



Australian Capital Territory

# Aboriginal and Torres Strait Islander Elected Body Act 2008

A2008-12

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J2007-394

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Australian Capital Territory

# Aboriginal and Torres Strait Islander Elected Body Act 2008

A2008-12

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An Act to establish an Aboriginal and Torres Strait Islander Elected Body, and  
for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as  
follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

### 2 Commencement

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 Objects

The objects of this Act are, in recognition of the disadvantaged position of Aboriginal people and Torres Strait Islanders living in the ACT—

- (a) to ensure maximum opportunity for the voice of Aboriginal people and Torres Strait Islanders living in the ACT to reach decision-makers in the government and its agencies; and
- (b) to ensure maximum participation of Aboriginal people and Torres Strait Islanders living in the ACT in developing and implementing government policies affecting them; and
- (c) to ensure coordination by government agencies in developing policies affecting Aboriginal people and Torres Strait Islanders living in the ACT without detracting from, or diminishing, the responsibilities of those agencies to provide services for the broader community; and
- (d) to further the economic, social and cultural development of Aboriginal people and Torres Strait Islanders living in the ACT; and

- (e) to provide for advice to be given on appropriate representation of Aboriginal people and Torres Strait Islanders living in the ACT on consultative bodies established by government agencies.

#### 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*ATSIEB election*, for part 3 (ATSIEB elections)—see section 28.' means that the term '*ATSIEB election*' is defined in that section for part 3.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

#### 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.



## **Part 2**                      **Aboriginal and Torres Strait Islander Elected Body**

### **Division 2.1**              **Establishment and functions of ATSIEB**

#### **7**                      **Aboriginal and Torres Strait Islander Elected Body**

The Aboriginal and Torres Strait Islander Elected Body (*ATSIEB*) is established.

#### **8**                      **Functions of ATSIEB**

ATSIEB has the following functions:

- (a) to receive, and pass on to the Minister, the views of Aboriginal people and Torres Strait Islanders living in the ACT on issues of concern to them;
- (b) to represent Aboriginal people and Torres Strait Islanders living in the ACT and to act as an advocate for their interests;
- (c) to foster community discussion about—
  - (i) issues of concern to Aboriginal people and Torres Strait Islanders living in the ACT; and
  - (ii) the functions of ATSIEB; and
  - (iii) this Act;
- (d) to conduct regular forums for Aboriginal people and Torres Strait Islanders living in the ACT and report the outcomes of those forums to the Minister;
- (e) to conduct research and community consultation to assist ATSIEB in the exercise of its functions;

- (f) to propose programs and design services for Aboriginal people and Torres Strait Islanders living in the ACT for consideration by the government and its agencies;
- (g) to monitor and report on the effectiveness of programs conducted by government agencies for Aboriginal people and Torres Strait Islanders living in the ACT;
- (h) to monitor and report on the accessibility by Aboriginal people and Torres Strait Islanders living in the ACT to programs and services conducted by government agencies for the general public;
- (i) when asked by the Minister, to give the Minister information or advice about any matter stated by the Minister;
- (j) when asked by a government agency or another person, and in consultation with UNEC, to recommend any reasonable action it considers necessary to protect Aboriginal and Torres Strait Islander cultural material or information considered sacred or significant by Aboriginal people and Torres Strait Islanders living in the ACT;
- (k) any other function given to ATSIEB by the Minister;
- (l) any other function given to ATSIEB under this Act or another territory law.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

## **9 Consultation etc with UNEC**

ATSIEB must, in exercising its functions, consult with and consider the views of UNEC.

## **10 Discussions etc with non-government entities**

- (1) ATSIEB may, in exercising its functions, communicate with a non-government entity providing a service or administering a program used by Aboriginal people and Torres Strait Islanders living in the ACT.
- (2) If the non-government entity is funded by a government agency, ATSIEB may also discuss matters relating to the service, program or funding with the chief executive of the agency.

*Note* Under s 26, ATSIEB may invite a chief executive to its meetings to discuss any issues relating to functions of ATSIEB or the agency.

- (3) However, this section does not make the non-government entity accountable to ATSIEB for its operations.
- (4) In this section:

*non-government entity* means an entity that is not a government agency.

## **11 Community forums**

- (1) ATSIEB must conduct a community forum on areas of interest to Aboriginal people and Torres Strait Islanders living in the ACT at least twice each financial year.
- (2) Every Aboriginal person and Torres Strait Islander living in the ACT is eligible to participate in a community forum.

## **12 Telling people about community forums**

- (1) ATSIEB must take reasonable steps to tell Aboriginal people and Torres Strait Islanders living in the ACT about a community forum at least 14 days before the forum is to be conducted.
- (2) ATSIEB may take steps under subsection (1) in any way it considers appropriate.

### **Examples**

an ATSIEB website, an email network, advertisements in local and Indigenous newspapers

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **13 Community forums—attendance and conduct**

- (1) ATSIEB must invite someone from each body declared to be a representative Aboriginal organisation under the *Heritage Act 2004*, section 14 to participate in each community forum.
- (2) A community forum must be conducted in a way that gives effect to the following principles:
  - (a) the forum should focus on the particular area of interest to be discussed;
  - (b) the forum should be open and transparent;
  - (c) the forum should lead to sustainable decisions by involving effective community engagement;
  - (d) without limiting paragraph (c), the forum should ensure that—
    - (i) relevant information is provided in a timely and accessible way to enable maximum community participation in debate about the area of interest; and
    - (ii) opportunities are provided for feedback about the area of interest.

## **Division 2.2           ATSIEB members**

### **14           ATSIEB members**

- (1) ATSIEB consists of 7 elected members.

*Note*       Members of ATSIEB are elected under pt 3.

- (2) Each member—

- (a) is elected for 3 years; and  
(b) holds office on a part-time basis.

*Note*       See sch 1, pt 1.5, modification 1.77, s 196 for the term of a member elected to fill a casual vacancy.

### **15           ATSIEB chair**

- (1) ATSIEB must, by majority vote, elect a member to be chair of ATSIEB (the *ATSIEB chair*).
- (2) The ATSIEB chair must be elected—
- (a) at the first meeting of ATSIEB; and  
(b) whenever the position of ATSIEB chair becomes vacant.
- (3) The ATSIEB chair is elected for 3 years, but may be re-elected.
- (4) The ATSIEB chair may resign as chair by written notice given to ATSIEB.
- (5) ATSIEB must tell the Minister, in writing, about a notice it receives under subsection (4).

**16 ATSIEB deputy chair**

- (1) ATSIEB must, by majority vote, elect a member (other than the ATSIEB chair) to be deputy chair of ATSIEB (the *ATSIEB deputy chair*).
- (2) The ATSIEB deputy chair must be elected—
  - (a) at the first meeting of ATSIEB; and
  - (b) whenever the position of deputy chair becomes vacant.
- (3) The ATSIEB deputy chair may exercise a function of the ATSIEB chair at any time when the chair cannot for any reason exercise the function.
- (4) The ATSIEB deputy chair is elected for 3 years, but may be re-elected.
- (5) The ATSIEB deputy chair may resign as deputy chair by written notice given to the ATSIEB chair or, if there is no chair, ATSIEB.

**17 Resignation of ATSIEB member**

- (1) A member of ATSIEB may resign as a member by written notice given to the ATSIEB chair or, if there is no chair, ATSIEB.

*Note* See sch 1, pt 1.5 for the filling of a casual vacancy on ATSIEB.

