) would empower the Minister, after he has consulted with both the Commission and the Electoral Commissioner, to make rules, not inconsistent with the Bill, prescribing :

(a) the manner in which Regional Council elections are to be conducted; and

(b) the manner in which casual vacancies in Regional Councils are to be filled.

Such rules are referred to in the Bill as Regional Council election rules.

Clause 109(2) would set out some examples of the matters that could be dealt with in Regional Council election rules as follows:

(a) the use of an electoral roll or voter cards to establish an entitlement to vote or to make a record of the persons who have cast votes;

(b) the nomination of candidates for election;

(c) ballot papers and forms;

(d) postal voting;

(e) mobile polling, including the appointment and duties of mobile polling teams and matters relating to polling by such teams;

(f) confidentiality of voting;

(g) the employment by the Australian Electoral Commission of staff, including polling staff, in connection with Regional Council elections;

(h) the scrutiny and counting of votes;

(j) the declaration of the poll;

Clause 109(3) would provide that the rules may provide penalties for breaches of the rules not exceeding :

(a) in the case of a natural person - $1000; and

(b) in the case of a body corporate - $5000.

However, pecuniary penalties above these limits could be imposed by the rules in respect of offences created by the rules that correspond to offences under the Commonwealth Electoral Act 1918. In such cases the rules could impose pecuniary penalties equivalent to those for the corresponding offences under that Act. Penalties of imprisonment could not be imposed at all under the rules. (See clause 109(4).)

Clause 109(5) would require the Minister in making rules under clause 109(1), to have regard to the desirability of providing for Regional Council elections to be conducted in a manner similar to the manner in which elections for the Parliament are conducted, with a view to increasing Aboriginal and Torres Strait Islander understanding of and participation in elections for the Parliament.

Clause 109(6) would make it clear that despite anything in clause 109(5) the Minister may make rules:

(a) that take account of the special circumstances of Aboriginal persons or Torres Strait Islanders; or

(b) that will enable significant reductions in the costs of conducting Regional Council elections.

Clause 109(7) would provide that rules made by the Minister under clause 109(1) would be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

By virtue of clause 109(8) rules made by the Minister under clause 109(1) would only come into effect when the time within which they might be disallowed, or deemed to be disallowed, under the Acts Interpretation Act 1901 has passed. This limitation would not, however, apply to rules made in respect of the first elections for Regional Councils, as otherwise there may be insufficient time for the rules to be made and come into operation before those elections are to be held: see clause 101(3).

CLAUSE 110 : AUTHORISED ELECTORAL OFFICER

This clause would define the term 'authorised electoral officer' for the purposes of Division 4 of Part 3 and Schedule 2 of the Bill.

DIVISION 5 - ADMINISTRATIVE PROVISIONS

CLAUSE 111 : CONSTITUTION OF REGIONAL COUNCILS

The Regional Councils other than the Regional Council for the Torres Strait Region would consist of up to 20 part-time members who would be elected in accordance with Division 4 of Part 3. The maximum number of Regional Councillors who would make up each of those Regional Councils would vary with the estimated population of the regions as determined by the Minister under clauses 89(4) or 103(3). The maximum number of Regional Councillors for regions other than the Torres Strait region would be calculated as follows:

- a region with an estimated population of less than 1000 would elect up to 10 Regional Councillors;

a region with an estimated population of between 1000 and 1999 would elect up to 11 Regional Councillors;

a region with an estimated population of 2000 or more would elect 11 Regional Councillors plus 1 additional Councillor for each 1000 of population.

Accordingly, regions with an estimated population of 10,000 or more would elect up to twenty Councillors.

(See the definition of 'prescribed number' in clause 4(1).)

The Regional Council for the Torres Strait Region would consist of 20 members similarly elected, unless special action is taken under clause 112.

No minimum number of members would be set, and the exercise of powers or the performance of functions by a Regional Council would not be affected by reason only that the number of members may be less than the maximum at any time because less than the relevant maximum number of persons nominated for the Council, or because of unfilled casual vacancies. However, the Minister would be able to remove the existing members of a Regional Council from office and appoint an Administrator to administer the affairs of the Regional Council if:

(a) the number of members falls below 7; and

(b) it would not be possible to bring the number of members up to at least 7 by filling casual vacancies in accordance with the Regional Council election rules.

CLAUSE 112 : TORRES STRAIT REGIONAL COUNCIL

This clause would provide that where the Minister is satisfied that the Torres Strait Regional Council would best be able to represent the Torres Strait Islanders and Aboriginals living in the Torres Strait region if it consisted of, or included, persons elected to represent particular communities in the Torres Strait region under the Community Services (Torres Strait) Act 1984 (Qld) ('the Queensland Act') or any Act replacing it, the Minister may, by notice in the Gazette, declare that he or she is so satisfied.

The notice would have to set out particulars of how the Torres Strait Regional Council would be constituted and could provide for, amongst other things:

(a) some or all of the members of the Torres Strait Regional Council to be persons elected under the Queensland Act to represent particular communities in the Torres Strait region;

(b) some of the members of the Torres Strait Regional Council to be elected under the Bill to represent particular communities in the Torres Strait region;

(c) the method of election of members of the Torres Strait Regional Council to whom provisions under paragraph (b) apply;

(d) the term of office of members of the Torres Strait Regional Council holding office under the clause.

The notice could also make such other provisions in relation to the constitution and operation of the Torres Strait Regional Council as the Minister thinks necessary, and would have effect according to its terms.

By virtue of clause 112(5), a notice under clause 112(1) would be a disallowable instrument for the purposes of section 46A of the

Acts Interpretation Act 1901. Except for a notice published before the beginning of the first Regional Council election period, such a notice would not come into effect until the time for its disallowance has passed.

It is proposed that the Minister will make a declaration under clause 112(1) by virtue of which the Torres Strait Regional Council would comprise 20 members being:

- the elected Chairperson from time to time of each of the 17 Island Councils represented on the Island Co-ordinating Council (the ICC), a body corporate established by s.44 of the Queensland Act;

- the person appointed to the ICC from time to time by the members of the Tamwoy community on Thursday Island as a representative of the community under s.45(b) of the Queensland Act;

- an elected member of the Thursday Island (Port Kennedy) community; and

- an elected member of the Horn Island and Prince of Wales communities.

The Regional Councillors for the Thursday Island (Port Kennedy) community and the Horn Island and Price of Wales communities, would be elected at elections held under Division 4 of Part 3 of the Bill.

CLAUSE 113 : TERM OF OFFICE OF MEMBERS

Persons who are elected, or are declared to have been elected under clause 104(1) as members of the Regional Council in a round of Regional Council elections would take office on the last day on which a poll is declared in relation to an election in that round of elections.

Subject to clauses 112(3)(a), 116, 117, 118, 119 and 136, members of a Regional Council would hold office until the last day on which a poll is declared in relation to an election in the next round of Regional Council elections.

CLAUSE 114 : REMUNERATION AND ALLOWANCES

This clause would provide that a member of a Regional Council is entitled to remuneration and allowances in accordance with clause 191.

CLAUSE 115 : DISCLOSURE OF INTERESTS

Clause 115(1) would oblige a member of a Regional Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Regional Council, as soon as possible after the relevant facts have come to the member's knowledge, to disclose the nature of the interest at a meeting of the Regional Council. Such a disclosure would have to be recorded in the minutes of the meeting.

CLAUSE 116 : RESIGNATION

This clause would provide that a member of a Regional Council may resign by writing signed by the member and sent to the Minister.

CLAUSE 117 : PERSONS TAKEN TO HAVE RESIGNED FROM REGIONAL COUNCILS IN CERTAIN CIRCUMSTANCES

Clause 117(1) would provide that where the Commission is satisfied that a member of a Regional Council :

(a) does not live in the Council's region; and

(b) has not lived in the region at all during the immediately preceding period of 6 months;

the Commission may, in writing, declare that it is so satisfied.

It would be possible to apply to the Administrative Appeals Tribunal for review of a decision of the Commission to make a declaration under clause 117(1). (See clause 193.) Clause 117(2) would therefore provide that, subject to the Administrative Appeals Tribunal Act 1975, where the Commission makes such a declaration, the member who is the subject of the declaration shall, for all purposes, be taken to have resigned on the date of the declaration.

The Commission would also be able, in writing, to declare that a member of a Regional Council has become an employee of, or a consultant to, the Commission. (See clause 117(3).)

Where the Commission makes a declaration under clause 117(3) about a member of a Regional Council, the member will for all purposes be taken to have resigned on the date of the declaration.

CLAUSE 118 : PERSONS TO CEASE TO BE MEMBERS OF REGIONAL COUNCILS IN CERTAIN CIRCUMSTANCES

Clause 118(1) would provide that where the Commission is satisfied that a member of a Regional Council, since becoming, or last becoming, a member of the Regional Council has been convicted and is under sentence for an offence against the law of the Commonwealth, or of a State or Territory punishable by imprisonment for 5 years or longer, the Commission would have to declare, in writing, that it is so satisfied.

