

2017

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**ABORIGINAL AND TORRES STRAIT ISLANDER ELECTED BODY
AMENDMENT BILL 2017**

REVISED EXPLANATORY STATEMENT

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Introduction

This revised Explanatory Statement relates to the *Aboriginal and Torres Strait Islander Elected Body Amendment Bill 2017* (the Bill) as presented in the Legislative Assembly. It has been prepared to assist the reader of the Bill and help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Outline

The purpose of this Bill is to amend the *Aboriginal and Torres Strait Islander Elected Body Act 2008* (the Act) following an Independent Review of the Act in 2015. Following considerable community consultation on the Act in 2015 and on the outcomes of the review in 2016 the review and Government response were tabled in the Legislative Assembly in 2 August 2016. One of the key recommendations from the review was that the functions of the Elected Body should be clarified to improve community and stakeholders understanding of the role of the Elected Body, to allow for more effectively targeted community and stakeholder consultation, and to formally enshrine the Elected Body hearing process within the legislation.

The amended Bill strengthens the functions of the Aboriginal and Torres Strait Islander Elected Body to consult and provide advice on systemic or whole-of-government issues. It clarifies the delineation of responsibility between the Elected Body and the ACT Government in the management of operational aspects of Aboriginal and Torres Strait Islander policy and service provision.

The sections on community forums have been expanded to include a more generalised consultation provisions that will allow the Elected Body to more effectively target their consultations to their stakeholders needs. The amended sections also enshrine the Elected Body's ability to hold public hearings to evaluate government service provision. The Bill also harmonises the *Aboriginal and Torres Strait Islander Elected Body Act 2008* with the *Heritage Act 2004* and how it consults on cultural heritage.

Human Rights considerations

The Bill does not engage or limit rights under the Human Rights Act 2004. The amendments are supported by section seven of the Preamble to the *ACT Human Rights Act 2004* and Section 17 - Taking part in public life. The amendments are supported by Article 3 of the United Nations Declaration of the Rights of Indigenous People.

The amendments have been developed following extensive consultation with members of the ACT Aboriginal and Torres Strait Islander community and relevant Aboriginal and Torres Strait Islander and peak stakeholders.

Notes on Clauses

Clause 1 Name of the Act

This is a technical clause and sets out the name of the new Act as the *Aboriginal and Torres Strait Islander Elected Body Amendment Act 2017*.

Clause 2 Commencement

This clause enables the new Act to commence on a day after its notification day.

Clause 3 Legislation amended

This clause identifies the Act to be amended is the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

Clause 4 Objects Section 3

This amendment shifts the objects of the Act from a deficit language to a strengths based approach which is consistent with the language in the United Nations Declaration on the Rights of Indigenous Peoples and the shared vision from the ACT Aboriginal and Torres Strait Islander Agreement.

Clause 5 Section 3(e)

This section has been moved to section 8 Functions.

Clause 6 Functions of ATSIEB Section 8(a)

This clause moves section 8(i) to section 8(a) combine two parts on giving advice to the Minister.

Clause 7 Section 8(b)

This clause redefines the purpose of ATSIEB is to advocate on systemic or whole-of-government issues rather than advocating on individual client complaints. For example the ATSIEB would not advocate on an individual housing application but could advocate on high level issues affecting housing accessibility for Aboriginal and Torres Strait Islander people in the ACT.

Clause 8 Section 8(d) and (e)

This clause removes the reference to holding forums and expands the ability for the ATSIEB to with conduct regular consultation with Aboriginal and Torres Strait Islander people living in the ACT in the format it judges most appropriate. This section also clarifies the ATSIEB's responsibility when reporting the outcomes of consultations to the Minister and any other Minister responsible for the matter. This amendment is complementary to the amendments in clause 17 (new sections 11 to 13) which replace the specific requirement for ATSIEB to hold 'forums' with a more general requirement to 'consult'.

The amended section 8(e) clarifies the responsibility for conducting research on matters of interest to the Aboriginal and Torres Strait Islander community in the ACT. The amendment empowers ATSIEB to recommend topics of research to the government agencies with portfolio responsibility to consider for funding.

Clause 8 Section 8(f)

This clause removes the function to propose programs and design services. It clarifies the responsibility of ACT Government for the operational management of the design and delivery of programs and services.

Clause 9 Section 8(g)

This clause strengthens ATSIEB's role of monitoring the effectiveness and accessibility of government programs and services for Aboriginal and Torres Strait Islander people and the ACT Government's accountability for the delivery of these programs and services.

This clause also widens ATSIEB's role of monitoring government programs and services for Aboriginal and Torres Strait Islander people.

Clause 10 Section 8(i)

This clause replaces the role of advice to the Minister on appropriate representation of Aboriginal and Torres Strait Islander people living in the ACT on consultative bodies established by government agencies that was previously an object in section 3(e) and now moved to section 8(a), with the role of providing advice to government agencies.