- (2) A member must resign if the member no longer lives in the ACT.

**18 Member taken to have resigned in certain circumstances**

- (1) This section applies if ATSIEB is satisfied that an ATSIEB member—
  - (a) no longer lives in the ACT; and
  - (b) has not lived in the ACT during the immediately preceding period of 6 months.

- (2) ATSIEB may, in writing, declare that it is satisfied as stated in subsection (1).
- (3) If ATSIEB makes a declaration under subsection (2), the member is taken to have resigned on the date of the declaration.
- (4) This section does not apply to an ATSIEB member who is absent from the ACT on leave approved under section 20.

## **19 Removal of ATSIEB member**

The Minister may remove a member from ATSIEB for any of the following reasons:

- (a) if the member contravenes a territory law in relation to the exercise of the member's functions;
- (b) for misbehaviour in relation to the exercise of the member's functions;
- (c) if the member becomes bankrupt or executes a personal insolvency agreement;
- (d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year;
- (e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year;
- (f) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions;
- (g) if the member contravenes section 27 (Disclosure of interests by ATSIEB members);
- (h) if the member is absent from 3 consecutive meetings of ATSIEB, otherwise than on approved leave;

- (i) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

## **20 Leave of ATSIEB members**

- (1) ATSIEB may, conditionally or unconditionally, allow the ATSIEB chair to take leave.
- (2) The ATSIEB chair may, conditionally or unconditionally, allow an ATSIEB member (other than the ATSIEB chair) to take leave for not longer than 1 year.

*Note* The ATSIEB deputy chair is a member and so can be given leave under s (2) (see s 16 (1)).

## **Division 2.3 ATSIEB meetings**

### **21 Time and place of ATSIEB meetings**

- (1) Meetings of ATSIEB are to be held when and where ATSIEB decides.
- (2) However, ATSIEB must meet at least 6 times in a financial year.
- (3) The ATSIEB chair—
  - (a) may, at any time, call a meeting of ATSIEB; and
  - (b) must call a meeting if asked in writing by—
    - (i) the Minister; or
    - (ii) at least 4 members.
- (4) A meeting called under subsection (3) (b) must be called not later than 14 days after the day the ATSIEB chair receives the request for the meeting.
- (5) The ATSIEB chair must give the other members reasonable notice of the time and place of a meeting called by the ATSIEB chair.



**22 Presiding member at ATSIEB meetings**

- (1) The ATSIEB chair presides at all meetings at which the ATSIEB chair is present.
- (2) If the ATSIEB chair is absent, the ATSIEB deputy chair presides.
- (3) If the ATSIEB chair and deputy chair are absent, the member chosen by the members present presides.

**23 Quorum at ATSIEB meetings**

Business may be carried on at a meeting of ATSIEB only if at least 5 members are present.

**24 Voting at ATSIEB meetings**

At a meeting of ATSIEB, a question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

**25 Conduct of ATSIEB meetings**

- (1) ATSIEB may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a member taking part to hear or otherwise know what each other member taking part says without the members being in each other's presence.

**Examples**

a phone link, a satellite link, an internet or intranet link

- (3) A member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.

- (4) A resolution is a valid resolution of ATSIEB, even if it is not passed at a meeting of ATSIEB, if all members agree to the proposed resolution in writing or by electronic communication.

**Example—electronic communication**

telephone or email

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) ATSIEB must keep minutes of its meetings.

## 26 Chief executive at ATSIEB meeting

- (1) ATSIEB may invite a chief executive of a government agency to attend a meeting of ATSIEB to discuss any issues relating to the functions of ATSIEB or the government agency.
- (2) If ATSIEB invites the chief executive of a government agency to attend a meeting to answer questions or provide information about the functions of the government agency, the chief executive must take reasonable steps to attend the meeting, and answer the questions and provide the information, as requested.

## 27 Disclosure of interests by ATSIEB members

- (1) If an ATSIEB member has a material interest in an issue being considered, or about to be considered, by ATSIEB, the member must disclose the nature of the interest at a meeting of ATSIEB as soon as practicable after the relevant facts come to the member's knowledge.

*Note* **Material interest** is defined in s (4). The definition of *indirect interest* in s (4) applies to the definition of **material interest**.

- (2) The disclosure must be recorded in ATSIEB's minutes and, unless ATSIEB otherwise decides, the member must not—
- (a) be present when ATSIEB considers the issue; or

- (b) take part in a decision of ATSIEB on the issue.
- (3) Any other member who also has a material interest in the issue must not be present when ATSIEB is considering its decision under subsection (2).
- (4) In this section:

*associate*, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

*executive officer*, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

*indirect interest*—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation, if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation, if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust, if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership, if the person, or an associate of the person, is a member of the firm or partnership;

- (g) someone else carrying on a business, if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

***material interest***—an ATSIEB member has a ***material interest*** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to ATSIEB's consideration of the issue.

## Part 3                      ATSIEB elections

### 28                      Definitions—pt 3

In this part:

***ATSIEB election***—

- (a) means an election under this part for members of ATSIEB; and
- (b) includes a recount under the Electoral Act, part 13 (Casual vacancies), as applied by section 31.

*Note*      Sch 1, pt 1.5 modifies the Electoral Act, pt 13 in its application to this Act.

***election start day***, for an ATSIEB election, means the first day when a person may be nominated as a candidate for the election.

***elector***, for an ATSIEB election, means a person entitled to vote in the election under the Electoral Act, section 128 (1) (Entitlement to vote), as applied by section 31.

*Note*      Sch 1, pt 1.3, modification 1.34 modifies the Electoral Act, s 128 (1) in its application to this Act.

***hour of nomination***, for an ATSIEB election—see the Electoral Act, section 108 (3), as applied by section 31.

*Note*      Sch 1, pt 1.2, modification 1.14 modifies the Electoral Act, s 108 (3) in its application to this Act.

***nomination close day***, for an ATSIEB election, means the last Tuesday before the polling start day.

***nominee***, for an ATSIEB election, means a person nominated as a candidate for the election.

***polling close day***, for an ATSIEB election, means the last day when an elector may vote in the election.

*polling period*, for an ATSIEB election, means the period beginning on the polling start day and ending on the polling close day.

*polling start day*, for an ATSIEB election, means the first day when an elector may vote in the election.

*pre-election period*, for an ATSIEB election, means the period—

- (a) starting at 9 am on the election start day for the election; and
- (b) ending at the end of the polling close day for the election.

**29 Timetable for ATSIEB elections**

- (1) An ATSIEB election must be held in accordance with the timetable set out in table 29.
- (2) If an event mentioned in this section falls on a day (other than a Saturday) that is a public holiday, the event happens instead on the next business day after the public holiday.

**Table 29 ATSIEB election timetable**

column 1 item	column 2 election event	column 3 date
1	election start day	the Monday in April, 3 weeks before the polling start day
2	electoral rolls close	5 pm on the Wednesday in April, 12 days before the polling start day
3	nominations close	12 noon on the last Tuesday before the polling start day
4	nominations for candidates declared	as soon as practicable after 12 noon on the last Wednesday before the polling start day
5	order of ballot paper decided	as soon as practicable after the nominations for candidates are declared

column 1 item	column 2 election event	column 3 date
6	polling start day	the first Monday in May of the year, 3 years after the last ATSIEB election was held
7	polling close day	the first Saturday after the polling start day
8	scrutiny starts	not earlier than 7 business days after the polling close day
9	election declared	as soon as practicable after scrutiny ends

**Example—item 6 and item 7**

Polling in the 2nd ATSIEB election must be held during the period starting on Monday, 2 May 2011 and ending on Saturday, 7 May 2011.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**30 Telling people about ATSIEB elections etc**

- (1) Before the election start day for an ATSIEB election, the electoral commission must take reasonable steps to tell electors and people entitled to be electors about the following:
  - (a) the ATSIEB election;
  - (b) who is eligible to nominate as a candidate for the election;
  - (c) who is eligible to vote at the election;
  - (d) the days worked out under section 29 for the election;
  - (e) the location of polling places;
  - (f) anything else about the election that the commission considers relevant.