Where the Commission makes a declaration under clause 118(1) about a member of a Regional Council, the member would cease to

be a member of the Regional Council on the date of the declaration.

CLAUSE 119 : REMOVAL OF REGIONAL COUNCIL

Clause 119 would provide a mechanism by which the persons who would be entitled to vote at an election for the members of a Regional Council may sign a petition calling on the Minister for the suspension of that Regional Council.

If a sufficient number of such persons sign a petition which meets the requirements for a valid petition set out in clause 119(2), the Minister would, at any time within 6 months after he or she receives the petition, be able to:

(a) remove all the members of the relevant Regional Council from office; and

(b) appoint an Administrator to administer the affairs of that Council.

The numbers of persons who would have to sign a petition would be 25% of the 'electorate number', which term is defined in clause 4(1).

CLAUSE 120 : POWERS OF ADMINISTRATOR

Clause 120 would provide that an Administrator appointed by the Minister under clause 111(3)(b), 119(1)(b), under Schedule 4 to administer the affairs of a Regional Council:

(a) shall do so until the last day on which a poll is declared in relation to the next round of Regional Council elections, when new Regional Councillors would take office;

(b) has all the functions and powers of the Regional Council;

(c) has all powers necessary to rectify any problems in the affairs of the Regional Council; and

(d) does not have the power to vote in any election for a Commissioner.

Clause 120(c) would, therefore, ensure that the Administrator may take any necessary action to rectify problems. If no powers greater than those of the Regional Council concerned are necessary, no such powers would be conferred by clause 120(c).

CLAUSE 121 : MEMBERS OF REGIONAL COUNCILS, AND ADMINISTRATORS, NOT PERSONALLY LIABLE

Clause 121(1) would provide that a member of a Regional Council is not personally liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:

(a) by the Regional Council; or

(b) by the member in the capacity of member.

Clause 121(2) would extend similar protection to an Administrator appointed under clauses 111(3)(b), 119(1)(b) or Schedule 4 by providing that an Administrator is not personally liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done:

(a) by the Regional Council concerned before the Administrator was appointed; or

(b) in good faith by the Administrator in the capacity of Administrator.

CLAUSE 122 : OTHER TERMS AND CONDITIONS

This clause would provide that a member of a Regional Council holds office on such terms and conditions (if any) in respect of

matters not provided for by the Bill as are determined by the Minister by notice published in the Gazette.

DIVISION 6 - OPERATIONS OF REGIONAL COUNCILS

CLAUSE 123 : CHAIRPERSON AND EXECUTIVE COMMITTEE

Clause 123(1) would require a Regional Council, at its first meeting after it is elected, and after that annually, to elect from among its members, by secret ballot, a Chairperson and 4 other persons who would together comprise the Executive Committee of the Regional Council: clause 123(2).

Clause 123(3) would also enable the Regional Councils to elect new Chairpersons or other new members of their Executive Committees, and would require them to do so if there is a vacancy in such offices.

The Governor-General would be able to make regulations, not inconsistent with the Bill, as to the manner in which such elections are to be conducted. (See clause 199(2)(b).) Elections under clause 123 would have to be conducted in accordance with such regulations.

CLAUSE 124 : MEETINGS OF REGIONAL COUNCILS

Clause 124(1) would require that each Regional Council hold a minimum of 4 meetings each calendar year, and in addition the Chairperson would be able to convene such other meetings as, in his or her opinion, are necessary for the efficient performance of the Regional Council's functions.

The Chairperson of a Regional Council would also be required to convene a meeting of the Regional Council upon receipt of a written request for a meeting signed by a least 4 members of the Regional Council.

The Commission Chairperson would also be able to convene meetings of Regional Councils at any time. This would ensure that it

would always be possible to convene such meetings, even though the Chairperson of a Regional Council may not be available. (Clause 124(2).)

The Commission Chairperson would have to convene a meeting of a Regional Council whenever the Regional Council does not have a Chairperson. Such meetings would have to be convened within a reasonable time of the occasion for the meeting arising: for example, when a new Regional Council takes office. A minimum of 14 days notice would be required for such meetings.

At a meeting of a Regional Council a quorum would be constituted by a majority of the current members of the Regional Council, and the Chairperson of a Regional Council would have to preside at all meetings of the Regional Council at which he or she is present. If the Chairperson is not present at a meeting, the members present would be required by clause 124(7) to elect one of their number to preside at the meeting.

Questions arising at a meeting of the Regional Council would be determined by a majority of the votes of the members present and voting, and the person presiding at a meeting of a Regional Council would have both a deliberative vote and, if voting is tied, a casting vote.

A Regional Council would be required by clause 124(10) to cause minutes of the proceedings at its meeting to be kept, but except as otherwise provided by the Bill, a Regional Council would be able to regulate the conduct of proceedings at its meetings as it thinks fit.

CLAUSE 125 : COMMISSION OFFICERS MAY BE REQUIRED TO ATTEND REGIONAL COUNCIL MEETINGS

If a Regional Council so requests, the Chief Executive Officer must nominate a member of the staff of the Commission to attend one or more meetings of the Regional Council: clause 125.

CLAUSE 126 : DELEGATION TO SEVERAL MEMBERS OF REGIONAL COUNCIL

Under clause 126(2), a Regional Council would be able, by instrument in writing, to delegate any or all of its functions and powers to at least 5 members of the Regional Council named in the instrument, which could include any members of the Executive Committee of that Regional Council.

A function or power so delegated could only be performed or exercised by a majority of the members of the Regional Council named in the instrument of delegation, acting jointly. When so performed or exercised a delegated power would, for the purposes of the Bill, be deemed to have been performed or exercised by the Regional Council.

Clause 126(5) would require the members of a Regional Council who perform a function or exercise a power pursuant to a delegation under clause 126 to:

(a) record, in writing, the performance of that function or the exercise of that power; and

(b) ensure that a copy of that record is tabled at the next meeting of the Regional Council.

DIVISION 7 - ZONES

CLAUSE 127 : ZONES

For the purposes of the Bill, clause 127(1) would divide Australia into 17 zones, each of which would be comprised of a region or regions as shown in Schedule 1. One of the zones would be the Torres Strait zone. The region or regions comprising each zone could be varied from time to time by the Minister by regulation made under clause 127(2).

CLAUSE 128 : ELECTION OF ZONE REPRESENTATIVES

Clause 128(1) would require the members of the Regional Councils of the regions included in a zone to elect one of their number to represent the zone. However, under clause 128(2), a person whose appointment as the Commissioner representing a zone has been terminated by the Minister under clause 38(4) for misbehaviour, or under clause 39, could not stand for election at the next election under clause 128(1) for a person to represent the zone.

CLAUSE 129 : ZONE ELECTIONS

Clause 129(1) would provide that zone elections must be conducted in accordance with the provisions of the Bill and the zone election rules made under clause 134 that were in force at the end of the previous round of Regional Council elections.

Clause 129(2) would have the effect that the Australian Electoral Commission must conduct all elections, other than elections to replace an elected Commissioner representing a zone who has ceased to hold office as an elected Commissioner. The latter elections would also have to be conducted by the Australian Electoral Commission unless zone election rules are made under clause 134(1)(b) for the conduct of those elections by another body or person.

CLAUSE 130 : TIMING OF ZONE ELECTIONS

This clause would require that each round of zone elections be held as soon as practicable, and not later than 3 months, after the last declaration of a poll in relation to a round of Regional Council elections.

CLAUSE 131 : EFFECT OF NOMINATIONS

If only one candidate is nominated for election at a zone election, clause 131(1) would require the authorised electoral officer to declare the candidate to be duly elected. If,

however, 2 or more candidates are nominated for election at a zone election, a poll must be held.

CLAUSE 132 : VOTING

Clause 132 would require that a vote be cast at a zone election by marking the ballot paper so as to show the order of the voter's preference for the candidates. By virtue of clause 132(2), a vote would be formal if and only if:

(a) the authorised electoral officer is satisfied that it is an authentic ballot paper;

(b) it indicates the voter's first preference for one, and only one, candidate; and

(c) it does not have upon it any identifying mark.

Clause 132(3) would require that a formal ballot paper must be given effect according to the voter's intention so far as that intention is clear.

Clause 132(4) would define the term 'identifying mark' for the purposes of clause 132.

CLAUSE 133 : COUNTING OF VOTES AND ELECTION OF CANDIDATES

This clause would require that votes cast at a zone election be counted, and candidates elected, as provided in Schedule 3 and in accordance with zone election rules made under clause 134. The method of counting votes and electing candidates set out in Schedule 3 would be the same as for elections for members of the House of Representatives.

