

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Indigenous Affairs)

Aboriginal and Torres Strait Islander Elected Body Bill 2008

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Indigenous Affairs)

Aboriginal and Torres Strait Islander Elected Body Bill 2008

A Bill for

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

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

J2007-394

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

6 This Act commences on the day after its notification day.

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

9 **3 Objects**

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

13 (a) to ensure maximum opportunity for the voice of Aboriginal
14 people and Torres Strait Islanders living in the ACT to reach
15 decision-makers in the government and its agencies; and

16 (b) to ensure maximum participation of Aboriginal people and
17 Torres Strait Islanders living in the ACT in developing and
18 implementing government policies affecting them; and

19 (c) to ensure coordination by government agencies in developing
20 policies affecting Aboriginal people and Torres Strait Islanders
21 living in the ACT without detracting from, or diminishing, the
22 responsibilities of those agencies to provide services for the
23 broader community; and

24 (d) to further the economic, social and cultural development of
25 Aboriginal people and Torres Strait Islanders living in the
26 ACT; and

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

5 **4 Dictionary**

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

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

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

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

17 **5 Notes**

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

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

1 **6 Offences against Act—application of Criminal Code etc**

2 Other legislation applies in relation to offences against this Act.

3 *Note 1 Criminal Code*

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

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

10 *Note 2 Penalty units*

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

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

3 **Division 2.1** **Establishment and functions of**
4 **ATSIEB**

5 **7** **Aboriginal and Torres Strait Islander Elected Body**

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

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

9 ATSIEB has the following functions:

- 10 (a) to receive, and pass on to the Minister, the views of Aboriginal
11 people and Torres Strait Islanders living in the ACT on issues
12 of concern to them;
- 13 (b) to represent Aboriginal people and Torres Strait Islanders
14 living in the ACT and to act as an advocate for their interests;
- 15 (c) to conduct regular forums for Aboriginal people and Torres
16 Strait Islanders living in the ACT and report the outcomes of
17 those forums to the Minister;
- 18 (d) to conduct research and community consultation to assist
19 ATSIEB in the exercise of its functions;
- 20 (e) to propose programs and design services for Aboriginal people
21 and Torres Strait Islanders living in the ACT for consideration
22 by the government and its agencies;
- 23 (f) to monitor and report on the effectiveness of programs
24 conducted by government agencies for Aboriginal people and
25 Torres Strait Islanders living in the ACT;

- 1 (g) to monitor and report on the accessibility by Aboriginal people
2 and Torres Strait Islanders living in the ACT to programs and
3 services conducted by government agencies for the general
4 public;
- 5 (h) when asked by the Minister, to give the Minister information
6 or advice about any matter stated by the Minister;
- 7 (i) when asked by a government agency or another person, and in
8 consultation with UNEC, to recommend any reasonable action
9 it considers necessary to protect Aboriginal and Torres Strait
10 Islander cultural material or information considered sacred or
11 significant by Aboriginal people and Torres Strait Islanders
12 living in the ACT;
- 13 (j) any other function given to ATSIEB by the Minister;
- 14 (k) any other function given to ATSIEB under this Act or another
15 territory law.
- 16 *Note* A provision of a law that gives an entity (including a person) a function
17 also gives the entity powers necessary and convenient to exercise the
18 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

19 **9 Consultation etc with UNEC**

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

22 **10 Discussions etc with non-government entities**

- 23 (1) ATSIEB may, in exercising its functions, communicate with a
24 non-government entity providing a service or administering a
25 program used by Aboriginal people and Torres Strait Islanders
26 living in the ACT.

- 1 (2) If the non-government entity is funded by a government agency,
2 ATSIEB may also discuss matters relating to the service, program or
3 funding with the chief executive of the agency.
- 4 *Note* Under s 26, ATSIEB may invite a chief executive to its meetings to
5 discuss any issues relating to functions of ATSIEB or the agency.
- 6 (3) However, this section does not make the non-government entity
7 accountable to ATSIEB for its operations.
- 8 (4) In this section:
- 9 *non-government entity* means an entity that is not a government
10 agency.

11 **11 Community forums**

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

17 **12 Telling people about community forums**

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

23 **Examples**

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

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

- 1 **13 Community forums—attendance and conduct**
- 2 (1) ATSIEB must invite someone from each body declared to be a
3 representative Aboriginal organisation under the *Heritage Act 2004*,
4 section 14 to participate in each community forum.
- 5 (2) A community forum must be conducted in a way that gives effect to
6 the following principles:
- 7 (a) the forum should focus on the particular area of interest to be
8 discussed;
- 9 (b) the forum should be open and transparent;
- 10 (c) the forum should lead to sustainable decisions by involving
11 effective community engagement;
- 12 (d) without limiting paragraph (c), the forum should ensure that—
- 13 (i) relevant information is provided in a timely and
14 accessible way to enable maximum community
15 participation in debate about the area of interest; and
- 16 (ii) opportunities are provided for feedback about the area of
17 interest.

18 **Division 2.2 ATSIEB members**

- 19 **14 ATSIEB members**
- 20 (1) ATSIEB consists of 7 elected members.
- 21 *Note* Members of ATSIEB are elected under pt 3.
- 22 (2) Each member—
- 23 (a) is elected for 3 years; and
- 24 (b) holds office on a part-time basis.
- 25 *Note* See sch 1, pt 1.5, modification 1.77, s 196 for the term of a member
26 elected to fill a casual vacancy.