- (2) The electoral commission may tell electors and people entitled to be electors about the matters mentioned in subsection (1) in any way it considers appropriate.

**Examples**

a newspaper, the electoral commission website, a media release

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**31                      Application of Electoral Act**

A provision of the Electoral Act mentioned in column 2 of an item in table 31 applies in relation to an ATSIEB election with the modifications (if any) in the part in schedule 1 mentioned in column 3 of the item (and any other necessary changes and any changes prescribed by regulation).

<b>Table 31</b>	<b>Application of Electoral Act provisions</b>	
<b>column 1</b>	<b>column 2</b>	<b>column 3</b>
<b>item</b>	<b>provision of Electoral Act to be applied</b>	<b>part in sch 1 with modifications</b>
1	section 4A (Meaning of <i>available for public inspection</i> )	
2	section 32 (Temporary staff and consultants)	
3	section 33 (Officers)	part 1.1
4	section 34 (Multimember electorates)	part 1.1
5	section 71A (Address of person serving sentence of imprisonment)	
6	section 80 (Closed rolls)	part 1.1
7	part 9 (Arrangements for elections)	part 1.2
8	part 10 (Voting)	part 1.3



<b>column 1 item</b>	<b>column 2 provision of Electoral Act to be applied</b>	<b>column 3 part in sch 1 with modifications</b>
9	part 12 (The scrutiny)	part 1.4
10	part 13 (Casual vacancies)	part 1.5
11	part 16 (Disputed elections, eligibility and vacancies)	part 1.6
12	part 17 (Electoral offences)	part 1.7
13	part 18 (Enforcement proceedings)	part 1.8
14	part 19 (Miscellaneous)	part 1.9
15	schedule 3 (Preliminary scrutiny of declaration voting papers)	part 1.10
16	schedule 4 (Ascertaining result of poll)	
17	dictionary	part 1.11

### **32 Interpretation of applied provisions of Electoral Act**

In the application of the Electoral Act in relation to an ATSIEB election—

- (a) a reference to a provision of that Act is taken to be a reference to the provision in its application in relation to the ATSIEB election; and
- (b) a reference to—
  - (i) a term used in that Act is taken to be a reference to the term in the application of that Act in relation to the ATSIEB election; and
  - (ii) in particular, a term mentioned in column 2 of an item in table 32 is taken to be a reference to the term mentioned in column 3 of the item.

**Table 32 Interpretation of terms in applied provisions of Electoral Act**

<b>column 1 item</b>	<b>column 2 term in Electoral Act</b>	<b>column 3 term in this Act</b>
1	(a)an election; (b)a general election; (c)an ordinary election	an ATSIEB election
2	an elector	an elector in an ATSIEB election
3	an electorate	the ACT
4	a relevant electorate	the ACT
5	a candidate	a candidate in an ATSIEB election
6	a seat	an ATSIEB position
7	a polling day	a polling period
8	a reference to something happening on polling day	a reference to something happening during a polling period
9	an MLA	an ATSIEB member
10	the Legislative Assembly	ATSIEB
11	the Speaker	(a) the ATSIEB chair; or (b) if there is no ATSIEB chair—the ATSIEB deputy chair; or (c) if there is no ATSIEB deputy chair—the Minister
12	the Court of Disputed Elections	the Court of Disputed ATSIEB Elections
13	a form approved under the Electoral Act, section 340A	a form approved under this Act, section 34

**33 Application of Electoral Regulation 1993**

The *Electoral Regulation 1993*, section 5A (Declaration ballot papers) applies to a ballot paper to be used for declaration voting in an ATSIEB election.

**34 Approved forms**

- (1) The commissioner may approve forms for this part.
- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## Part 4 Miscellaneous

### 35 Protection of ATSIEB members from liability

- (1) An ATSIEB member is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act or another territory law; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act or another territory law.
- (2) Any liability that would, apart from this section, attach to an ATSIEB member attaches instead to the Territory.
- (3) In this section:

*conduct* means an act or an omission to do an act.

### 36 Regulation-making power

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

## **Part 5                      Transitional**

### **Division 5.1              Transitional—general**

#### **37                      Transitional—community forums**

- (1) Section 11 (1) does not apply to the financial year ending on 30 June 2008.
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

#### **38                      Transitional—time and place of ATSIEB meetings**

- (1) Section 21 (2) does not apply to the financial year ending on 30 June 2008.
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

### **Division 5.2              Transitional—first ATSIEB election**

#### **39                      Conduct of first ATSIEB election**

This division applies in relation to the first ATSIEB election under part 3.

#### **40                      Transitional—timetable for first ATSIEB election**

- (1) Despite section 29 (1), the first ATSIEB election must be held in accordance with the timetable set out in table 40.
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**Table 40 Timetable for first ATSIEB election**

<b>column 1 item</b>	<b>column 2 election event</b>	<b>column 3 date</b>
1	election start day	Monday, 26 May 2008
2	electoral rolls close	5 pm on Wednesday, 4 June 2008
3	nominations close	12 noon on Tuesday, 10 June 2008
4	nominations for candidates declared	as soon as practicable after 12 noon on Wednesday, 11 June 2008
5	order of ballot paper decided	as soon as practicable after the nominations for candidates are declared
6	polling start day	Monday, 16 June 2008
7	polling close day	Saturday, 21 June 2008
8	scrutiny starts	not earlier than Tuesday, 1 July 2008
9	election declared	as soon as practicable after scrutiny ends

---

**41 Transitional—modification of Electoral Act, s 33, s 111 and s 125A**

- (1) For the first ATSIEB election, the modifications in schedule 1 to the following provisions of the Electoral Act apply as if a reference to ATSIEB were a reference to UNEC:
  - section 33 (2B)
  - section 111B (2) (first mention)
  - section 125A (4).
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**42 Transitional—modification of Electoral Act, s 80**

- (1) For the first ATSIEB election, schedule 1, modification 1.4 applies as if new section 80 (1A) read as follows:
  - ‘(1A) For this Act, the roll for an ATSIEB election is closed during the period—
    - (a) starting at 5 pm on Wednesday, 4 June 2008; and
    - (b) ending at the close of polling at the election.’
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**43 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive’s opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**Division 5.3 Expiry—pt 5**

**44 Expiry—pt 5**

This part expires 6 months after the day it commences.

## **Schedule 1 Modifications of Electoral Act as applied to ATSIEB elections**

(see s 31)

### **Part 1.1 Modifications of s 33, s 34 and s 80**

#### **[1.1] Officers New section 33 (2A) to (2C)**

*insert*

- (2A) Before the polling start day for an ATSIEB election, the commissioner must appoint at least 1 Aboriginal and Torres Strait Islander liaison officer for each polling place for the election.
- (2B) Before appointing an Aboriginal and Torres Strait Islander liaison officer, the commissioner must consult ATSIEB.
- (2C) A person is eligible to be appointed as an Aboriginal and Torres Strait Islander liaison officer if the person—
  - (a) is—
    - (i) an Aboriginal person or Torres Strait Islander; and
    - (ii) at least 18 years old; and
    - (iii) enrolled, or entitled to be enrolled, for an electorate in the ACT; and
  - (b) is not a candidate in the election.