CLAUSE 134 : RULES FOR CONDUCT OF ELECTIONS

This clause would empower the Minister after consulting with the Commission and the Electoral Commissioner, to make rules, not inconsistent with the Bill, prescribing:

(a) the manner in which zone elections are to be conducted; and

(b) the manner of filling casual vacancies among elected Commissioners. (See clause 129(2).)

Clause 134(2) would set out the following examples of the matters that may be dealt with in rules made under clause 134(1):

(a) the nomination of candidates for election;

(b) ballot papers and forms;

(c) postal voting;

(d) confidentiality of voting;

(e) the performance of administrative duties in relation to elections by members of staff of the Commission;

(f) the scrutiny and counting of votes;

(g) the declaration of the ballot;

(h) the making of applications for inquiries into elections: see clause 136.

Clause 134(3) would provide that the rules may provide penalties for breaches of the rules not exceeding:

(a) in the case of a natural person - $1000; and

(b) in the case of a body corporate - $5000.

However, pecuniary penalties above these limits could be imposed by the rules in respect of offences created by the rules that correspond to offences under the Commonwealth Electoral Act 1918. In such cases the rules could impose pecuniary penalties equivalent to those for the corresponding offences under that Act. Penalties of imprisonment could not be imposed at all under the rules. (See clause 134(4).)

By virtue of clause 134(5) rules made by the Minister under clause 134(1) would be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901. Such rules (except for rules made for the first zone elections) would not come into effect until the time for their disallowance has passed: see clause 134(6).

CLAUSE 135 : AUTHORISED ELECTORAL OFFICER

This clause would define the term 'authorised electoral officer' for the purposes of Division 7 of Part 3 of the Bill.

DIVISION 8 - DISPUTED ELECTIONS

CLAUSE 136 : DISPUTED ELECTIONS

This clause would provide that where there is a dispute in relation to a Regional Council or zone election, Schedule 4 would apply.

Schedule 4 would provide for the Federal Court of Australia to act as a Court of Disputed Elections.

DIVISION 9 - REVIEW OF BOUNDARIES

CLAUSE 137 : REVIEW PANELS

Clause 137 would require the Minister to convene a Review Panel to review and report to the Minister on:

- the boundaries of the regions; and
- the grouping of regions into zones.

A Review Panel would consist of:

- a Chairperson who would be a Commissioner;
- a person nominated by the Australian Electoral Commissioner; and
- an Aboriginal person or Torres Strait Islander who is not a Commissioner.

A Review Panel could also include a person nominated by the Commonwealth Surveyor-General to represent the Australian Survey and Land Information Group.

A member of a Review Panel would be entitled to remuneration and allowances under clause 191.

CLAUSE 138 : WHEN REVIEW PANEL TO BE CONVENED

The Minister would have to convene to Review Panel after the first round of zone elections. The Minister could then convene a Review Panel after any subsequent round of zone elections, and would have to do so after a round of zone elections if a Review Panel was not convened after the previous round of elections: clause 138(1) and (2).

The Minister would also have to convene a Review Panel if he or she receives a valid petition calling for a review of:

- the boundaries of a region; or

- the regions comprising a zone.

The requirements for a valid petition are contained in clause 138(3):

- the signatures on the petition must be less than six months old; and

- the petition must contain certain information and contain a minimum number of signatures.

The persons who could validly sign such a petition would be the persons who at the time of signing would be able to vote at an election for the relevant Regional Council, or at an election for a Regional Council in the relevant zone.

The number of signatures required would be a number that exceeds 25% of:

- in relation to a region - the electorate number for the region;

- in relation to a zone - the sum of the electorate numbers for all regions in the zone.

CLAUSE 139 : CONDUCT OF REVIEW ETC

A Review Panel would have to give each Regional Council an opportunity to express an view about the matters under review.

If a Review Panel is convened following a petition under clause 138(2)(b), the Minister would have the option under clause 139(2) of:

(a) having the Review Panel review only the matters raised in the petition; or

(b) taking the opportunity to have the Review Panel carry out a more wide ranging review of the boundaries of the regions and the grouping of the regions into zones.

CLAUSE 140 : WHEN REVIEW PANEL TO REPORT

A Review Panel would have to report within 12 months after it is convened, and the Minister would have to table copies of such reports in each House of Parliament.

PART 4 - ABORIGINAL AND TORRES STRAIT ISLANDER COMMERCIAL DEVELOPMENT CORPORATION

DIVISION 1 - ABORIGINAL AND TORRES STRAIT ISLANDER COMMERCIAL DEVELOPMENT CORPORATION

CLAUSE 141 : ABORIGINAL AND TORRES STRAIT ISLANDER COMMERCIAL DEVELOPMENT CORPORATION

Clause 141(1) would establish the Aboriginal and Torres Strait Islander Commercial Development Corporation.

By virtue of Clause 141(2) the Corporation would:

(a) be a body corporate;

(b) have a seal;

(c) be able to acquire, hold and dispose of real and personal property; and

(d) be able to sue and be sued.

The common seal of the Corporation would have to be kept as the Corporation directs and used as authorised by the Corporation: clause 141(3). Clause 141(4) would require all courts, judges and persons acting judicially to take judicial notice of the imprint of the seal of the Corporation appearing on a document, and to presume that it was duly affixed.

CLAUSE 142 : PURPOSES OF CORPORATION

This clause would set out the purposes for which the Corporation would be established, namely:

> to advance the commercial and economic interests of Aboriginal persons and Torres Strait Islanders by accumulating and using a substantial capital asset for the benefit of the Aboriginal and Torres Strait Islander peoples

DIVISION 2 - FUNCTIONS OF CORPORATION

CLAUSE 143 : FUNCTIONS OF CORPORATION

This clause would provide that the Corporation has the following functions:

(a) to engage in commercial activities;

(b) such other functions as are conferred on the Corporation by the Bill.

CLAUSE 144 : PERFORMANCE OF FUNCTIONS

This clause would oblige the Corporation Board to act in relation to the Corporation's functions in accordance with sound business principles, and also to have regard to the desirability of:

(a) encouraging and facilitating Aboriginal and Torres Strait Islander participation in commercial projects and enterprises;

(b) securing, as far as practicable, Aboriginal and Torres Strait Islander participation in the ownership and control of companies engaged in activities that are likely to have a significant impact on Aboriginal or Torres Strait Islander interests;

(c) promoting the development of industries and other commercial and economic activities that are likely to have a beneficial impact on Aboriginal or Torres Strait Islander interests; and

(d) making specialist commercial expertise available to Aboriginal persons and Torres Strait Islanders engaged in commercial activities.

CLAUSE 145 : CORPORATE PLAN

This clause would require the Corporation Board to, from time to time, prepare a corporate plan:

(a) setting out a statement of the Corporation's objectives; and

(b) outlining the strategies and policies that the Corporation Board intends to adopt in order to achieve those objectives, with particular reference to the Corporation Board's intentions in relation to investments, loans, guarantees and other financial aspects of its operations.

Each corporate plan would have to relate to a period of between 3 and 5 years, and the Corporation would be required to review the corporate plan regularly.

CLAUSE 146 : CONSIDERATION OF CORPORATE PLAN BY MINISTER

The Corporation Board would be required by clause 146 to give a copy of the corporate plan to the Commission. The Commission

must pass a copy to the Minister, and would also be able to give the Minister its written comments on the corporate plan.

Clause 146(3) would empower the Minister, after consulting with the Commission, by notice in writing to the Corporation Board, to request the Corporation Board to change the corporate plan in specified respects.

CLAUSE 147 : POWERS OF MINISTER

This clause would make it clear that the Minister would only be able to direct the Corporation in relation to any of its activities where the Bill expressly provides that the Minister may do so.

CLAUSE 148 : POWERS OF CORPORATION

This clause would provide that subject to clause 149 and clauses 175 to 187 of the Bill, the Corporation would have power to do everything necessary to be done for or in connection with the performance of its functions. The Corporation would, amongst other things, be able to:

(a) enter into contracts;

(b) invest its own money;

(c) appoint agents and attorneys, and act as an agent for other persons;

(d) form, and participate in the formation of, companies;

(e) subscribe for and purchase shares in, and debentures and other securities of, companies;

(f) enter into partnerships;

(g) participate in joint ventures and arrangements for the sharing of profits;

(h) accept gifts, grants, bequests and devises made to it;

(j) act as trustee of money and other property vested in it on trust; and

(k) charge for the provision of services by it.

Any money held by the Corporation on trust would have to be dealt with by the Corporation in accordance with its powers and duties as trustee, and would be unaffected by any other provision of the Bill.

The powers of the Corporation would be exercisable within or outside Australia.