- 1 **15 ATSIEB chair**
- 2 (1) ATSIEB must, by majority vote, elect a member to be chair of
- 3 ATSIEB (the *ATSIEB chair*).
- 4 (2) The ATSIEB chair must be elected—
- 5 (a) at the first meeting of ATSIEB; and
- 6 (b) whenever the position of ATSIEB chair becomes vacant.
- 7 (3) The ATSIEB chair is elected for 3 years, but may be re-elected.
- 8 (4) The ATSIEB chair may resign as chair by written notice given to
- 9 ATSIEB.
- 10 (5) ATSIEB must tell the Minister, in writing, about a notice it receives
- 11 under subsection (4).
- 12 **16 ATSIEB deputy chair**
- 13 (1) ATSIEB must, by majority vote, elect a member (other than the
- 14 ATSIEB chair) to be deputy chair of ATSIEB (the *ATSIEB deputy*
- 15 *chair*).
- 16 (2) The ATSIEB deputy chair must be elected—
- 17 (a) at the first meeting of ATSIEB; and
- 18 (b) whenever the position of deputy chair becomes vacant.
- 19 (3) The ATSIEB deputy chair may exercise a function of the ATSIEB
- 20 chair at any time when the chair cannot for any reason exercise the
- 21 function.
- 22 (4) The ATSIEB deputy chair is elected for 3 years, but may be
- 23 re-elected.
- 24 (5) The ATSIEB deputy chair may resign as deputy chair by written
- 25 notice given to the ATSIEB chair or, if there is no chair, ATSIEB.

1 **17 Resignation of ATSIEB member**

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

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

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

6 **18 Member taken to have resigned in certain circumstances**

7 (1) This section applies if ATSIEB is satisfied that an ATSIEB
8 member—

9 (a) no longer lives in the ACT; and

10 (b) has not lived in the ACT during the immediately preceding
11 period of 6 months.

12 (2) ATSIEB may, in writing, declare that it is satisfied as stated in
13 subsection (1).

14 (3) If ATSIEB makes a declaration under subsection (2), the member is
15 taken to have resigned on the date of the declaration.

16 (4) This section does not apply to an ATSIEB member who is absent
17 from the ACT on leave approved under section 20.

18 **19 Removal of ATSIEB member**

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

21 (a) if the member contravenes a territory law in relation to the
22 exercise of the member's functions;

23 (b) for misbehaviour in relation to the exercise of the member's
24 functions;

25 (c) if the member becomes bankrupt or executes a personal
26 insolvency agreement;

- 1 (d) if the member is convicted, or found guilty, in Australia of an
2 offence punishable by imprisonment for at least 1 year;
- 3 (e) if the member is convicted, or found guilty, outside Australia
4 of an offence that, if it had been committed in the ACT, would
5 be punishable by imprisonment for at least 1 year;
- 6 (f) if the member fails to take all reasonable steps to avoid being
7 placed in a position where a conflict of interest arises during
8 the exercise of the member's functions;
- 9 (g) if the member contravenes section 27 (Disclosure of interests
10 by ATSIEB members);
- 11 (h) if the member is absent from 3 consecutive meetings of
12 ATSIEB, otherwise than on approved leave;
- 13 (i) for physical or mental incapacity, if the incapacity substantially
14 affects the exercise of the member's functions.

15 **20 Leave of ATSIEB members**

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

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

1 **Division 2.3 ATSIEB meetings**

2 **21 Time and place of ATSIEB meetings**

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

16 **22 Presiding member at ATSIEB meetings**

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

22 **23 Quorum at ATSIEB meetings**

- 23 Business may be carried on at a meeting of ATSIEB only if at least
24 5 members are present.

1 **24 Voting at ATSIEB meetings**

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

5 **25 Conduct of ATSIEB meetings**

6 (1) ATSIEB may conduct its proceedings (including its meetings) as it
7 considers appropriate.

8 (2) A meeting may be held using a method of communication, or a
9 combination of methods of communication, that allows a member
10 taking part to hear or otherwise know what each other member
11 taking part says without the members being in each other's
12 presence.

13 **Examples**

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

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

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

20 **Example—electronic communication**

21 telephone or email

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

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

26 **26 Chief executive at ATSIEB meeting**

27 (1) ATSIEB may invite a chief executive of a government agency to
28 attend a meeting of ATSIEB to discuss any issues relating to the
29 functions of ATSIEB or the government agency.

- 1 (2) If ATSIEB invites the chief executive of a government agency to
2 attend a meeting to answer questions or provide information about
3 the functions of the government agency, the chief executive must
4 take reasonable steps to attend the meeting, and answer the
5 questions and provide the information, as requested.

6 **27 Disclosure of interests by ATSIEB members**

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

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

- 14 (2) The disclosure must be recorded in ATSIEB's minutes and, unless
15 ATSIEB otherwise decides, the member must not—

- 16 (a) be present when ATSIEB considers the issue; or
17 (b) take part in a decision of ATSIEB on the issue.

- 18 (3) Any other member who also has a material interest in the issue must
19 not be present when ATSIEB is considering its decision under
20 subsection (2).