**[1.2] Section 33 (3)**

*after*

an officer

*insert*

under this section

**[1.3] Section 34**

*substitute*

**34 Electorate for ATSIEB elections**

- (1) The ACT is 1 electorate for the purposes of an ATSIEB election.
- (2) Seven members of ATSIEB must be elected from the ACT.

**[1.4] Closed rolls**  
**Section 80 (1)**

*substitute*

- (1) This section applies in relation to an ATSIEB election.
- (1A) For this Act, the roll for an ATSIEB election is closed during the period—
  - (a) starting at 5 pm on the Wednesday in April 12 days before the polling start day for the ATSIEB election; and
  - (b) ending at the close of polling at the election.

## Part 1.2                      Modifications of pt 9 (Arrangements for elections)

### [1.5]            Eligibility—MLAs Section 103 (1) to (4)

*substitute*

- (1) A person is eligible to be an ATSIEB member if the person—
- (a) is—
    - (i) an Aboriginal person or Torres Strait Islander; and
    - (ii) at least 18 years old; and
    - (iii) enrolled, or entitled to be enrolled, for an electorate in the ACT; and
  - (b) is not under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence.

*Note*        For the meaning of *indictable offence*, see the Legislation Act, s 190 (Indictable and summary offences).

### [1.6]            Qualifications for nomination Section 104 (b)

*omit*

### [1.7]            Candidates to be nominated Section 105 (2) and (3)

*substitute*

- (2) A person (the *nominee*) may be nominated as a candidate for an ATSIEB election only by 4 electors (the *nominators*) entitled to vote at the ATSIEB election on the day the nominators sign the nomination form.

(2A) A person is eligible to be a nominee if, at the hour of nomination, the person—

(a) is—

- (i) an Aboriginal person or Torres Strait Islander; and
- (ii) at least 18 years old; and
- (iii) enrolled, or entitled to be enrolled, for an electorate in the ACT; and

(b) is not under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence.

*Note* For the meaning of *indictable offence*, see the Legislation Act, s 190 (Indictable and summary offences).

(3) A nomination is made by giving the commissioner a completed nomination form before the hour of nomination.

*Note* Nomination forms are available at the office of the commissioner and in electronic form on the commissioner's website.

**[1.8] Section 105 (4) (d)**

*substitute*

(d) contain a declaration, signed by the nominee, to the effect that the nominee, at the hour of nomination—

(i) is—

- (A) an Aboriginal person or Torres Strait Islander; and
- (B) at least 18 years old; and
- (C) enrolled, or entitled to be enrolled, for an electorate in the ACT; and

(ii) is not under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence; and

- (da) contain a declaration by each nominator, signed by the nominator, to the effect that, on the day the nominator signs the nomination form, the nominator—
- (i) is—
    - (A) an Aboriginal person or Torres Strait Islander; and
    - (B) at least 18 years old; and
    - (C) enrolled, or entitled to be enrolled, for an electorate in the ACT; and
  - (ii) is not under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence; and

**[1.9] Section 105 (4) (f) and (g)**

*omit*

**[1.10] Section 105 (9) to (11)**

*omit*

**[1.11] Multiple nominations invalid**  
**Section 106**

*omit*

**[1.12] Withdrawal etc of consent to nomination**  
**Section 107 (1)**

*omit*

not later than 24 hours

**[1.13] Section 107 (2) and (3)**

*substitute*

- (2) If the commissioner receives a notice under subsection (1), the commissioner must cancel the nomination.

**[1.14] Place and hour of nomination**  
**Section 108 (3)**

*substitute*

- (3) The *hour of nomination* for an ATSIEB election is 12 noon on the nomination close day for the election.

**[1.15] Section 108 (4) and (5)**

*omit*

**[1.16] Declaration of candidates**  
**Section 109 (1)**

*after*

As soon as practicable

*insert*

after 24 hours

**[1.17] New section 109 (1A)**

*insert*

- (1A) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**[1.18] Section 109 (2) (b)**

*omit*

**[1.19] Section 109 (4)**

*omit*

if it is a suppressed address

**[1.20] Section 110**

*substitute*

**110 Invalid nominations**

If the commissioner decides that a nomination is invalid, the commissioner must—

- (a) declare the nomination invalid; and
- (b) as soon as practicable after declaring the nomination invalid and before the hour of nomination—take reasonable steps to tell the nominee that the nomination is invalid; and
- (c) if the nomination can be corrected, tell the nominee—
  - (i) how the nomination can be corrected; and
  - (ii) that the corrected nomination may be given to the commissioner before the hour of nomination.

**110A Retention of nomination papers**

The commissioner must keep all nominations (including invalid nominations) in a secure place until the election start date for the next ATSIEB election.

**[1.21] Section 111**

*substitute*

**111 If more positions than candidates**

- (1) This section applies if, at the hour of nomination—
  - (a) at least 1 candidate has been nominated; and
  - (b) the number of candidates to be elected is more than the number of candidates nominated.

- (2) The commissioner must, in writing—
  - (a) declare the nominated candidate or candidates elected; and
  - (b) tell the ATSIEB chair (or, if there is no ATSIEB chair, the Minister) about the election of each person elected; and
  - (c) tell the ATSIEB chair (or, if there is no ATSIEB chair, the Minister) the number of candidates required to be elected who were not elected.
- (3) A declaration under subsection (2) (a) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (4) The remaining vacancies are taken to be casual vacancies and must be filled in accordance with part 13 (Casual vacancies).

#### **111A If same number of positions as candidates**

- (1) This section applies if, at the hour of nomination, the number of candidates nominated is the same as the number of candidates to be elected.
- (2) The commissioner must, in writing—
  - (a) declare the nominated candidates elected; and
  - (b) tell the ATSIEB chair (or, if there is no ATSIEB chair, the Minister) about the election of each person elected.
- (3) A declaration under subsection (2) (a) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

#### **111B If no candidates**

- (1) If no candidate is nominated for an ATSIEB election, the election is taken to have failed and the commissioner must, in writing, tell the ATSIEB chair (if any) and the Minister about the failure of the election.

- (2) If the commissioner tells the Minister about the failure of the election, the Minister may, after taking into consideration any recommendations from ATSIEB, appoint the ATSIEB members.

**111C If more candidates than positions**

If more candidates are nominated for an ATSIEB election than are required to be elected, the commissioner must conduct a poll under this part to decide the election.

**[1.22] Deposit—return or forfeiture  
Section 113**

*omit*

**[1.23] Section 114**

*substitute*

**114 Ballot papers**

- (1) The commissioner must arrange for the preparation of ballot papers to be used at an ATSIEB election.
- (2) The ballot papers—
- (a) may be in electronic form; and
  - (b) must include the official mark approved under the Electoral Act, section 340A (Approved forms) for section 114 (3) of that Act; and
  - (c) must include the year of the election; and
  - (d) must include the following words:
    - ‘Ballot paper’
    - ‘Aboriginal and Torres Strait Islander Elected Body ACT’
    - ‘Election of 7 representatives’
    - ‘Number seven boxes from 1 to 7 in the order of your choice’



- if there are more than 8 candidates—‘You may then show as many further preferences as you wish by writing numbers from 8 onwards in the other boxes’.