CLAUSE 149 : GUARANTEES

Clause 149(1) would provide that where the Corporation Board is satisfied that money lent or to be lent to any person will be used in a way that furthers the commercial or economic development of Aboriginal persons or Torres Strait Islanders, the Corporation may guarantee the due payment of all moneys (including interest) payable by the borrower in accordance with the terms and conditions of the loan concerned. The Corporation could only do so, however, subject to such limits as the Treasurer determines as to the total amount of money (other than interest) the payment of which may at any time be the subject of guarantees under this clause.

The power to guarantee the due payment of moneys under clause 149(1) would have to be exercised in accordance with sound business principles. (See clause 144(1).) The Corporation would have no other power to give guarantees.

CLAUSE 150 : MINISTER OR COMMISSION MAY ASK FOR INFORMATION

This clause would require the Corporation Board to give to the Minister or the Commission any information about the Corporation's activities for which they have asked.

DIVISION 3 - BOARD OF DIRECTORS OF CORPORATION

CLAUSE 151 : BOARD OF DIRECTORS OF CORPORATION

Clause 151 will establish a Board of Directors of the Corporation, comprising:

(a) a Chairperson;

(b) a Deputy Chairperson; and

(c) 7 other members.

CLAUSE 152 : RESPONSIBILITIES OF CORPORATION BOARD

The Board of Directors would be responsible for ensuring the proper and efficient performance of the Corporation's functions, and would also have to determine the Corporation's policies.

CLAUSE 153 : APPOINTMENT OF DIRECTORS

Clause 153 would require that the Directors be appointed by the Minister on a part-time basis, and that the Chairperson of the Corporation Board and at least 4 other Directors be Aboriginal persons or Torres Strait Islanders. At least 3 of the Directors would also have to be members of the Commission.

Clause 153(4) would prevent the Minister from appointing a person who is not a member of the Commission as a Director, unless the Minister is satisfied that the person has experience and expertise in industry, commerce or finance.

CLAUSE 154 : SELECTION OF DIRECTORS

Clause 154(1) would require that whenever there is, or is expected to be, a vacancy in an office of Director, the Commission shall recommend to the Minister that a specified person, or any of 2 or more specified persons, be appointed to fill the vacancy. If the Minister is not satisfied with such a recommendation, the Minister would be obliged by clause 154(2) to notify the Commission accordingly and invite the Commission to make another recommendation. The Minister may impose time limits on the making of such recommendations, and the Commission must comply with those limits. (See clause 154(3)).

If the Minister is not satisfied with a second recommendation made by the Commission in respect of a vacancy, clause 154(4) would enable the Minister to fill the vacancy by choosing a person and by appointing him or her in accordance with clause 153.

DIVISION 4 - ADMINISTRATIVE PROVISIONS

CLAUSE 155 : PERIOD OF APPOINTMENT

This clause would deal with the periods for which Directors would be able to hold office, which would differ according to whether or not the Director is also a Commissioner. A person who is a Commissioner could be appointed or re-appointed as Director at any age, and would hold office for the period, of not less than 1 and no more than 5 years, specified in the instrument of the Director's appointment. (Such a person would also cease to hold office as a Director if he or she ceases to be a Commissioner. See clause 161(3).)

A person who is not a Commissioner could not be appointed or re-appointed as Director after he or she has attained the age of 65 years; nor could such a person be appointed or re-appointed for a period extending beyond the day on which the person will attain the age of 65 years. Subject to those limitations, a person who

is not a Commissioner would hold office for the period, of no more than 5 years, that is specified in the instrument of the Director's appointment.

CLAUSE 156 : REMUNERATION AND ALLOWANCES

This clause would provide that a Director is entitled to remuneration and allowances in accordance with clause 211.

CLAUSE 157 : LEAVE OF ABSENCE

This clause would empower the Minister to grant, by writing, to a Director leave of absence from a meeting of the Board, and would enable the Minister to delegate to the Corporation Chairperson the power to grant leave of absence to other Directors.

CLAUSE 158 : ACTING APPOINTMENTS

Clause 158(1) would provide that the Deputy Chairperson of the Corporation Board shall act as the Corporation Chairperson:

(a) during a vacancy in the office of Corporation Chairperson, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Corporation Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of his or her office.

Clause 158(2) would empower the Minister to appoint a Director to act as the Deputy Chairperson of the Corporation Board:

(a) during a vacancy in the office of Deputy Chairperson of the Corporation Board, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Deputy Chairperson of the Corporation Board is absent

from duty or from Australia or is, for any reason unable to perform the duties of the office.

Clause 158(3) would empower the Minister to appoint a person to act as a Director (other than the Chairperson or Deputy Chairperson of the Corporation Board):

(a) during a vacancy in an office of Director, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when a Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

A person appointed to act during a vacancy under clause 158(2) or (3) would not be able to continue so to act for more than 6 months.

The Minister would be prohibited by clause 158(4), from appointing or re-appointing a person to act in an office under clause 158, unless the person could be appointed to that office in accordance with clause 153.

Clause 158(5) would provide that anything done by or in relation to a person purporting to act pursuant to to an appointment made under this section is not invalid merely because:

(a) the occasion for the appointment had not arisen;

(b) there was a defect or irregularity in connection with the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

CLAUSE 159 : DISCLOSURE OF INTERESTS

This clause would require a Director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Corporation Board, as soon as possible after the relevant facts have come to the Director's knowledge, to disclose the nature of the interest at a meeting of the Corporation Board.

Such a disclosure must be recorded in the minutes of the meeting of the Corporation Board and the Director making the disclosure would then be prohibited from:

(a) being present during any deliberation of the Corporation Board with respect to that matter; or

(b) taking part in any decision of the Corporation Board with respect to that matter.

CLAUSE 160 : RESIGNATION

Clause 160 would provide that a Director may resign by writing signed by him or her and sent to the Minister.

CLAUSE 161 : TERMINATION OF APPOINTMENT

Clause 161(1) would provide that after consulting with the Commission, the Minister would be able to terminate the appointment of a Director because of misbehaviour, or physical or mental incapacity.

Clause 161(2) would require the Minister to terminate a Director's appointment if the Director:

(a) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Corporation Board;

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors,

compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(c) fails, without reasonable excuse, to comply with the requirement to disclose an interest that would be imposed by clause 159(1) or (2).

A Director who was a Commissioner at the time of his or her appointment would cease to be a Director if he or she ceases to be a Commissioner.

CLAUSE 162 : OTHER TERMS AND CONDITIONS

Clause 162 would provide that a Director holds office on such terms and conditions (if any) in respect of matters not provided for by the Bill as are determined by the Minister by notice published in the Gazette.

DIVISION 5 - OPERATIONS OF CORPORATION AND CORPORATION BOARD

CLAUSE 163 : MEETINGS OF CORPORATION BOARD

The Corporation Chairperson would be required by clause 163(1) to convene such meetings of the Corporation Board as, in the Chairperson's opinion, are necessary for the efficient performance of its responsibilities. At a meeting of the Corporation Board a quorum would generally be constituted by 5 Directors including at least one Commissioner. However, if a Director who is present at a meeting is required by clause 159 not to be present during the deliberations, or to take part in any decision, of the Corporation Board with respect to a particular matter and, when the Director leaves the meeting there are less then 5 Directors present, the Directors remaining at the meeting would constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

Clause 163(4) would require the Chairperson of the Corporation to preside at all meetings of the Corporation Board at which he or she is present, but in his or her absence, by virtue of clause 163(5), if the Deputy Chairperson of the Corporation Board is present, he or she must preside at the meeting. If the Deputy Chairperson is also absent, the Directors present must elect one of their number to preside at the meeting.

Clause 163(6) would provide that questions arising at a meeting of the Corporation Board must be determined by a majority of the votes of the Directors present and voting, and for those purposes the person presiding at a meeting of the Corporation Board would have a deliberative vote and, if the votes are equal, would also have a casting vote. (See clause 163(7).)

By virtue of clause 163(8), the Corporation Board would be able to regulate the conduct of proceedings at its meetings as it thinks fit, and would be required to cause minutes of those proceedings to be kept.

Clause 163(9) would empower the Corporation Board to determine that a Director may participate in, and form part of a quorum at, a meeting of the Corporation Board by telephone, closed circuit television, or by any other method of communication determined by the Corporation Board. The Corporation Board would be able to make such a determination in respect of a particular meeting, or in respect of all meetings, of the Corporation Board.

Clause 163(11) would provide that a Director who participates in a meeting as provided by clause 163(9) shall be taken for the purposes of clauses 159 and 163 to be present at the meeting.

Clause 163(12) would require the Corporation Chairperson, when he or she convenes a meeting, to notify the Chief Executive Officer of the time and place fixed for the meeting. This requirement would reflect clause 163(13), which would provide that the Chief Executive Officer is entitled to be present at meetings of the Corporation Board although he or she could not vote at any such meeting.