- 21 (4) In this section:

22 **associate**, of a person, means—

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

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

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

- 8 (a) an associate of the person;
- 9 (b) a corporation, if the corporation has not more than
10 100 members and the person, or an associate of the person, is a
11 member of the corporation;
- 12 (c) a subsidiary of a corporation mentioned in paragraph (b);
- 13 (d) a corporation, if the person, or an associate of the person, is an
14 executive officer of the corporation;
- 15 (e) the trustee of a trust, if the person, or an associate of the
16 person, is a beneficiary of the trust;
- 17 (f) a member of a firm or partnership, if the person, or an associate
18 of the person, is a member of the firm or partnership;
- 19 (g) someone else carrying on a business, if the person, or an
20 associate of the person, has a direct or indirect right to
21 participate in the profits of the business.

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

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

1 **Part 3 ATSIEB elections**

2 **28 Definitions—pt 3**

3 In this part:

4 ***ATSIEB election***—

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) starting at 9 am on the election start day for the election; and

7 (b) ending at the end of the polling close day for the election.

8 **29 Timetable for ATSIEB elections**

9 (1) An ATSIEB election must be held in accordance with the timetable
10 set out in table 29.

11 (2) If an event mentioned in this section falls on a day (other than a
12 Saturday) that is a public holiday, the event happens instead on the
13 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

1 **Example—item 6 and item 7**

2 Polling in the 2nd ATSIEB election must be held during the period starting on Monday,
3 2 May 2011 and ending on Saturday, 7 May 2011.

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

6 **30 Telling people about ATSIEB elections etc**

7 (1) Before the election start day for an ATSIEB election, the electoral
8 commission must take reasonable steps to tell electors and people
9 entitled to be electors about the following:

- 10 (a) the ATSIEB election;
- 11 (b) who is eligible to nominate as a candidate for the election;
- 12 (c) who is eligible to vote at the election;
- 13 (d) the days worked out under section 29 for the election;
- 14 (e) the location of polling places;
- 15 (f) anything else about the election that the commission considers
16 relevant.

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

4 **Examples**

5 a newspaper, the electoral commission website, a media release

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

9 **31 Application of Electoral Act**

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

Table 31 Application of Electoral Act provisions

column 1 item	column 2 provision of Electoral Act to be applied	column 3 part in sch 1 with modifications
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

column 1 item	column 2 provision of Electoral Act to be applied	column 3 part in sch 1 with modifications
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

1 **32 Interpretation of applied provisions of Electoral Act**

2 In the application of the Electoral Act in relation to an ATSIEB

3 election—

4 (a) a reference to a provision of that Act is taken to be a reference

5 to the provision in its application in relation to the ATSIEB

6 election; and

7 (b) a reference to—

8 (i) a term used in that Act is taken to be a reference to the

9 term in the application of that Act in relation to the

10 ATSIEB election; and

11 (ii) in particular, a term mentioned in column 2 of an item in

12 table 32 is taken to be a reference to the term mentioned

13 in column 3 of the item.

Table 32 Interpretation of terms in applied provisions of Electoral Act		
column 1 item	column 2 term in Electoral Act	column 3 term in this Act
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

1 **33 Application of Electoral Regulation 1993**

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

5 **34 Approved forms**

6 (1) The commissioner may approve forms for this part.

7 (2) If the commissioner approves a form for a particular purpose, the
8 approved form must be used for that purpose.

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

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

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

1 **Part 4** **Miscellaneous**

2 **35** **Protection of ATSIEB members from liability**

3 (1) An ATSIEB member is not civilly liable for conduct engaged in
4 honestly and without recklessness—

5 (a) in the exercise of a function under this Act or another territory
6 law; or

7 (b) in the reasonable belief that the conduct was in the exercise of
8 a function under this Act or another territory law.

9 (2) Any liability that would, apart from this section, attach to an
10 ATSIEB member attaches instead to the Territory.

11 (3) In this section:

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

13 **36** **Regulation-making power**

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

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

17 (2) A regulation may also prescribe offences for contraventions of the
18 regulations and prescribe maximum penalties of not more than
19 10 penalty units for offences against a regulation.

- 1 **Part 5 Transitional**
- 2 **Division 5.1 Transitional—general**
- 3 **37 Transitional—community forums**
- 4 (1) Section 11 (1) does not apply to the financial year ending on
5 30 June 2008.
- 6 (2) This section is a law to which the Legislation Act, section 88
7 (Repeal does not end effect of transitional laws etc) applies.
- 8 **38 Transitional—time and place of ATSIEB meetings**
- 9 (1) Section 21 (2) does not apply to the financial year ending on
10 30 June 2008.
- 11 (2) This section is a law to which the Legislation Act, section 88
12 (Repeal does not end effect of transitional laws etc) applies.
- 13 **Division 5.2 Transitional—first ATSIEB election**
- 14 **39 Conduct of first ATSIEB election**
- 15 This division applies in relation to the first ATSIEB election under
16 part 3.
- 17 **40 Transitional—timetable for first ATSIEB election**
- 18 (1) Despite section 29 (1), the first ATSIEB election must be held in
19 accordance with the timetable set out in table 40.
- 20 (2) This section is a law to which the Legislation Act, section 88
21 (Repeal does not end effect of transitional laws etc) applies.

Table 40 Timetable for first ATSIEB election

column 1 item	column 2 election event	column 3 date
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

1 **41 Transitional—modification of Electoral Act, s 33, s 111**
2 **and s 125A**

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

1 **42 Transitional—modification of Electoral Act, s 80**

2 (1) For the first ATSIEB election, schedule 1, modification 1.4 applies
3 as if new section 80 (1A) read as follows:

4 ‘(1A) For this Act, the roll for an ATSIEB election is closed during the
5 period—

6 (a) starting at 5 pm on Wednesday, 4 June 2008; and

7 (b) ending at the close of polling at the election.’