*Note* If a form is approved under s 34 for this provision, the form must be used.

- (3) An approval under subsection (2) (b) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (4) A regulation may—

- (a) state the headings or directions to be contained on ballot papers to be used for declaration voting; and
- (b) provide for—
- (i) the form of a ballot paper to be altered as stated in the regulation; or
  - (ii) a form set out in the regulation to be used in place of the form of a ballot paper.

**[1.24] Grouping of candidates’ names**  
**Section 115**

*omit*

**[1.25] Section 116**

*substitute*

**116 Printing of ballot papers**

- (1) The names of the candidates for an ATSIEB election must be printed on each ballot paper in a single column.
- (2) If the commissioner believes on reasonable grounds that similarity in the names of 2 or more candidates is likely to cause confusion, the commissioner may arrange their names on the ballot papers with a description or addition that distinguishes the names.

**[1.26] Names on ballot papers**  
**Section 117**

*omit*

**[1.27] Section 118**

*substitute*

**118 Draw for positions on ballot papers**

The commissioner must determine by lot the order in which the names of candidates for an ATSIEB election are to appear on the ballot paper, as soon as practicable after 12 noon on the last Wednesday before the polling start day for the election.

*Note* The commissioner determines the positions by lot if the commissioner determines the positions in accordance with an approval in force under the Electoral Act, s 125.

**[1.28] Polling places and scrutiny centres**  
**Section 119 (1) (a)**

*substitute*

- (a) appoint a stated place to be a polling place on stated days at the stated times for an ATSIEB election; and

**[1.29] New section 119 (2A)**

*insert*

- (2A) The stated times mentioned in subsection (1) (a) must indicate—
- (a) the time when the polling place must open for polling (the *polling open time for the place*); and
- (b) the time when the polling place must close for polling (the *polling close time for the place*).

**[1.30] Certified list of electors**  
**Section 121 (1) (c)**

*omit*

**[1.31] Scrutineers—appointment**  
**Section 122 (1)**

*substitute*

- (1) A candidate for an ATSIEB election may appoint a scrutineer to represent the candidate during—
- (a) the taking of votes for the election at polling places; and
  - (b) the scrutiny for the election.

**[1.32] New section 125A**

*insert*

**125A Review panel**

- (1) Before the polling start day for an ATSIEB election, the commissioner must establish a review panel to review any decision made by an Aboriginal and Torres Strait Islander liaison officer in relation to a claim by an elector that the elector—
- (a) is an Aboriginal person or Torres Strait Islander; or
  - (b) lives in the ACT.
- (2) A review panel is made up of 3 members appointed by the commissioner, under the Electoral Act, section 33 (1), as review panel officers for this Act.
- (3) A person is eligible to be appointed as a review panel officer if the person—
- (a) is—
    - (i) an Aboriginal person or Torres Strait Islander; and

- (ii) at least 18 years old; and
  - (iii) enrolled, or entitled to be enrolled, for an electorate in the ACT; and
- (b) is not a candidate in the election.
- (4) Before appointing review panel officers, the commissioner must consult ATSIEB.

**[1.33] Supplementary elections**  
**Section 126**

*omit*

## **Part 1.3 Modifications of pt 10 (Voting)**

**[1.34] Entitlement to vote**  
**Section 128 (1)**

*substitute*

- (1) A person is entitled to vote in an ATSIEB election if the person is—
- (a) an Aboriginal person or Torres Strait Islander; and
  - (b) at least 18 years old on polling start day; and
  - (c) enrolled, or entitled to be enrolled, for an electorate in the ACT.

*Note* The Electoral Act, s 72 (Entitlement) states when a person is entitled to be enrolled for an electorate.

**[1.35] Section 128 (3)**

*omit*

**[1.36] Section 129**

*substitute*

**129 Voting not compulsory**

Voting at an ATSIEB election is not compulsory.

**[1.37] Section 130**

*substitute*

**130 Multiple votes prohibited**

An elector must not vote more than once at the same election.

Maximum penalty: 30 penalty units.

**[1.38] Procedures for voting  
Section 131 (1) (b)**

*omit*

**[1.39] Section 131 (2)**

*substitute*

- (2) An elector may cast a vote during the polling period for an ATSIEB election at any polling place for the election.

**[1.40] Claims to vote  
Section 133 (1)**

*substitute*

- (1) This section applies if a person attends before an officer at a polling place during the polling period for an ATSIEB election and claims to vote at the election.

- (1A) The officer (the *issuing officer*) must give the person a ballot paper if satisfied that—
- (a) the certified list of electors—
    - (i) states the person's name; and
    - (ii) states an address for the person or indicates that the person's address is suppressed; and
    - (iii) has not been marked in a way that indicates that a ballot paper has already been issued to the person; and
  - (b) no challenge has been made under section 133A in relation to the person.

**[1.41] New sections 133A and 133B**

*insert*

**133A Challenge whether claimant to vote is Aboriginal person or Torres Strait Islander**

- (1) This section applies if a liaison officer suspects on reasonable grounds that a person claiming to vote under section 133 (the *claimant*) is not an Aboriginal person or Torres Strait Islander.
- (2) The liaison officer may ask the claimant any question the officer believes on reasonable grounds is necessary to decide whether the claimant is an Aboriginal person or Torres Strait Islander.
- (3) The liaison officer must consider any answer the claimant gives the officer.
- (4) If the liaison officer decides, on the balance of probabilities, that the claimant is not an Aboriginal person or Torres Strait Islander, the officer must—
  - (a) challenge the claimant's right to vote at the election; and

- (b) tell the claimant about the claimant's right to cast a declaration vote under section 133B; and
  - (c) tell the issuing officer under section 133 about the challenge; and
  - (d) record the details of the challenge in a register (the *liaison officer's objections register*) and sign the record.
- (5) After being challenged under subsection (4), the claimant may—
- (a) leave the polling place; or
  - (b) elect to cast a declaration vote under section 133B.
- (6) If the claimant elects to cast a declaration vote under section 133B, the liaison officer must give the claimant a written notice about the challenge, including a statement to the effect that—
- (a) notice of the liaison officer's decision will be given to the review panel under section 134A (Review of challenge under s 133A); and
  - (b) the claimant's ballot paper will only be admitted to scrutiny if the review panel decides that the claimant is an Aboriginal person or Torres Strait Islander.

*Note* If a form is approved under s 34 for this provision, the form must be used.

### **133B Declaration voting—challenged claims to vote**

- (1) This section applies if a claimant elects, under section 133A (5) (b), to cast a declaration vote.
- (2) The issuing officer under section 133 must—
  - (a) give the claimant declaration voting papers; and

- (b) indicate on the envelope on which the declaration appears that the claimant is casting a declaration vote because the liaison officer has challenged the claimant's claim to be an Aboriginal person or Torres Strait Islander.
- (3) Subject to section 156, the claimant and the issuing officer must follow the procedure stated in section 135 (4) (Declaration voting at polling places) for the casting of a declaration vote under this section.