DIVISION 6 - GENERAL MANAGER

CLAUSE 164 : GENERAL MANAGER

Clause 164(1) would provide that there shall be a General Manager of the Corporation, who shall be appointed by the Corporation Board and who, subject to clause 164(3), would manage the day-to-day administration of the Corporation.

Clause 164(3) would require that in managing the administration of the Corporation and in exercising any powers conferred on him or her by Bill, the General Manager must act in accordance with any policies determined, and any directions given, by the Corporation Board in writing.

CLAUSE 165 : TERM OF APPOINTMENT

Clause 165(1) would provide that the General Manager would hold office for no longer than 5 years, starting from a day specified in the instrument of his or her appointment.

By virtue of clause 165(2) it would not be possible to appoint as General Manager a person who has attained the age of 65 years; nor could a person be appointed as the General Manager for a period that extends beyond the day on which the person will attain the age of 65 years.

CLAUSE 166 : HOLDING OF OFFICE

This clause would provide that the General Manager of the Corporation holds office at the pleasure of the Corporation Board.

CLAUSE 167 : REMUNERATION AND ALLOWANCES

This clause would provide that the General Manager shall be paid such remuneration and allowances as are determined in writing by the Corporation Board.

CLAUSE 168 : ACTING GENERAL MANAGER

Clause 168 would empower the Corporation Board to appoint a person to act as the General Manager:

(a) during vacancy in the office of General Manager, whether or not an appointment has previously been made to the office: or

(b) during any period, or during all periods, when the General Manager is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy would not be able to continue so to act for more than 6 months.

Clause 168(2) would provide that anything done by or in relation to a person purporting to act pursuant to an appointment made under that clause is not invalid merely because:

(a) the occasion for the appointment had not arisen;

(b) there was a defect or irregularity in connection with the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion to act had arisen or had ceased.

CLAUSE 169 : RESIGNATION

This clause would provide that the General Manager may resign by writing signed by him or her and sent to the Corporation Board.

CLAUSE 170 : OTHER TERMS AND CONDITIONS

This clause would provide that the General Manager holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Corporation Board in writing.

DIVISION 7 - STAFF

CLAUSE 171 : STAFF

Clause 171(1) would empower the General Manager to engage such employees as are necessary for the performance of the Corporation's functions. The terms and conditions of employment of persons engaged under clause 171 would be as determined by the Corporation Board in writing.

CLAUSE 172 : ARRANGEMENTS FOR COMMISSION STAFF TO PERFORM DUTIES ON BEHALF OF CORPORATION

This clause would empower the General Manager to make arrangements with the Chief Executive Officer for the performance of duties by the staff of the Commission on behalf of the Corporation.

CLAUSE 173 : ARRANGEMENTS RELATING TO STAFF

This would empower the General Manager to make arrangements with the Chief Executive Officer or employees of:

(a) the Public Service of the Commonwealth or of a State or Territory;

(b) an authority of the Commonwealth or of a State or Territory; or

(c) any other organisation or body;

to be made available to the Corporation.

CLAUSE 174 : CONSULTANTS

Clause 174 would empower the General Manager to engage as consultants to the Corporation persons having suitable qualifications and experience, whose terms and conditions of engagement of consultants would be as determined in writing by the Corporation.

DIVISION 8 - FINANCES

CLAUSE 175 : CAPITAL OF THE CORPORATION

This clause would provide that the capital of the Corporation consists of:

(a) money that, immediately before the Bill comes into operation, was held in the Capital Fund referred to in paragraph 20(3)(a) of the Aboriginal Development Commission Act 1980, which would be transferred to the Corporation by clause 206; and

(b) any amount appropriated from time to time by the Parliament as capital for the Corporation.

CLAUSE 176 : BANK ACCOUNTS

Clause 176(1) would require the Corporation to open and maintain at least one account with a bank and would empower the Corporation to open and maintain as many other accounts with banks as the Corporation Board thinks necessary. Clause 176(2) would require the Corporation to pay all money received by it into such an account or accounts.

CLAUSE 177 : APPLICATION OF MONEY HELD BY CORPORATION

This clause would provide that money held by the Corporation shall be applied only:

(a) in payment or discharge of the costs, expenses and other obligations incurred by the Corporation in the performance of its functions or the exercise of its powers under the Bill or any law;

(b) in payment of any remuneration and allowances payable to any person under the Bill or any law; and

(c) in making any other payments which the Corporation is authorised or required to make under the Bill or any law.

CLAUSE 178 : RESTRICTION ON CORPORATION SPENDING

This clause would prohibit the Corporation Board from approving any proposal for Corporation expenditure without first considering a written assessment of the proposal that has been:

(a) prepared by a member of the staff of the Corporation; and

(b) endorsed by or on behalf of the General Manager.

The prohibition would apply to decisions for expenditure related to the commercial activities of the Corporation, and would not apply to day to day administrative expenditure.

CLAUSE 179 : BORROWING FOR TEMPORARY PURPOSES

This clause would empower the Corporation to borrow money on overdraft from a bank only for the purpose of meeting a temporary deficit in the money of the Corporation. Further, the

Corporation's power to borrow that would be conferred by clause 179 would be subject to such limits as the Treasurer determines as to:

(a) the total amount of money (other than interest) that may be owed by the Corporation at any time as a result of borrowings under this clause; and

(b) the periods for which money may be borrowed under this clause.

CLAUSE 180 : LIMIT ON CORPORATION'S POWERS

This clause would prohibit the Corporation from borrowing money except in accordance with clause 179, and would also prohibit the Corporation from raising money except by borrowing. The latter prohibition would not prevent the Corporation from making a profit, or from earning interest on investments, or from undertaking any other activity that would be authorised by the Bill. Clause 180(2) would, however, prevent the Corporation from raising money by, for example, issuing debentures or some other form of security.

CLAUSE 181 : GIVING OF SECURITY OVER ASSETS

This clause would provide that the Corporation may give security over the whole or any part of its assets:

(a) for the repayment by the Corporation of money borrowed under clause 179 and the payment by the Corporation of interest (including interest on interest) on money so borrowed; or

(b) in connection with a guarantee given by the Corporation under clause 149.

The Corporation would not be able to otherwise give security over its assets.

CLAUSE 182 : PAYMENT OF DIVIDEND TO COMMONWEALTH

This clause would require the Corporation Board, within the period of 4 months after the end of each financial year after 30 June 1993, by notice in writing to the Minister, to recommend:

(a) that the Corporation pay a dividend of a specified amount to the Commonwealth for the financial year; or

(b) that the Corporation not pay a dividend to the Commonwealth for the financial year.

Clause 182(2) would require the Minister, after consulting the Treasurer, to give, within 30 days after receiving the recommendation, notice in writing to the Corporation Board either approving the recommendation, or directing the Corporation Board to pay a dividend of a specified amount to the Commonwealth for the financial year.

If the Minister approves a recommendation of a Corporation that it pay a dividend of a specified amount, or if the Minister directs the Corporation to pay a dividend of a specified amount, the Corporation would, by virtue of clause 182(4), have to pay the relevant specified amount to the Commonwealth. The payment would have to be made within the period of 8 months after the end of the financial year concerned. (See clause 182(5).)

Clause 182(6) would provide that the Corporation Board is not required to recommend, and the Minister is not empowered to direct, the payment of a dividend by the Corporation that exceeds half of the amount of the net profit of the Corporation for the financial year concerned.

It is proposed, by virtue of clause 182(7), that no dividend would be paid for any financial year ending on or before 30 June 1993.

CLAUSE 183 : NET PROFIT OF CORPORATION

This clause would provide that for the purposes of the Bill, the net profit of the Corporation for a financial year is the amount (if any) remaining after deducting from the revenue received or receivable in respect of the financial year:

(a) the expenditure and provision for expenditure properly chargeable against that revenue; and

(b) provision for income tax.

CLAUSE 184: AUDIT OF SUBSIDIARY BODIES BY AUDITOR-GENERAL

Clause 184(1) would empower the Minister, with the consent of the Auditor-General, to direct in writing that:

(a) a specified company that is a subsidiary of the Corporation; or

(b) all companies that are subsidiaries of the Corporation;

shall be audited by the Auditor-General. While such a direction is in force, clause 194 would apply to each company to which the direction relates. That clause contains detailed provisions for the audit of subsidiary bodies.

CLAUSE 185 : POWERS OF COMPANIES IN WHICH CORPORATION HAS AN INTEREST

This clause would provide that nothing in Part IV of the Bill, other than clause 184, shall be taken to limit the powers of any company:

(a) formed by the Corporation, whether alone or jointly with another person; or

(b) in which the Corporation holds shares, debentures or other securities.

CLAUSE 186 : LIABILITY TO TAXATION

This clause would mean that the Corporation would have to pay taxes imposed by Commonwealth laws if those laws required it to do so. The Corporation would have to pay income tax.