8 (2) This section is a law to which the Legislation Act, section 88
9 (Repeal does not end effect of transitional laws etc) applies.

10 **43 Transitional regulations**

11 (1) A regulation may prescribe transitional matters necessary or
12 convenient to be prescribed because of the enactment of this Act.

13 (2) A regulation may modify this part to make provision in relation to
14 anything that, in the Executive’s opinion, is not, or is not adequately
15 or appropriately, dealt with in this part.

16 (3) A regulation under subsection (2) has effect despite anything
17 elsewhere in this Act.

18 (4) This section is a law to which the Legislation Act, section 88
19 (Repeal does not end effect of transitional laws etc) applies.

20 **Division 5.3 Expiry—pt 5**

21 **44 Expiry—pt 5**

22 This part expires 6 months after the day it commences.

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

3 (see s 31)

4 **Part 1.1** **Modifications of s 33, s 34 and**
5 **s 80**

6 **[1.1] Officers**
7 **New section 33 (2A) to (2C)**

8 *insert*

9 (2A) Before the polling start day for an ATSIEB election, the
10 commissioner must appoint at least 1 Aboriginal and Torres Strait
11 Islander liaison officer for each polling place for the election.

12 (2B) Before appointing an Aboriginal and Torres Strait Islander liaison
13 officer, the commissioner must consult ATSIEB.

14 (2C) A person is eligible to be appointed as an Aboriginal and Torres
15 Strait Islander liaison officer if the person—

16 (a) is—

17 (i) an Aboriginal person or Torres Strait Islander; and

18 (ii) at least 18 years old; and

19 (iii) enrolled, or entitled to be enrolled, for an electorate in the
20 ACT; and

21 (b) is not a candidate in the election.

1 **[1.2] Section 33 (3)**

2 *after*

3 an officer

4 *insert*

5 under this section

6 **[1.3] Section 34**

7 *substitute*

8 **34 Electorate for ATSIEB elections**

9 (1) The ACT is 1 electorate for the purposes of an ATSIEB election.

10 (2) Seven members of ATSIEB must be elected from the ACT.

11 **[1.4] Closed rolls**
12 **Section 80 (1)**

13 *substitute*

14 (1) This section applies in relation to an ATSIEB election.

15 (1A) For this Act, the roll for an ATSIEB election is closed during the
16 period—

17 (a) starting at 5 pm on the Wednesday in April 12 days before the
18 polling start day for the ATSIEB election; and

19 (b) ending at the close of polling at the election.

1 **Part 1.2** **Modifications of pt 9**
2 **(Arrangements for elections)**

3 **[1.5] Eligibility—MLAs**
4 **Section 103 (1) to (4)**

5 *substitute*

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

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

16 **[1.6] Qualifications for nomination**
17 **Section 104 (b)**

18 *omit*

19 **[1.7] Candidates to be nominated**
20 **Section 105 (2) and (3)**

21 *substitute*

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

- 1 (2A) A person is eligible to be a nominee if, at the hour of nomination,
2 the person—
3 (a) is—
4 (i) an Aboriginal person or Torres Strait Islander; and
5 (ii) at least 18 years old; and
6 (iii) enrolled, or entitled to be enrolled, for an electorate in the
7 ACT; and
8 (b) is not under a sentence of imprisonment for 1 year or longer for
9 a conviction for an indictable offence.

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

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

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

16 **[1.8] Section 105 (4) (d)**

17 *substitute*

- 18 (d) contain a declaration, signed by the nominee, to the effect that
19 the nominee, at the hour of nomination—
20 (i) is—
21 (A) an Aboriginal person or Torres Strait Islander; and
22 (B) at least 18 years old; and
23 (C) enrolled, or entitled to be enrolled, for an electorate
24 in the ACT; and
25 (ii) is not under a sentence of imprisonment for 1 year or
26 longer for a conviction for an indictable offence; and

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

11 **[1.9] Section 105 (4) (f) and (g)**

12 *omit*

13 **[1.10] Section 105 (9) to (11)**

14 *omit*

15 **[1.11] Multiple nominations invalid**
16 **Section 106**

17 *omit*

18 **[1.12] Withdrawal etc of consent to nomination**
19 **Section 107 (1)**

20 *omit*

21 not later than 24 hours

22 **[1.13] Section 107 (2) and (3)**

23 *substitute*

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

- 1 **[1.14] Place and hour of nomination**
2 **Section 108 (3)**
- 3 *substitute*
- 4 (3) The *hour of nomination* for an ATSIEB election is 12 noon on the
5 nomination close day for the election.
- 6 **[1.15] Section 108 (4) and (5)**
- 7 *omit*
- 8 **[1.16] Declaration of candidates**
9 **Section 109 (1)**
- 10 *after*
- 11 As soon as practicable
- 12 *insert*
- 13 after 24 hours
- 14 **[1.17] New section 109 (1A)**
- 15 *insert*
- 16 (1A) A declaration is a notifiable instrument.
- 17 *Note* A notifiable instrument must be notified under the Legislation Act.
- 18 **[1.18] Section 109 (2) (b)**
- 19 *omit*
- 20 **[1.19] Section 109 (4)**
- 21 *omit*
- 22 if it is a suppressed address

1 **[1.20] Section 110**

2 *substitute*

3 **110 Invalid nominations**

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

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

14 **110A Retention of nomination papers**

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

18 **[1.21] Section 111**

19 *substitute*

20 **111 If more positions than candidates**

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

- 1 (2) The commissioner must, in writing—
2 (a) declare the nominated candidate or candidates elected; and
3 (b) tell the ATSIEB chair (or, if there is no ATSIEB chair, the
4 Minister) about the election of each person elected; and
5 (c) tell the ATSIEB chair (or, if there is no ATSIEB chair, the
6 Minister) the number of candidates required to be elected who
7 were not elected.
- 8 (3) A declaration under subsection (2) (a) is a notifiable instrument.
9 *Note* A notifiable instrument must be notified under the Legislation Act.
- 10 (4) The remaining vacancies are taken to be casual vacancies and must
11 be filled in accordance with part 13 (Casual vacancies).