**[1.42] New section 134A and 134B**

*in division 10.2, insert*

**134A Review of challenge under s 133A**

- (1) This section applies if—
  - (a) a liaison officer challenges, under section 133A (4) (a), a claimant's right to vote; and
  - (b) the claimant elects, under section 133A (5) (b), to cast a declaration vote.
- (2) The commissioner must give the review panel written notice of the liaison officer's decision not later than 3 business days after the day the claimant has cast a declaration vote.
- (3) The review panel must review the liaison officer's decision and decide, on the balance of probabilities, whether the claimant is an Aboriginal person or Torres Strait Islander.
- (4) The review panel must complete its review not later than 6 business days after the polling close day.
- (5) If any member of the review panel decides that the claimant is an Aboriginal person or Torres Strait Islander, the applicant's ballot paper must be admitted to scrutiny under part 12.



- (6) The review panel must give the commissioner and the claimant written notice of—
- (a) its decision; or
  - (b) if there is no unanimous decision—the decision of each panel member.

### **134B Challenged claimant to leave polling place**

A claimant who is given a ballot paper and ballot paper envelope under section 133B (Declaration voting—challenged claims to vote) must leave a polling place immediately after the claimant places the claimant's sealed ballot paper envelope and contents in a ballot box at the polling place.

### **[1.43] New section 135A**

*in division 10.3, insert*

### **135A Evidence of living in ACT**

- (1) This section applies to a person who casts a declaration vote under section 135 (Declaration voting at polling places).
- (2) The person must give evidence that the person lives in the ACT—
  - (a) to the officer at the polling place who issues the person with declaration voting papers (the *issuing officer*); or
  - (b) to the commissioner not later than 3 business days after the polling close day for the election.

#### **Examples—evidence that person lives in the ACT**

one of the following documents, if it states the person's name and an ACT address for the person:

- a driver licence
- vehicle registration
- a contract of purchase or current lease for place of residence

- a utility account statement (electricity, gas, telephone or water) paid within 3 months before the relevant ATSIEB election

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the person gives the issuing officer evidence that the person lives in the ACT, the issuing officer must—
  - (a) record the details of the evidence; and
  - (b) include a written statement of the record with the person's declaration voting papers.
- (4) If the person gives the commissioner evidence that the person lives in the ACT within the time required under subsection (2) (b), the person is, for schedule 3, taken to be enrolled to vote.
- (5) If the person does not provide evidence that the person lives in the ACT within the time required under subsection (2), the person's ballot paper must not be admitted to scrutiny under part 12.

**[1.44] Applications for postal voting papers**  
**Section 136A (2) (c)**

*substitute*

- (c) received by an authorised officer before 5 pm on the Thursday before polling close day.

**[1.45] Section 136A (6)**

*substitute*

- (6) Despite subsections (3) and (5), the authorised officer may post or give postal voting papers to the applicant as soon as practicable after the draw for positions on the ballot paper is completed.

**[1.46] Ordinary or declaration voting in ACT before polling day  
Section 136B**

*omit*

**[1.47] Declaration voting outside ACT on or before polling day  
Section 136C**

*omit*

**[1.48] Record of issue of declaration voting papers  
Section 137 (1)**

*omit*

, 136B (17) or 136C

**[1.49] Inspection of records  
Section 138 (1)**

*omit*

polling day

*substitute*

polling close day

**[1.50] Receipt of declaration voting papers  
Section 139 (2)**

*substitute*

- (2) If the commissioner receives completed postal voting papers under subsection (1), the commissioner must give the voting papers to the review panel for their decision, under section 144B, about whether the person who cast the postal vote is an Aboriginal person or Torres Strait Islander.

**[1.51] Registered declaration voters  
Section 140**

*omit*

**[1.52] Issue of voting papers to registered declaration voters  
Section 141**

*omit*

**[1.53] Requirements for casting postal votes  
Section 144A (1)**

*omit*

or section 141 (Issue of voting papers to registered declaration voters)

**[1.54] New sections 144B and 144C**

*insert*

**144B Review panel—eligibility of person who postal votes**

- (1) This section applies if the commissioner gives the review panel completed postal voting papers under section 139 (2).
- (2) The review panel must decide, after making any investigation the panel considers appropriate, whether the person who cast the postal vote (the *claimant*) is an Aboriginal person or Torres Strait Islander.
- (3) The review panel must complete its review not later than 6 business days after the day it receives the claimant's postal voting papers.
- (4) If any member of the review panel decides that the claimant is an Aboriginal person or Torres Strait Islander, the claimant's ballot paper must be admitted to scrutiny under part 12.
- (5) The review panel must give the commissioner written notice of—
  - (a) its decision; or

- (b) if there is no unanimous decision—the decision of each panel member.
- (6) The commissioner must tell the claimant whether, having regard to the review panel’s decision, the claimant’s vote will be admitted to scrutiny.

**144C Review panel—residence of person who postal votes**

- (1) This section applies if the commissioner gives the review panel completed postal voting papers under schedule 3, clause 12.
- (2) The review panel must decide, after making any investigation the panel considers appropriate, whether the person who cast the postal vote (the *claimant*) lives in the ACT.
- (3) The review panel must complete its review not later than 6 business days after the day it receives the claimant’s postal voting papers.
- (4) If any member of the review panel decides that the claimant lives in the ACT, the claimant’s ballot paper must be admitted to scrutiny under part 12.
- (5) The review panel must give the commissioner written notice of—
  - (a) its decision; or
  - (b) if there is no unanimous decision—the decision of each panel member.
- (6) The commissioner must tell the claimant whether, having regard to the review panel’s decision, the claimant’s vote will be admitted to scrutiny.

**[1.55] Mobile polling**  
**Division 10.5**

*omit*

**[1.56] Section 154**

*substitute*

**154 Arrangements at polling places—opening and closing**

- (1) Each polling place for an ATSIEB election must—
  - (a) open at the polling open time for the polling place; and
  - (b) close at the polling close time for the polling place.
- (2) No-one must be admitted to the polling place after the polling close time for the purpose of voting.
- (3) The poll at the polling place must—
  - (a) open at the polling open time; and
  - (b) not close until all electors present in the polling place at the polling close time and wanting to vote have voted.
- (4) In this section:

*polling close time*, for a polling place, means the polling close time stated in the appointment under section 119 (1) (a) for the polling place.

*polling open time*, for a polling place, means the polling open time stated in the appointment under section 119 (1) (a) for the polling place.

**154A Arrangements at polling places—ballot boxes**

- (1) The polling at each polling place for an ATSIEB election must be conducted in accordance with this section.
- (2) Before any vote is taken in the election, the OIC must, in the presence of any scrutineers—
  - (a) exhibit the ballot box for the election empty; and
  - (b) after exhibiting the ballot box, securely fasten its cover.

- (3) At the end of each day's polling, the OIC must, in the presence of any scrutineers, close the ballot box and seal it.
- (4) At the start of the 2nd and each subsequent day's polling, the OIC must, in the presence of any scrutineers, examine the seal on the ballot box and open it.
- (5) The same ballot box must be used at each polling place for the election unless it is full.
- (6) When a ballot box is full, the OIC must, in the presence of any scrutineers—
  - (a) close and seal the ballot box; and
  - (b) exhibit another ballot box for the election empty and then securely fasten its cover.
- (7) At the end of the polling close day for the election, the OIC must, in the presence of any scrutineers—
  - (a) close and seal the ballot box containing sealed ballot paper envelopes and their contents for ordinary voting or declaration voting; and
  - (b) parcel and enclose in sealed wrapping all unused ballot papers; and
  - (c) parcel and enclose in sealed wrapping all other electoral papers used at the polling place; and
  - (d) give all the ballot boxes used in the election, and the articles mentioned in paragraph (b) and (c), to the commissioner.
- (8) The commissioner must keep the articles mentioned in subsection (7) in safe custody for the purposes of scrutiny under part 12.
- (9) Ballot paper envelopes containing ballot papers cast as ordinary votes in an ATSIEB election may only be removed from ballot boxes and counted after the close of polling on polling close day.