The Corporation would also have to pay the same State and Territory taxes as other corporations.

CLAUSE 187 : APPLICATION OF DIVISION 2 OF PART XI OF AUDIT ACT

This clause would apply Division 2 of Part XI of the Audit Act 1901 to the Corporation as if sections 63D and 63E of that Act were omitted. The applied provisions deal with, amongst other things, audit, and the preparation of annual reports and financial statements.

DIVISION 9 - MISCELLANEOUS

CLAUSE 188 : DELEGATION TO GENERAL MANAGER OR MEMBER OF STAFF

This clause would empower the Corporation, by instrument under its seal, to delegate any or all of its functions and powers to the General Manager (see Division 6 of Part 4 of the Bill), or t a member of the staff of the Corporation.

CLAUSE 189 : SECRECY

Clause 189 would apply to a person:

(a) who is or has been a Director or acting Director of th Corporation Board;

(b) who is or has been the General Manager or acting General Manager;

(c) who is or has been employed or engaged under clause 171 or 174;

(d) who is a member of staff of the Commission performing, or who has performed, duties on behalf of the Corporation under arrangements made between the General Manager of the Corporation and the Chief Executive Officer of the Commission pursuant to clause 172; or

(e) whose services are being or have been made available to the Corporation pursuant to an arrangement under clause 173.

This clause would make it an offence for the persons referred to above to either directly or indirectly, except for the purposes of the Bill or the regulations made under clause 199, or of a prosecution for an offence against the Bill or those regulations:

(a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the first-mentioned person in performing the duties of his or her position, or in performing duties under a clause 172 or 173 arrangement, as the case may be; or

(b) produce to any person a document relating to the affairs of another person furnished for the purposes of the Bill.

The maximum penalty for an offence against the clause would be a find of $2,000 or imprisonment for 1 year, or both.

The clause would provide additional protection for information obtained by the Corporation by providing that a person to whom the clause applies may not be required to divulge or communicate to a court any information referred to in clause 189(2), or to produce in a court any document referred to in clause 189(2), except when it is necessary to do so for the purposes of the Bill

or the regulations made under clause 199, or for the purposes of a prosecution for offences under the Bill, the regulations, or certain provisions of the Crimes Act 1914 as they relate to the Bill or the regulations.

Clause 189(5) would define certain terms for the purposes of clause 189.

PART 5 - MISCELLANEOUS

CLAUSE 190 : APPROVAL OF BANKS

This clause would empower the Treasurer, or an officer of the Australian Public Service authorised by the Treasurer, to approve banks for the purposes of the Bill.

CLAUSE 191 : REMUNERATION AND ALLOWANCES

This clause applies to:

- members of any advisory committee established by the Commission pursuant to clause 13 of the Bill;
- Commissioners;
- the Chief Executive Officer of the Commission;
- members of the Torres Strait Islander Advisory Board;
- members of Regional Councils;
- members of Review Panels; and
- the Directors of the Aboriginal and Torres Strait Islander Commercial Development Corporation.

The clause would provide that the holders of such offices would be paid:

(a) such remuneration as is determined by the Remuneration Tribunal;

(b) if no determination of that remuneration is in operation - such remuneration as the Minister determines in writing; and

(c) such allowances as the Minister determines in writing.

By virtue of clause 191(2) a determination of remuneration or allowances made by the Minister under the clause would be a disallowable instrument for the purposes section 46A of the Acts Interpretation Act 1901.

Clause 191(3) would provide that clause 191 would have effect subject to the Remuneration Tribunal Act 1973.

CLAUSE 192 : REVIEW BY COMMISSION OF DELEGATES' DECISIONS

This clause would provide a system for the review of decisions of delegates of the Commission. A natural person who has been refused:

- a loan under clause 16;
- a loan or a grant under clause 17; or
- a guarantee under clause 19 in respect of a loan made or to be made to that person;

by a delegate of the Commission would be able to request the Commission to reconsider the matter.

Such applications need not be made in writing, but would have to be made within 30 days of notification of the refusal.

The Commission would have to reconsider the matter, and decide whether to make the loan or grant, or to give the guarantee. Decisions of the Commission under this clause would themselves be reviewable under clause 193.

CLAUSE 193 : REVIEW BY ADMINISTRATIVE APPEALS TRIBUNAL

This clause would provide for review by the Administrative Appeals Tribunal of:

(a) a decision of the Commission to refuse a loan under clause 16 or 17 to a natural person;

(b) a decision of the Commission to refuse to give a guarantee under clause 19 in respect of a loan made, or to be made to a natural person;

(c) a decision of the Commission under clause 88(2) refusing to declare a body corporate to be an Aboriginal or Torres Strait Islander corporation;

(d) a decision of the Commission under clause 88(3) declaring that a body corporate has ceased to be an Aboriginal or Torres Strait Islander corporation;

(e) a decision of the Commission to make a declaration under clause 117(1);

(f) any other decision of the Commission included in a class of decisions declared by regulations made under the Bill to be reviewable decisions for the purposes of this clause; or

(g) any decision made under the Regional Council el ction rules (see clause 109) or the zone election rules (see clause 134) included in a class of decisions declared by regulations made under the Bill to be reviewable decisions for the purpose of this clause.

Clause 193(2) would require that when the Commission notifies a person of one of the decisions referred to above, the notice of the decision must advise the person of their rights to apply to the Administrative Appeals Tribunal for review of the decision.

If a notice of such rights is not given, the validity of the decision in question would not be affected.

The effect of clause 193(4) would be that there would be no appeal directly to the Administrative Appeals Tribunal from a decision of a delegate of the Commission under clauses 16, 17 or 19, which would first have to be reviewed by the Commission under clause 193.

CLAUSE 194 : AUDIT OF SUBSIDIARIES

This clause would deal with the audit of the financial statements of subsidiary companies of the Commission and the Corporation where the Minister, after consulting with the Auditor-General, has made a direction under clause 72 or 184 for their audit.

The clause would require that the financial statements of such subsidiary companies of the Commission or of the Corporation be audited by the Auditor-General, who would also be required to prepare and submit to the Minister a report of the result of that audit.

The Auditor-General would also be obliged by clause 194(2)) to inspect and audit the accounts and records of financial transactions of such subsidiary companies, and records relating to assets of, or in the custody of, these companies, and to forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his or her so doing.

A discretion would be conferred on the Auditor-General by clause 194(3) to dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in clause 194(2).

Clause 194(4) would further require the Auditor-General, at least once in each year, to report to the Minister the results of the inspections and audit carried out under clause 194(2).

Clause 194(5) would provide that the Auditor-General, or a person authorised by the Auditor-General, is entitled at all reasonable times to full and free access to all accounts and records of the subsidiary companies, relating directly or indirectly to the receipt or payment of money by the companies or to the acquisition, receipt, custody or disposal of assets by the companies.

The Auditor-General or a person authorised by the Auditor-General would also be authorised by clause 194(6) to make copies of, or take extracts from, any such accounts or records.

Clause 194(7) would provide that the Auditor-General or a person authorised by the Auditor-General may require any person to furnish him or her with such information in the possession of the person, or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this clause, and the person would have to comply with the requirement.

By virtue of clause 194(8) a person who contravenes clause 194(7) would be guilty of an offence punishable, upon conviction, by a fine not exceeding $1000.

Clause 194(9) would provide that the application to the subsidiary companies of any law in force in a State or Territory relating to:

(a) the appointment of an auditor of the companies; or

(b) the power and duties of an auditor of the companies appointed under such a law,

would be unaffected by anything in clause 194.

Clause 194(10) would also provide that nothing in clause 194 would prevent:

(a) the appointment of the Auditor-General as auditor of such a subsidiary company for the purposes of a law of a State or of a Territory; or

(b) the inclusion in an arrangement referred to in section 63P of the Audit Act 1901 relating to such an appointment, of a provision for the payment of a fee by the company to the Commonwealth in respect of carrying out an audit to which the arrangement relates.

Clause 194(11) would define the terms 'financial statements' and 'subsidiary company' for the purposes of clause 194.

CLAUSE 195 : OFFENCES - GUARANTEES, GRANTS AND LOANS

Clause 195(1) would make it an offence for a person to make, in or in connection with a claim under a guarantee given under the Bill, a statement that the person knows to be false or misleading in a material particular, or to present a document that, to the person's knowledge, contains information that is false or misleading in a material particular. The maximum penalty for an offence against clause 195(1) tried on indictment would be $10,000, or imprisonment for 5 years, or both.

Clause 195(2) would similarly make it an offence for a person to make in connection with, or in connection with an application for, a guarantee, or a grant or loan under the Bill, a statement that the person knows to be false or misleading in a material particular or present a document that, to the person's knowledge, contains information that is false or misleading in a material particular. The maximum penalty for an offence against clause 195(2) would be $1,000, or imprisonment for 6 months or both.