12 **111A If same number of positions as candidates**

- 13 (1) This section applies if, at the hour of nomination, the number of
14 candidates nominated is the same as the number of candidates to be
15 elected.
- 16 (2) The commissioner must, in writing—
17 (a) declare the nominated candidates elected; and
18 (b) tell the ATSIEB chair (or, if there is no ATSIEB chair, the
19 Minister) about the election of each person elected.
- 20 (3) A declaration under subsection (2) (a) is a notifiable instrument.
21 *Note* A notifiable instrument must be notified under the Legislation Act.

22 **111B If no candidates**

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

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

4 **111C If more candidates than positions**

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

8 **[1.22] Deposit—return or forfeiture**
9 **Section 113**

10 *omit*

11 **[1.23] Section 114**

12 *substitute*

13 **114 Ballot papers**

14 (1) The commissioner must arrange for the preparation of ballot papers
15 to be used at an ATSIEB election.

16 (2) The ballot papers—

17 (a) may be in electronic form; and

18 (b) must include the official mark approved under the Electoral
19 Act, section 340A (Approved forms) for section 114 (3) of that
20 Act; and

21 (c) must include the year of the election; and

22 (d) must include the following words:

- 23 • ‘Ballot paper’
24 • ‘Aboriginal and Torres Strait Islander Elected Body ACT’
25 • ‘Election of 7 representatives’
26 • ‘Number seven boxes from 1 to 7 in the order of your
27 choice’

- 1 • if there are more than 8 candidates—‘You may then show
2 as many further preferences as you wish by writing
3 numbers from 8 onwards in the other boxes’.
- 4 *Note* If a form is approved under s 34 for this provision, the form must be
5 used.
- 6 (3) An approval under subsection (2) (b) is a notifiable instrument.
- 7 *Note* A notifiable instrument must be notified under the Legislation Act.
- 8 (4) A regulation may—
- 9 (a) state the headings or directions to be contained on ballot papers
10 to be used for declaration voting; and
- 11 (b) provide for—
- 12 (i) the form of a ballot paper to be altered as stated in the
13 regulation; or
- 14 (ii) a form set out in the regulation to be used in place of the
15 form of a ballot paper.

16 **[1.24] Grouping of candidates’ names**
17 **Section 115**

18 *omit*

19 **[1.25] Section 116**

20 *substitute*

21 **116 Printing of ballot papers**

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

1 **[1.26] Names on ballot papers**
2 **Section 117**

3 *omit*

4 **[1.27] Section 118**

5 *substitute*

6 **118 Draw for positions on ballot papers**

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

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

14 **[1.28] Polling places and scrutiny centres**
15 **Section 119 (1) (a)**

16 *substitute*

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

19 **[1.29] New section 119 (2A)**

20 *insert*

21 (2A) The stated times mentioned in subsection (1) (a) must indicate—

22 (a) the time when the polling place must open for polling (the
23 *polling open time for the place*); and

24 (b) the time when the polling place must close for polling (the
25 *polling close time for the place*).

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

3 *omit*

4 **[1.31] Scrutineers—appointment**
5 **Section 122 (1)**

6 *substitute*

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

11 **[1.32] New section 125A**

12 *insert*

13 **125A Review panel**

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

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

7 **[1.33] Supplementary elections**
8 **Section 126**

9 *omit*

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

11 **[1.34] Entitlement to vote**
12 **Section 128 (1)**

13 *substitute*

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

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

21 **[1.35] Section 128 (3)**

22 *omit*

- 1 **[1.36] Section 129**
- 2 *substitute*
- 3 **129 Voting not compulsory**
- 4 Voting at an ATSIEB election is not compulsory.
- 5 **[1.37] Section 130**
- 6 *substitute*
- 7 **130 Multiple votes prohibited**
- 8 An elector must not vote more than once at the same election.
- 9 Maximum penalty: 30 penalty units.
- 10 **[1.38] Procedures for voting**
- 11 **Section 131 (1) (b)**
- 12 *omit*
- 13 **[1.39] Section 131 (2)**
- 14 *substitute*
- 15 (2) An elector may cast a vote during the polling period for an ATSIEB
- 16 election at any polling place for the election.
- 17 **[1.40] Claims to vote**
- 18 **Section 133 (1)**
- 19 *substitute*
- 20 (1) This section applies if a person attends before an officer at a polling
- 21 place during the polling period for an ATSIEB election and claims
- 22 to vote at the election.