**[1.57] Extension of time for conducting elections**  
**Section 159 (1)**

*omit*

the day

*substitute*

the period

**[1.58] Suspension and adjournment of polling**  
**Section 160 (1)**

*omit*

on polling day

*substitute*

during the polling period

**[1.59] Section 160 (5)**

*omit*

on the day

*substitute*

during the period

**[1.60] Failure to vote**  
**Division 10.7**

*omit*



## **Part 1.4**                      **Modification of pt 12 (The scrutiny)**

**[1.61]      Scrutiny**  
**Section 178 (3) (f)**

*omit*

**[1.62]      Preliminary scrutiny of declaration voting papers etc**  
**Section 179 (1) (c)**

*omit*

**[1.63]      Section 179 (6)**

*omit*

**[1.64]      First count—ordinary ballot papers**  
**Section 182 (2)**

*substitute*

- (2) The OIC for a scrutiny centre must arrange for the procedures set out in this section to be carried out not earlier than—
- (a) 7 business days after the polling close day for the election; or
  - (b) if a review panel is considering a postal vote under section 144B or section 144C—the day after the review panel gives the commissioner written notice of its decision under section 144B (5) or section 144C (5).

**[1.65]      Section 182 (5) (b), (c) and (d)**

*omit*

**[1.66]      Section 182 (6) and (7)**

*omit*

**[1.67] Section 183A**

*substitute*

**183A First count—electronic ballot papers**

The OIC for a scrutiny centre must arrange for preferences from electronic voting to be entered into the approved computer program, and for the electronic counting of the votes using the program, not earlier than—

- (a) 7 business days after the polling close day for the election; or
- (b) if a review panel is considering a postal vote under section 144B or section 144C—the day after the review panel gives the commissioner written notice of its decision under section 144B (5) or section 144C (5).

**[1.68] Second count—first preferences  
Section 184**

*omit*

**[1.69] Ascertaining result of poll  
Section 185 (1) (a)**

*omit*

**[1.70] Section 189**

*substitute*

**189 Declaration of result of ATSIEB election**

- (1) As soon as practicable after the result of an ATSIEB election has been decided, the commissioner must, in writing, declare each successful candidate elected.
- (2) A declaration under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **189A Report of result of ATSIEB election**

- (1) As soon as practicable after the result of an ATSIEB election has been decided, the commissioner must give the ATSIEB chair (or, if there is no chair, the Minister) a written report setting out:
  - (a) the election results; and
  - (b) the number of votes received by each candidate.
- (2) The commissioner must make the report available to the public during ordinary office hours.

### **Examples**

- at the office of the commissioner
- on the commissioner's website

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **Part 1.5 Modifications of pt 13 (Casual vacancies)**

### **[1.71] Section 190, new definitions**

*insert*

***casual vacancy*** means a vacancy in a position on ATSIEB if the vacancy has happened otherwise than because—

- (a) the term for which the ATSIEB member was elected has ended; or
- (b) there has been a partial failure of an election.

*Note* See s 111B for what happens if there are no candidates for an ATSIEB election.

***partial failure***, of an ATSIEB election, means that fewer candidates were nominated for the election than were required to be elected.

**[1.72] Section 190, definition of *Speaker***

*omit*

**[1.73] Notice of casual vacancy  
Section 191 (1)**

*substitute*

- (1) This section applies if—
- (a) the ATSIEB chair tells the commissioner in writing that there is a casual vacancy for a position for an ATSIEB member; and
  - (b) the vacancy occurs after the latest ATSIEB election has been declared and before 1 January in the year in which the next ATSIEB election is to be held.
- (1A) If the commissioner is satisfied that it is practicable to fill the vacancy under section 194, the commissioner must publish a notice in a newspaper.

**[1.74] Section 191 (2)**

*omit*

subsection (1)

*substitute*

subsection (1A)

**[1.75] Publication of candidates' details  
Section 193 (1) (b)**

*omit*

any suppressed address

*substitute*

the candidate's address

**[1.76] Determination of candidate to fill vacancy**  
**Section 194 (3)**

*substitute*

- (3) The commissioner must—
- (a) declare the successful candidate elected; and
  - (b) tell the ATSIEB chair (or, if there is no chair, the Minister) in writing about the election of the successful candidate.

**[1.77] Sections 195 and 196**

*substitute*

**195 ATSIEB nominees**

- (1) This section applies if—
- (a) there is a casual vacancy for a position on ATSIEB; and
  - (b) the commissioner tells the ATSIEB chair (or, if there is no chair, the Minister)—
    - (i) under section 191 (4), that it is not practicable to fill the vacancy; or
    - (ii) under section 193 (2), that there are no candidates for the vacancy.
- (2) The Minister must, after taking into consideration any recommendations from ATSIEB, appoint a person who is eligible to be elected to the vacant position to fill the vacancy.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

**196 Term of ATSIEB member declared elected under pt 13**

- (1) This section applies to a person—
  - (a) declared elected under section 194 (3) (a); or
  - (b) appointed under section 195 (2).
- (2) The term of the person's appointment begins at the end of the day the election of the person is declared or the person is appointed and, unless sooner ended, ends on the day the former ATSIEB member's appointment would have ended.

**Part 1.6 Modifications of pt 16 (Disputed elections, eligibility and vacancies)****[1.78] Definitions for pt 16  
Section 250, definition of *Speaker***

*omit*

**[1.79] Section 251**

*substitute*

**251 Meaning of *ATSIEB chair*—pt 16**

- (1) In this part:  
*ATSIEB chair* includes—
  - (a) if the ATSIEB chair is unavailable—the ATSIEB deputy chair;  
or
  - (b) if both the ATSIEB chair and the ATSIEB deputy chair are unavailable—another ATSIEB member who is not the subject of a proceeding and is appointed by ATSIEB to act as the ATSIEB chair for this part; or

- (c) if both the ATSIEB chair and the ATSIEB deputy chair are unavailable and no ATSIEB member is appointed for paragraph (b)—the Minister.
- (2) For this section, the ATSIEB chair or the ATSIEB deputy chair is unavailable if—
- (a) the office-holder is absent from duty; or
  - (b) there is a vacancy in the office; or
  - (c) the office-holder is the subject of a proceeding.

**[1.80] Validity may be disputed after election**  
**New section 256 (2) (aa) and (ab)**

*before section 256 (2) (a), insert*

- (aa) a decision by a liaison officer or review panel in relation to an elector's claim to be an Aboriginal person or Torres Strait Islander;
- (ab) a decision by a review panel in relation to an elector's claim to live in the ACT;

**[1.81] Inquiries by court**  
**Section 269 (3)**

*omit*

## Part 1.7                      Modifications of pt 17 (Electoral offences)

### [1.82]      Sections 286 and 287

*substitute*

#### 286              Interference with voting

- (1) A person must not—
- (a) interfere with the casting of a vote by an elector; or
  - (b) do anything to find out how an elector voted; or
  - (c) allow anyone else to find out how an elector voted.

Maximum penalty: 30 penalty units.

- (2) Subsection (1) does not apply to a person assisting an elector under section 156.