CLAUSE 196 : OFFENCES : ELECTIONS

This clause would make bribery, and the hindering of the free exercise or performance of political rights or duties in relation to zone and Regional Council elections, offences under the Act. The maximum penalty would be $5,000.

CLAUSE 197 : CONDUCT OF DIRECTORS SERVANTS AND AGENTS

Clause 197(1) is an evidentiary provision which would impute to a body corporate the state of mind of its directors, servants or agents, in circumstances where it is necessary to establish the body corporate's state of mind for the purposes of proceedings for an offence against the Bill.

Clause 197(2) would deem, for the purposes of a prosecution for an offence against the Bill, conduct engaged in on behalf of a body corporate by a director, servant or agent acting within the scope of his or her actual or apparent authority to also have been engaged in by the body corporate, unless the body corporate shows it took reasonable precautions to avoid the conduct.

Clause 197(3) and (4) are similar evidentiary provisions in relation to persons other than bodies corporate.

Clause 197(5) would provide that a natural person shall not be subject to a term of imprisonment when convicted of an offence in respect of conduct attributable to him or her by clause 197(3) and (4).

Clause 197(6), (7), (8) and (9) are definitional.

CLAUSE 198 : STAFF OF ABORIGINAL HOSTELS TO BE PUBLIC SERVANTS

This clause would require staff of Aboriginal Hostels Limited to be appointed or employed under the Public Service Act 1922.

The General Manager of Aboriginal Hostels Limited would have all the powers exercisable by a Secretary under the Public Service Act in relation to such staff.

Clause 198(3) would ensure that Aboriginal Hostels Limited would not be required to comply with the requirements of Part VII of the Audit Act 1901 that apply to Departments.

CLAUSE 199 : REGULATIONS

This clause would provide that the Governor-General may make regulations, not inconsistent with the Bill, the Regional Council election rules made under clause 109, or the zone election rules made under clause 134 prescribing matters :

(a) required or permitted by the Bill to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to the Bill.

Amongst other things, such regulations would be able to :

(a) provide for notices given to the Commission under clause 91(2) (which would deal with the corporate names of Regional Councils) to be available for public inspection;

(b) make provision in relation to the conduct of elections for the purposes of clause 123 including, amongst other things, provision for a system of optional preferential voting to be used in such elections;

(c) make provision in relation to the system of internal review of decision that would be dealt with in clause 192;

(d) prescribe fees payable in respect of any matter under the Bill; and

(e) provide penalties for breaches of the regulations not exceeding :

(i) in the case of a natural person - $1,000; or

(ii) in the case of a body corporate - $5,000.

PART 6 - CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

DIVISION 1 - PRELIMINARY

CLAUSE 200 : INTERPRETATION

This clause would define a number of expressions for the purposes of Part 6 of the Bill.

DIVISION 2 - REPEALS

CLAUSE 201 : REPEALS

This clause would repeal the following Acts :

Aboriginal Development Commission Act 1980
States Grants (Aboriginal Advancement) Act 1972
States Grants (Aboriginal Advancement) Act 1973
States Grants (Aboriginal Advancement) Act (No. 2) 1973
States Grants (Aboriginal Assistance) Act 1974
States Grants (Aboriginal Assistance) Act 1976

Section 5 of the States Grant (Aboriginal Assistance) Act 1976 would, however, continue to have effect in relation to grants of financial assistance made under that Act.

DIVISION 3 - TRANSITIONAL PROVISIONS RELATING TO ABORIGINAL DEVELOPMENT COMMISSION AND DEPARTMENT OF ABORIGINAL AFFAIRS

CLAUSE 202 : QUORUM UNTIL ALL COMMISSIONERS APPOINTED

This clause would ensure that the Commission would be able to operate even though not all appointments have been made to the offices of Commissioner by providing that, until all such appointments have been made, the quorum at a meeting of the Commission is constituted by a majority of the number of Commissioners holding office on the day of that meeting. In the absence of this provision a quorum of 12 Commissioners would have been required by clause 42(4).

CLAUSE 203 : NEW COMMISSION SHALL DECLARE BODIES TO BE ABORIGINAL OR TORRES STRAIT ISLANDER CORPORATIONS

This clause would require the Commission, as soon as practicable after the commencement of the Bill to declare each body corporate:

(a) that has, at some time since 1 July 1987, received a grant from the Department of Aboriginal Affairs or the Aboriginal Development Commission; and

(b) in relation to which the Commission is satisfied that all the members of the body corporate are Aboriginal persons or Torres Strait Islanders;

to be an Aboriginal or Torres Strait Islander corporation for the purposes of the Bill. The clause would operate in respect of bodies incorporated under State or Territory laws that have received grants as provided in clause 203(a). Bodies that do not meet the criteria set out in this clause would have to apply to the Commission under clause 88 to be declared to be an Aboriginal or Torres Strait Islander corporation.

CLAUSE 204 : ASSETS AND LIABILITIES OF OLD DEPARTMENT

This clause would empower the Minister to transfer to the Commission, or to the Corporation, assets of the Commonwealth that were used by the Department of Aboriginal Affairs before Part VII of the Bill comes into operation.

Similarly, clause 204(3) would enable the Minister to transfer to the Commission, or to the Corporation, liabilities of the Commonwealth incurred in connection with the operation of the Department of Aboriginal Affairs before the Bill comes into operation. The Corporation and the Commission would be responsible for any transferred liabilities as if they had incurred them themselves.

CLAUSE 205 : TRANSFER OF ASSETS AND LIABILITIES OF THE OLD COMMISSION

By virtue of this clause, on the day on which the Bill commences operation, all the assets of the Aboriginal Development Commission other than:

(a) money held immediately before that day in the Capital Fund referred to in paragraph 20(3)(a) of the Aboriginal Development Commission Act 1980; and

(b) any assets of the Aboriginal Development Commission that were acquired as a result of expenditure from that Capital Fund.

would become assets of the new Commission. The assets referred to in paragraph (a) and (b), and any associated liabilities, would be transferred to the Corporation under clause 206.

Any assets of the Aboriginal Development Commission that were held on trust before the transfer would be held by the Commission on the same trust.

All liabilities of the Aboriginal Development Commission, (other than any liabilities that, by means of a declaration made under clause 207(1), become liabilities of the Commonwealth, and any liabilities transferred to the Corporation under clause 206(2)), would also become liabilities of the new Commission by force of clause 205.

CLAUSE 206 : CAPITAL FUND OF OLD COMMISSION TRANSFERRED TO CORPORATION

This clause would transfer to the Corporation on the day on which the Bill comes into force, money held immediately before that day in the Capital Fund referred to in paragraph 20(3)(a) of the Aboriginal Development Commission Act 1980, together with assets of the old Commission that were acquired as a result of expenditure out of that Capital Fund, and any associated liabilities.

CLAUSE 207 : MINISTER MAY DECLARE SPECIFIED LIABILITIES TRANSFERRED TO COMMONWEALTH INSTEAD OF NEW COMMISSION

This clause would empower the Minister, in writing, to declare that a specified liability does not become a liability of the new Commission, and the liability concerned would then be transferred to the Commonwealth.

CLAUSE 208 : MINISTER MAY DIRECT TRANSFER OF MONEY ETC. FROM NEW COMMISSION TO CORPORATION

This clause would empower the Minister to make the Commission transfer to the Corporation:

(a) all or part of the money transferred from the Aboriginal Development Commission to the new Commission by clause 205; or

(b) all or some of the other assets transferred from the Aboriginal Development Commission to the new Commission by clause 205.

Any liabilities associated with assets transferred to the Corporation under clause 208 would also become liabilities of the Corporation: see clause 208(3).

CLAUSE 209 : OLD COMMISSION INSTRUMENTS

Clause 209 would provide that an old Commission instrument continues to have effect on and after the commencement day but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring on or after that commencement day, has effect as if a reference in the instrument to the old Commission were a reference to the Corporation, the Commonwealth or the new Commission as appropriate, see clause 209(2). (The expression 'old Commission instrument' would be defined in clause 200.)

CLAUSE 210 : PENDING PROCEEDINGS

This clause would substitute the new Commission for the Aboriginal Development Commission in any proceedings to which the Aboriginal Development Commission is a party, and which are pending in any court or tribunal when the Bill comes into operation. The new Commission would have the same rights in such proceedings as the Aboriginal Development Commission has.

CLAUSE 211 : FINAL REPORT AND FINANCIAL STATEMENT FOR OLD DEPARTMENT

This clause would require the Chief Executive Officer of the Commission to prepare and give to the Minister the final report for the Department of Aboriginal Affairs, covering the period 1 July 1989 to the commencement of the Bill. The Chief

Executive Officer would also have to prepare and give to the Auditor-General the final financial statement for the old Department for the financial year commencing 1 July 1989.