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

11 **[1.41] New sections 133A and 133B**

12 *insert*

13 **133A Challenge whether claimant to vote is Aboriginal person**
14 **or Torres Strait Islander**

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

- 1 (b) tell the claimant about the claimant's right to cast a declaration
2 vote under section 133B; and
- 3 (c) tell the issuing officer under section 133 about the challenge;
4 and
- 5 (d) record the details of the challenge in a register (the *liaison*
6 *officer's objections register*) and sign the record.
- 7 (5) After being challenged under subsection (4), the claimant may—
- 8 (a) leave the polling place; or
- 9 (b) elect to cast a declaration vote under section 133B.
- 10 (6) If the claimant elects to cast a declaration vote under section 133B,
11 the liaison officer must give the claimant a written notice about the
12 challenge, including a statement to the effect that—
- 13 (a) notice of the liaison officer's decision will be given to the
14 review panel under section 134A (Review of challenge under
15 s 133A); and
- 16 (b) the claimant's ballot paper will only be admitted to scrutiny if
17 the review panel decides that the claimant is an Aboriginal
18 person or Torres Strait Islander.
- 19 *Note* If a form is approved under s 34 for this provision, the form must be
20 used.

21 **133B Declaration voting—challenged claims to vote**

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

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

9 **[1.42] New section 134A and 134B**

10 *in division 10.2, insert*

11 **134A Review of challenge under s 133A**

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

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

6 **134B Challenged claimant to leave polling place**

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

12 **[1.43] New section 135A**

13 *in division 10.3, insert*

14 **135A Evidence of living in ACT**

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

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

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

- 25 • a driver licence
26 • vehicle registration
27 • a contract of purchase or current lease for place of residence

- 1 • a utility account statement (electricity, gas, telephone or water) paid within
2 3 months before the relevant ATSIEB election
- 3 *Note* An example is part of the Act, is not exhaustive and may extend, but
4 does not limit, the meaning of the provision in which it appears (see
5 Legislation Act, s 126 and s 132).
- 6 (3) If the person gives the issuing officer evidence that the person lives
7 in the ACT, the issuing officer must—
- 8 (a) record the details of the evidence; and
- 9 (b) include a written statement of the record with the person's
10 declaration voting papers.
- 11 (4) If the person gives the commissioner evidence that the person lives
12 in the ACT within the time required under subsection (2) (b), the
13 person is, for schedule 3, taken to be enrolled to vote.
- 14 (5) If the person does not provide evidence that the person lives in the
15 ACT within the time required under subsection (2), the person's
16 ballot paper must not be admitted to scrutiny under part 12.

17 **[1.44] Applications for postal voting papers**
18 **Section 136A (2) (c)**

19 *substitute*

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

22 **[1.45] Section 136A (6)**

23 *substitute*

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

1 **[1.46] Ordinary or declaration voting in ACT before polling day**
2 **Section 136B**

3 *omit*

4 **[1.47] Declaration voting outside ACT on or before polling day**
5 **Section 136C**

6 *omit*

7 **[1.48] Record of issue of declaration voting papers**
8 **Section 137 (1)**

9 *omit*

10 , 136B (17) or 136C

11 **[1.49] Inspection of records**
12 **Section 138 (1)**

13 *omit*

14 polling day

15 *substitute*

16 polling close day

17 **[1.50] Receipt of declaration voting papers**
18 **Section 139 (2)**

19 *substitute*

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

1 **[1.51] Registered declaration voters**
2 **Section 140**

3 *omit*

4 **[1.52] Issue of voting papers to registered declaration voters**
5 **Section 141**

6 *omit*

7 **[1.53] Requirements for casting postal votes**
8 **Section 144A (1)**

9 *omit*

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

12 **[1.54] New sections 144B and 144C**

13 *insert*

14 **144B Review panel—eligibility of person who postal votes**

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

1 (b) if there is no unanimous decision—the decision of each panel
2 member.

3 (6) The commissioner must tell the claimant whether, having regard to
4 the review panel’s decision, the claimant’s vote will be admitted to
5 scrutiny.

6 **144C Review panel—residence of person who postal votes**

7 (1) This section applies if the commissioner gives the review panel
8 completed postal voting papers under schedule 3, clause 12.

9 (2) The review panel must decide, after making any investigation the
10 panel considers appropriate, whether the person who cast the postal
11 vote (the *claimant*) lives in the ACT.

12 (3) The review panel must complete its review not later than 6 business
13 days after the day it receives the claimant’s postal voting papers.

14 (4) If any member of the review panel decides that the claimant lives in
15 the ACT, the claimant’s ballot paper must be admitted to scrutiny
16 under part 12.

17 (5) The review panel must give the commissioner written notice of—

18 (a) its decision; or

19 (b) if there is no unanimous decision—the decision of each panel
20 member.

21 (6) The commissioner must tell the claimant whether, having regard to
22 the review panel’s decision, the claimant’s vote will be admitted to
23 scrutiny.

24 **[1.55] Mobile polling**
25 **Division 10.5**

26 *omit*

1 **[1.56] Section 154**

2 *substitute*

3 **154 Arrangements at polling places—opening and closing**

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

14 *polling close time*, for a polling place, means the polling close time

15 stated in the appointment under section 119 (1) (a) for the polling

16 place.

17 *polling open time*, for a polling place, means the polling open time

18 stated in the appointment under section 119 (1) (a) for the polling

19 place.