### [1.83]      Section 288

*substitute*

#### 288              Violence and intimidation

A person must not, by violence or intimidation, hinder or interfere with the free exercise of a right or function under this Act.

Maximum penalty: 30 penalty units.

*Note 1*      **Function** is defined in the Legislation Act, dict, pt 1 to include authority, duty and power.

*Note 2*      **Exercise** a function includes perform the function (see Legislation Act, dict, pt 1).



**[1.84] Dissemination of electoral matter—authorisers and authors**  
**Section 292 (1) (b)**

*substitute*

- (b) if the matter was published for a candidate for election—the name of the candidate.

**[1.85] Publication of statements about candidates**  
**Section 301 (3)**

*omit*

**[1.86] Canvassing within 100m of polling places**  
**Section 303 (7), definition of *polling hours***

*substitute*

*polling hours*, for a polling place, means the period stated in the appointment under section 119 during which the place is open for polling.

**[1.87] Section 307**

*substitute*

**307 Voting fraud**

- (1) A person must not supply a ballot paper unless authorised by this Act.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person dishonestly obtains a ballot paper.

Maximum penalty: 20 penalty units.

- (3) A person must not mark a ballot paper unless—
- (a) the person is an elector or an assistant assisting the elector under section 156; and
  - (b) the ballot paper marked is the elector's ballot paper.

Maximum penalty: 30 penalty units.

- (4) A person commits an offence if—
- (a) the person casts a ballot; and
  - (b) the person is not entitled to vote.

Maximum penalty: 30 penalty units.

**[1.88] New section 317A**

*insert*

**317A Influencing of votes by officers**

- (1) An officer must not do anything to influence someone else's vote.

Maximum penalty: 30 penalty units.

- (2) In this section:

*officer* includes a liaison officer.

**[1.89] New sections 318A and 318B**

*insert*

**318A Giving completed ballot papers to commissioner**

A person who accepts completed ballot papers to be given to the commissioner must give them to the commissioner as soon as practicable.

Maximum penalty: 10 penalty units.

**318B Opening envelopes containing ballot papers**

Unless authorised under this Act, a person must not open a ballot box, or an envelope, that appears to contain completed ballot papers.

Maximum penalty: 5 penalty units.

**Part 1.8 Modifications of pt 18  
(Enforcement proceedings)**

**[1.90] Commissioner may prosecute enrolment and voting offences  
Section 326**

*omit*

**[1.91] Service of certain process by mail  
Section 327**

*omit*

**Part 1.9 Modifications of pt 19  
(Miscellaneous)**

**[1.92] Administrative arrangements with Commonwealth and States  
Section 336**

*omit*

**[1.93] Evidentiary certificates  
Section 337 (1) (b) (ii)**

*omit*

**[1.94] Section 337 (1) (h) and (i)**

*omit*

registered party,

**[1.95] Approved forms  
Section 340A**

*omit*

**[1.96] Regulation-making power  
Section 341**

*omit*

**Part 1.10 Modifications of sch 3  
(Preliminary scrutiny of  
declaration voting papers)**

**[1.97] Clause 6 (1), definition of *relevant provision*, new  
paragraph (aa)**

*before clause 6 (1) (a), insert*

(aa) for a vote under section 133B (Declaration voting—challenged claims to vote)—section 133B (3); or

**[1.98] Clause 6 (1), definition of *relevant provision*,  
paragraphs (b) and (c)**

*omit*

**[1.99] Clause 6 (2) (d)**

*substitute*

- (d) for a declaration vote under section 133B (3) or a postal vote under section 136A (Applications for postal voting papers)—the review panel or a member of the review panel has decided that the elector is an Aboriginal person or Torres Strait Islander.

**[1.100] Clause 11**

*omit everything before paragraph (a), substitute*

- 11 The OIC must, in accordance with clauses 4 to 10, conduct a further scrutiny of the group of remaining declaration voting papers to which clause 5 (b) applies and, if there are any papers to which clause 5 (b) applies after the further scrutiny, the OIC must—

**[1.101] New clause 12**

*insert*

- 12 The OIC must, in accordance with clauses 4 to 10, conduct a further scrutiny of the group of remaining declaration voting papers to which clause 8 (b) applies and, if there are any papers to which clause 8 (b) applies after the further scrutiny, the OIC must give the papers to the review panel for consideration under section 144C.

## **Part 1.11 Modifications of dictionary**

**[1.102] Definition of *ballot paper*, paragraph (b)**

*substitute*

- (b) if a regulation is in force under section 114 (4) (Ballot papers)—means a ballot paper in the form prescribed by regulation.

**[1.103] New definition of *casual vacancy***

*insert*

*casual vacancy*, for part 13 (Casual vacancies)—see section 190.

**[1.104] Definition of *declaration vote*, new paragraph (aa)**

*before paragraph (a), insert*

(aa) section 133B (Declaration voting—challenged claims to vote);

**[1.105] New definition of *liaison officer* and *partial failure***

*insert*

*liaison officer* means an Aboriginal and Torres Strait Islander liaison officer appointed under section 33 (2A).

*partial failure*, for part 13 (Casual vacancies)—see section 190.

**[1.106] Definition of *polling place***

*substitute*

*polling place* means a place appointed to be a polling place under section 119.

**[1.107] New definition of *review panel***

*insert*

*review panel* means the panel established under section 125A.

## Dictionary

(see s 4)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- administrative unit
- appoint
- body
- business day
- chief executive (see s 163)
- electoral commission
- electoral commissioner
- Executive
- financial year
- indictable offence (see s 190)
- Minister (see s 162)
- modification
- must (see s 146)
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- sign.

***Aboriginal person or Torres Strait Islander*** means a person who—

- (a) is a descendant of an Aboriginal person or Torres Strait Islander; and
- (b) identifies as an Aboriginal person or Torres Strait Islander; and
- (c) is accepted as an Aboriginal person or Torres Strait Islander by an Aboriginal or Torres Strait Islander community.

***ATSIEB***—see section 7.

**ATSIEB chair**—see section 15.

**ATSIEB deputy chair**—see section 16.

**ATSIEB election**, for part 3 (ATSIEB elections)—see section 28.

**ATSIEB member** means a person elected under part 3 (ATSIEB elections) to be a member of ATSIEB.

**commissioner** means the electoral commissioner.

**community forum** means a community forum under section 11.

**election start day**, for part 3 (ATSIEB elections)—see section 28.

**elector**, for part 3 (ATSIEB elections)—see section 28.

**Electoral Act** means the *Electoral Act 1992*.

**government agency** means—

- (a) an administrative unit; or
- (b) a territory instrumentality; or
- (c) a statutory office-holder and the staff required to assist the statutory office-holder.

**hour of nomination**, for part 3 (ATSIEB elections)—see section 28.

**nomination close day**, for part 3 (ATSIEB elections)—see section 28.

**nominee**, for part 3 (ATSIEB elections)—see section 28.

**polling close day**, for part 3 (ATSIEB elections)—see section 28.

**polling period**, for part 3 (ATSIEB elections)—see section 28.

**polling start day**, for part 3 (ATSIEB elections)—see section 28.

**pre-election period**, for part 3 (ATSIEB elections)—see section 28.

**UNEC** means the United Ngunnawal Elders Council.



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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 10 April 2008.

**2 Notification**

Notified under the Legislation Act on 14 May 2008.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Aboriginal and Torres Strait Islander Elected Body Bill 2008, which was passed by the Legislative Assembly on 6 May 2008.

Clerk of the Legislative Assembly

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