Clause 11 Section 8(j)

This clause removes the restriction of consulting only with the United Ngunnawal Elders Council and is further defined in section 9.

Clause 12 Section 9

This clause increases the scope of consultation on cultural heritage to include Representative Aboriginal Organisations identified in the *Heritage Act 2004*. This clause also allows the ATSIEB to consult with other relevant cultural stakeholders as required.

Clause 13 Section 10 heading

This clause replaces the heading and defines the scope of discussions to systemic issues.

Clause 14 Section 10 (1)

This clause adds the reference under Section 8 functions 'under section 8 (b)'.

Clause 15 Section 10 (4), definition of *executive officer*

This clause removes the definition of executive officer that will be added to the dictionary.

Clause 16 New sections 10A and 10B

This clause adds in **10A Public hearings about government service provision** and establishes the hearings process within the legislation. This clause enshrines the Public Hearing process as a format for delivering the ATSIEB function to monitor the effectiveness and accessibility of government programs and services for Aboriginal and Torres Strait Islander people and the ACT Government's accountability for the delivery of these programs and services. This clause formalise the current practice of the ATSIEB by requiring at least two public hearings to be held each ATSIEB term and also identifies the quorum requirements for the ATSIEB to hold a hearing.

This clause adds in **10B Reports from ATSIEB** the requirement for ATSIEB to report to the Minister following the hearings and a requirement for the Minister to table the ATSIEB report in the Legislative Assembly and respond to the report within 6 months.

Clause 17 Sections 11 to 13

This clause replaces the sections on community forums, as discussed in clause 8, in order to allow the ATSIEB to develop a consultation plan that meets the community's requirements. This clause:

- defines the requirement to consult in **Section 11**;
- requires ATSIEB to develop a consultation plan to maximise the participation of Aboriginal and Torres Strait Islander people living in the ACT in **Section 12**; and
- requires ATSIEB to describe the grounds used to determine a person has traditional connection to the ACT region for the purpose of consultation on cultural heritage for Section 9(1)(a)(iii); and
- principles for consulting in **Section 13**.

This clause adds in a new section, **13A Reporting on consultation**, with the requirement on the format for a report and the requirement to publish a report on the consultation on the ATSIEB website and provide the Minister with the report. The Minister must respond to the report within 3 months of receiving the report.

Clause 18 ATSIEB chair New section 15 (3A)

This clause expands the ability of the ATSIEB to manage their governance by allowing the ATSIEB to pass a resolution of no confidence and replace an ATSIEB chair, in addition to appointing a chair.

Clause 19 Section 15 (5)

If ATSIEB removes a chair under the new section 15 (3A), ATSIEB must tell the Minister in writing.

Clause 20 ATSIEB deputy chair New section 16 (4A)

This clause adds a new section on a resolution of no confidence in the ATSIEB deputy chair.

Clause 21 New section 16 (6)

If ATSIEB removes a deputy chair under the new section 16 (4A), or the deputy chair resigns under section 16 (5), the chair or if there is no chair, ATSIEB, must tell the Minister in writing.

Clause 22 New section 16 (A)

This clause adds in new section on the process for a resolution of no confidence in the ATSIEB chair or ATSIEB deputy chair including the appropriate notice period and the number of members to pass the resolution.

Clause 23 Removal of ATSIEB member Section 19 (b)

This clause substitutes the section on misbehaviour with the contravening the prescribed code of conduct under section 36.

Clause 24 Quorum at ATSIEB meetings
Section 23

This clause redefines a quorum for an ATSIEB meeting to a simple majority of a full membership – from 5 members to 4 members.

Clause 25 Executive officer at ATSIEB meeting
Section 26 (3)

This clause removes the definition of an executive officer from Section 10 (4). The definition for an executive officer will be moved to the dictionary.

Clause 26 Regulation-making power
Section 36 (1)

This clause adds section (1A) which defines that a regulation can be made to make provision on an ATSIEB code of conduct and other ATSIEB governance matters.

This clause adds section 1B which identifies that the Executive should consult with ATSIEB before making a regulation.

Clause 27 Dictionary, note 2

This clause reflects removal of the definition of administrative unit and head of service from the 2017 amendment to the Legislation Act.

Clause 28 Dictionary, new definition of *ATSIEB term*

This clause adds the meaning of a term for ATSIEB being the period between elections.

Clause 29 Dictionary, definition of *community forum*

This removes the definition on community forum as this is redundant given the changes to **Section 8(d)** and **Sections 11 to 13**.

Clause 30 Dictionary, new definitions of *executive officer* and *representative Aboriginal organisation*

This clause adds 3 new definitions to the dictionary: *ATSIEB term*, *executive officer* and *representative Aboriginal organisation*.

Clause 31 Dictionary, definition of *UNEC*

This removes from the dictionary the definition of UNEC as the name will now be used in full within the Act.