20 **154A Arrangements at polling places—ballot boxes**

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

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

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

3 *omit*

4 the day

5 *substitute*

6 the period

7 **[1.58] Suspension and adjournment of polling**
8 **Section 160 (1)**

9 *omit*

10 on polling day

11 *substitute*

12 during the polling period

13 **[1.59] Section 160 (5)**

14 *omit*

15 on the day

16 *substitute*

17 during the period

18 **[1.60] Failure to vote**
19 **Division 10.7**

20 *omit*

1 **Part 1.4** **Modification of pt 12 (The**
2 **scrutiny)**

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

5 *omit*

6 **[1.62] Preliminary scrutiny of declaration voting papers etc**
7 **Section 179 (1) (c)**

8 *omit*

9 **[1.63] Section 179 (6)**

10 *omit*

11 **[1.64] First count—ordinary ballot papers**
12 **Section 182 (2)**

13 *substitute*

14 (2) The OIC for a scrutiny centre must arrange for the procedures set
15 out in this section to be carried out not earlier than—

16 (a) 7 business days after the polling close day for the election; or

17 (b) if a review panel is considering a postal vote under
18 section 144B or section 144C—the day after the review panel
19 gives the commissioner written notice of its decision under
20 section 144B (5) or section 144C (5).

21 **[1.65] Section 182 (5) (b), (c) and (d)**

22 *omit*

23 **[1.66] Section 182 (6) and (7)**

24 *omit*

1 **[1.67] Section 183A**

2 *substitute*

3 **183A First count—electronic ballot papers**

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

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

13 **[1.68] Second count—first preferences**
14 **Section 184**

15 *omit*

16 **[1.69] Ascertaining result of poll**
17 **Section 185 (1) (a)**

18 *omit*

19 **[1.70] Section 189**

20 *substitute*

21 **189 Declaration of result of ATSIEB election**

22 (1) As soon as practicable after the result of an ATSIEB election has
23 been decided, the commissioner must, in writing, declare each
24 successful candidate elected.

25 (2) A declaration under subsection (1) is a notifiable instrument.

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

1 **189A Report of result of ATSIEB election**

2 (1) As soon as practicable after the result of an ATSIEB election has
3 been decided, the commissioner must give the ATSIEB chair (or, if
4 there is no chair, the Minister) a written report setting out:

5 (a) the election results; and

6 (b) the number of votes received by each candidate.

7 (2) The commissioner must make the report available to the public
8 during ordinary office hours.

9 **Examples**

- 10 • at the office of the commissioner
11 • on the commissioner's website

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

15 **Part 1.5 Modifications of pt 13 (Casual**
16 **vacancies)**

17 **[1.71] Section 190, new definitions**

18 *insert*

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

21 (a) the term for which the ATSIEB member was elected has
22 ended; or

23 (b) there has been a partial failure of an election.

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

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

1 **[1.72] Section 190, definition of *Speaker***

2 *omit*

3 **[1.73] Notice of casual vacancy**
4 **Section 191 (1)**

5 *substitute*

6 (1) This section applies if—

- 7 (a) the ATSIEB chair tells the commissioner in writing that there
8 is a casual vacancy for a position for an ATSIEB member; and
9 (b) the vacancy occurs after the latest ATSIEB election has been
10 declared and before 1 January in the year in which the next
11 ATSIEB election is to be held.

12 (1A) If the commissioner is satisfied that it is practicable to fill the
13 vacancy under section 194, the commissioner must publish a notice
14 in a newspaper.

15 **[1.74] Section 191 (2)**

16 *omit*

17 subsection (1)

18 *substitute*

19 subsection (1A)

20 **[1.75] Publication of candidates' details**
21 **Section 193 (1) (b)**

22 *omit*

23 any suppressed address

24 *substitute*

25 the candidate's address

1 **[1.76] Determination of candidate to fill vacancy**
2 **Section 194 (3)**

3 *substitute*

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

8 **[1.77] Sections 195 and 196**

9 *substitute*

10 **195 ATSIEB nominees**

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

22 *Note 1* For the making of appointments (including acting appointments), see

23 the Legislation Act, pt 19.3.

24 *Note 2* In particular, an appointment may be made by naming a person or

25 nominating the occupant of a position (see Legislation Act, s 207).

26 *Note 3* Certain Ministerial appointments require consultation with an Assembly

27 committee and are disallowable (see Legislation Act, div 19.3.3).

1 **196 Term of ATSIEB member declared elected under pt 13**

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

9 **Part 1.6 Modifications of pt 16 (Disputed**
10 **elections, eligibility and**
11 **vacancies)**

12 **[1.78] Definitions for pt 16**
13 **Section 250, definition of *Speaker***

14 *omit*

15 **[1.79] Section 251**

16 *substitute*

17 **251 Meaning of *ATSIEB chair*—pt 16**

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

Schedule 1
Part 1.6

Modifications of Electoral Act as applied to ATSIEB elections
Modifications of pt 16 (Disputed elections, eligibility and vacancies)

Modification [1.80]

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

9 **[1.80] Validity may be disputed after election**
10 **New section 256 (2) (aa) and (ab)**

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

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

17 **[1.81] Inquiries by court**
18 **Section 269 (3)**

19 *omit*

1 **Part 1.7** **Modifications of pt 17 (Electoral**
2 **offences)**

3 **[1.82] Sections 286 and 287**

4 *substitute*

5 **286 Interference with voting**

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

10 Maximum penalty: 30 penalty units.

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

13 **[1.83] Section 288**

14 *substitute*

15 **288 Violence and intimidation**

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

18 Maximum penalty: 30 penalty units.

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

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

- 1 **[1.84] Dissemination of electoral matter—authorisers and**
2 **authors**
3 **Section 292 (1) (b)**
- 4 *substitute*
- 5 (b) if the matter was published for a candidate for election—the
6 name of the candidate.
- 7 **[1.85] Publication of statements about candidates**
8 **Section 301 (3)**
- 9 *omit*
- 10 **[1.86] Canvassing within 100m of polling places**
11 **Section 303 (7), definition of *polling hours***
- 12 *substitute*
- 13 *polling hours*, for a polling place, means the period stated in the
14 appointment under section 119 during which the place is open for
15 polling.
- 16 **[1.87] Section 307**
- 17 *substitute*
- 18 **307 Voting fraud**
- 19 (1) A person must not supply a ballot paper unless authorised by this
20 Act.
- 21 Maximum penalty: 20 penalty units.
- 22 (2) A person commits an offence if the person dishonestly obtains a
23 ballot paper.
- 24 Maximum penalty: 20 penalty units.