CLAUSE 212 : FINAL REPORT AND FINANCIAL STATEMENTS FOR OLD COMMISSION

Clause 212 would require the Chief Executive Officer of the Commission to prepare and give to the Minister the final report and financial statement for the Aboriginal Development Commission for the period 1 July 1989 to the commencement of the Bill.

CLAUSE 213 : CERTIFICATES RELATING TO ASSETS, LIABILITIES AND INSTRUMENTS

This clause is an evidentiary provision and would empower an authorised officer as defined in clause 200 to certify, in writing, that:

- an asset or a liability specified or described in the certificate was transferred by clause 205 to the Commission;

- an asset or liability specified or described in the certificate was transferred by clause 206 to the Corporation; or

- an instrument specified or described in the certificate is an old Commission instrument within the meaning of that expression as defined in clause 200.

Clause 213(2) would provide that a certificate under clause 213(1) is, in all courts and for all purposes, evidence of the matter stated in the certificate.

Clause 213(3) would require that where a document purports to be a certificate under clause 213(1) signed by a person purporting to be an authorised officer, judicial notice shall be taken of

the signature of the person and of the fact that the person is or was an authorised officer.

CLAUSE 214 : EXEMPTION FROM TAXATION

This clause would exempt an instrument from stamp duty or any other tax under a law of the Commonwealth or of a State or Territory if any authorised officer certifies, in writing, that the instrument was made or given because of, or for a purpose connected with, or arising out of, the operation of Division 3 of Part 6 of the Bill.

CLAUSE 215 : OMBUDSMAN INVESTIGATION

This clause would substitute the new Commission for the Aboriginal Development Commission and the Department of Aboriginal Affairs in respect of complaints to or investigations by the Ombudsman into action taken by those bodies if the complaints or investigations have not been finalised when th Bill comes into effect.

DIVISION 4 -GENERAL TRANSITIONAL PROVISIONS

CLAUSE 216 : TRANSFER OF APPROPRIATED MONEY

This clause would provide for the transfer of money appropriated for the expenditure of :

. the Department of Aboriginal Affairs; and

. the Aboriginal Development Commission

to the new Commission.

CLAUSE 217 : TRANSFER OF STAFF TO AUSTRALIAN PUBLIC SERVICE

This clause would enable officers of the Australian Public Service who immediately before the Bill comes into operation are

employed by the Aboriginal Development Commission or Aboriginal Hostels Limited, and who are unattached officers for the purposes of the Public Service Act 1922, to be transferred to the Commission by means of section 81B of the Public Service Act 1922. Without this provision such persons would have to resign from the Australian Public Service before being transferred.

CLAUSE 218 : CONTRACTS OF EMPLOYMENT NOT PRESERVED

Clause 218 would provide that nothing in Part 6 of the Bill preserves contracts of employment entered into by the Aboriginal Development Commission.

CLAUSE 219 : STATE OR TERRITORY OFFICER MAY ACT ON CERTIFICATE

This clause would facilitate the registration etc., of the transfer of interests in land that may take place under clauses 204, 205 and 206. Those clauses provide for, amongst other things, the transfer of assets from the Aboriginal Development Commission and the Department of Aboriginal Affairs to the new bodies that would be established by the Bill.

The clause would provide for the lodging of certificates relating to such transfers with the relevant Registrar of Titles, or equivalent officer, who would be able to deal with and give effect to the certificates as if they were a grant or conveyance etc., duly executed under the laws of the relevant State or Territory.

DIVISION 5 - AMENDMENTS OF OTHER ACTS

CLAUSE 220 : ABORIGINAL AFFAIRS (ARRANGEMENTS WITH THE STATES) ACT

This clause would repeal sections 5, 6, 7 and 8 of the Aboriginal Affairs (Arrangements with the States) Act 1973. The other provisions of that Act would not be repealed to protect rights under that Act.

CLAUSE 221 : ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT

Clause 221 would amend section 21B of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 so as to enable Minister administering that Act to delegate any of his or her powers under 11A of the Act to the Chief Executive Officer of, o a member of the staff of, the Commission.

CLAUSE 222 : ABORIGINAL COUNCILS AND ASSOCIATIONS ACT

Clause 222 would amend the definition of "Aboriginal" in section 3 of the Aboriginal Councils and Associations Act 1976, by bringing paragraph (b) of that definition in line with the definition of Torres Strait Islander which is used in the Bill.

CLAUSE 223 : ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) ACT

Clause 223(2) would amend section 15(3) of the Aboriginal Land Grant (Jervis Bay Territory Act) 1986 so that the Registrar of the Wreck Bay Aboriginal Community Council may be an officer of either the Department administered by the Minister administering the Bill, or a member of the staff of the Commission.

Clause 223(3) would amend section 16(1) of the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 so that Registrar of the Wreck Bay Aboriginal Community Council may delegate his or her powers to an officer of either the Department or the Commission. Where the Registrar delegates his or her powers to an officer of the Commission, the officer must first be approved by the Chief Executive Officer.

CLAUSE 224 : ABORIGINAL LAND (LAKE CONDAH AND FRAMLINGHAM FOREST) ACT

Clause 224 would amend section 5 of the Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987 so that the Minister administering that Act may delegate his or her powers or functions under the Act either to an officer of the Department

administered by the Minister administering the Bill, or to a member of the staff of the Commission.

CLAUSE 225 : ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT

Clause 225(2) would have the effect that information or documents concerning the affairs of persons acquired by a member or employee of a Land Council, or by persons authorized by a Land Council for the purposes of sections 23A or 23C of the Aboriginal Land Rights (Northern Territory) Act 1976, may be communicated by a person authorised by the Land Council for the purpose to the Chief Executive Officer, or to a member of the staff of the Commission approved by the Chief Executive Officer. The amendment would subject officers of the Commission and the Chief Executive Officer to the same duty of secrecy in respect of any document or information so communicated to them, as is imposed on officers of the Australian Public Service by section 23E(4) of the Act in respect of such personal information.

Clause 225(3) would require the Commission to keep accounts, and to prepare financial statements and annual reports in respect of the Trust Account established by section 62 of the Aboriginal Land Rights (Northern Territory) Act 1976.

CLAUSE 226 : ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT

This clause would have the effect of excluding decisions of the Corporation in respect of its commercial activities from section 13 of the Administrative Decisions (Judicial Review) Act 1977. That section provides a means of obtaining reasons for decisions.

CLAUSE 227 : FREEDOM OF INFORMATION ACT

This clause would have the effect of exempting the Corporation from the operation of the Freedom of Information Act 1982 in relation to documents in respect of its commercial competitive activities.

CLAUSE 228 : PUBLIC SERVICE ACT

This clause would give to a person who either held office in, or was employed by, the Commission, and who resigned in order to become a candidate for election as a member of a Regional Council, was a candidate, and failed to be elected, the same entitlement to re-appointment with the Commission, as an officer of the Australian Public Service has if he or she resigns from the Australian Public Service in order to become a candidate for election to the Parliament, is a candidate, and fails to be elected.

The effect of clause 228(4) would be that if officers of the Australian Public Service take up an appointment as General Manager of the Corporation, they would be able to return to employment in the Australian Public Service in accordance with the provisions of Part IV of the Public Service Act 1922.

CLAUSE 229 : REMUNERATION TRIBUNAL ACT

This clause would amend the Remuneration Tribunal Act 1977 as a consequence of those provisions of the Bill that would provide for the determination by the Remuneration Tribunal of remuneration and allowances in respect of persons who hold an office, or have been appointed under :

- Parts 2 or 3; or
- Part 4;

of the Bill.

The effect of the amendments of the Remuneration Tribunal Act 1977 would be that where the Remuneration Tribunal has made such a determination, the remuneration or allowances in question must be paid in accordance with the determination out of lawfully available moneys of the Commission or the Corporation respectively. (See clause 191.)

CLAUSE 230 : SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

Clause 230 would amend the First Schedule to the Sales Tax (Classifications and Exemptions) Act 1935. The effect of the amendment would be to exempt from sales tax certain goods for use, and not for sale, by the Commission.

SCHEDULE 1

This Schedule would set out details of the regions and zones. See clauses 89, 90 and 91 as to regions, and clause 127 on zones.

SCHEDULE 2

This Schedule would set out the method of counting votes and determining successful candidates at Regional Council elections. (See clause 107.) The method would be the same as that used for elections for members of the Senate.

SCHEDULE 3

This Schedule would set out the method of determining successful candidates at zone elections. (See clause 133.) The method would be the same as that used for elections for members of the House of Representatives.

SCHEDULE 4

This Schedule would make provision for the Federal Court of Australia to act as a Court of Disputed Elections for the purposes of zone and Regional Council elections.

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