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

5 Maximum penalty: 30 penalty units.

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

9 Maximum penalty: 30 penalty units.

10 **[1.88] New section 317A**

11 *insert*

12 **317A Influencing of votes by officers**

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

14 Maximum penalty: 30 penalty units.

- 15 (2) In this section:

16 *officer* includes a liaison officer.

17 **[1.89] New sections 318A and 318B**

18 *insert*

19 **318A Giving completed ballot papers to commissioner**

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

23 Maximum penalty: 10 penalty units.

- 1 **318B Opening envelopes containing ballot papers**
2 Unless authorised under this Act, a person must not open a ballot
3 box, or an envelope, that appears to contain completed ballot papers.
4 Maximum penalty: 5 penalty units.

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

7 **[1.90] Commissioner may prosecute enrolment and voting**
8 **offences**
9 **Section 326**

10 *omit*

11 **[1.91] Service of certain process by mail**
12 **Section 327**

13 *omit*

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

16 **[1.92] Administrative arrangements with Commonwealth and**
17 **States**
18 **Section 336**

19 *omit*

20 **[1.93] Evidentiary certificates**
21 **Section 337 (1) (b) (ii)**

22 *omit*

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

2 *omit*

3 registered party,

4 **[1.95] Approved forms**
5 **Section 340A**

6 *omit*

7 **[1.96] Regulation-making power**
8 **Section 341**

9 *omit*

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

13 **[1.97] Clause 6 (1), definition of *relevant provision*, new**
14 **paragraph (aa)**

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

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

18 **[1.98] Clause 6 (1), definition of *relevant provision*,**
19 **paragraphs (b) and (c)**

20 *omit*

1 **[1.99] Clause 6 (2) (d)**

2 *substitute*

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

8 **[1.100] Clause 11**

9 *omit everything before paragraph (a), substitute*

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

14 **[1.101] New clause 12**

15 *insert*

16 12 The OIC must, in accordance with clauses 4 to 10, conduct a further
17 scrutiny of the group of remaining declaration voting papers to
18 which clause 8 (b) applies and, if there are any papers to which
19 clause 8 (b) applies after the further scrutiny, the OIC must give the
20 papers to the review panel for consideration under section 144C.

21 **Part 1.11 Modifications of dictionary**

22 **[1.102] Definition of *ballot paper*, paragraph (b)**

23 *substitute*

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

- 1 **[1.103] New definition of *casual vacancy***
2 *insert*
3 *casual vacancy*, for part 13 (Casual vacancies)—see section 190.
- 4 **[1.104] Definition of *declaration vote*, new paragraph (aa)**
5 *before paragraph (a), insert*
6 (aa) section 133B (Declaration voting—challenged claims to vote);
- 7 **[1.105] New definition of *liaison officer* and *partial failure***
8 *insert*
9 *liaison officer* means an Aboriginal and Torres Strait Islander
10 liaison officer appointed under section 33 (2A).
11 *partial failure*, for part 13 (Casual vacancies)—see section 190.
- 12 **[1.106] Definition of *polling place***
13 *substitute*
14 *polling place* means a place appointed to be a polling place under
15 section 119.
- 16 **[1.107] New definition of *review panel***
17 *insert*
18 *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.

- 1 **ATSIEB chair**—see section 15.
- 2 **ATSIEB deputy chair**—see section 16.
- 3 **ATSIEB election**, for part 3 (ATSIEB elections)—see section 28.
- 4 **ATSIEB member** means a person elected under part 3 (ATSIEB
5 elections) to be a member of ATSIEB.
- 6 **commissioner** means the electoral commissioner.
- 7 **community forum** means a community forum under section 11.
- 8 **election start day**, for part 3 (ATSIEB elections)—see section 28.
- 9 **elector**, for part 3 (ATSIEB elections)—see section 28.
- 10 **Electoral Act** means the *Electoral Act 1992*.
- 11 **government agency** means—
- 12 (a) an administrative unit; or
- 13 (b) a territory instrumentality; or
- 14 (c) a statutory office-holder and the staff required to assist the
15 statutory office-holder.
- 16 **hour of nomination**, for part 3 (ATSIEB elections)—see section 28.
- 17 **nomination close day**, for part 3 (ATSIEB elections)—
18 see section 28.
- 19 **nominee**, for part 3 (ATSIEB elections)—see section 28.
- 20 **polling close day**, for part 3 (ATSIEB elections)—see section 28.
- 21 **polling period**, for part 3 (ATSIEB elections)—see section 28.
- 22 **polling start day**, for part 3 (ATSIEB elections)—see section 28.
- 23 **pre-election period**, for part 3 (ATSIEB elections)—see section 28.
- 24 **UNEC** means the United Ngunnawal Elders Council.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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