



Australian Capital Territory

# Aboriginal and Torres Strait Islander Elected Body Amendment Act 2017

A2017-18

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Australian Capital Territory

# Aboriginal and Torres Strait Islander Elected Body Amendment Act 2017

A2017-18

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An Act to amend the *Aboriginal and Torres Strait Islander Elected Body Act 2008*

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

## **1 Name of Act**

This Act is the *Aboriginal and Torres Strait Islander Elected Body Amendment Act 2017*.

## **2 Commencement**

This Act commences on a day fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

## **3 Legislation amended**

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

## **4 Objects Section 3**

*omit*

disadvantaged position of Aboriginal and Torres Strait people living in the ACT

*substitute*

rights of Aboriginal and Torres Strait Islander peoples to freely determine their political status and to freely pursue their economic, social and cultural development in line with the right to self-determination

**5 Section 3 (e)**

*omit*

**6 Functions of ATSIEB  
Section 8 (a)**

*after*

them

*insert*

and, when asked by the Minister, to give the Minister information or advice about the views of Aboriginal and Torres Strait Islander people on matters stated by the Minister

**7 Section 8 (b)**

*omit*

for their interests

*insert*

on systemic or whole-of-government issues affecting their interests

**8 Section 8 (d), (e) and (f)**

*substitute*

- (d) to conduct regular consultation with Aboriginal and Torres Strait Islander people living in the ACT and report the outcomes of that consultation to the Minister and any other Minister responsible for the matter that is the subject of the consultation;
- (e) to make recommendations to government agencies about research proposals that further the objects of this Act;

**9 Section 8 (g)**

*omit*

effectiveness of programs

*insert*

effectiveness and accessibility of programs and services

**10 Section 8 (i)**

*substitute*

- (i) to provide advice to government agencies on appropriate representation of Aboriginal and Torres Strait Islander people living in the ACT on consultative bodies established by government agencies;

**11 Section 8 (j)**

*omit*

and in consultation with UNEC,

**12 Section 9**

*substitute*

**9 Consultation on cultural heritage**

- (1) Before recommending action under section 8 (j) in relation to cultural material or information, ATSIEB—
  - (a) if the cultural material or information is specific to an Aboriginal object or an Aboriginal place that is in, or apparently originated in, the ACT—must consult at least 1 of the following:
    - (i) the United Ngunnawal Elders Council;
    - (ii) a representative Aboriginal organisation;

- (iii) another person that ATSIEB is satisfied has a traditional connection to the ACT region; or
- (b) in any other case—may consult any person ATSIEB considers appropriate.
- (2) In this section:
- Aboriginal object*—see the *Heritage Act 2004*, section 9.
- Aboriginal place*—see the *Heritage Act 2004*, section 9.

**13 Section 10 heading**

*substitute*

**10 Discussions etc with non-government entities on systemic issues**

**14 Section 10 (1)**

*after*

functions

*insert*

under section 8 (b)

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

*omit*

**16 New sections 10A and 10B**

*insert*

**10A Public hearings about government service provision**

- (1) In exercising its functions under section 8 (g) and (h), ATSIEB must hold at least 2 public hearings during each ATSIEB term.

- (2) The purpose of a public hearing under subsection (1) is to obtain information about—
  - (a) the effectiveness and accessibility of programs and services conducted by government agencies for Aboriginal and Torres Strait Islander people living in the ACT; and
  - (b) the accessibility by Aboriginal and Torres Strait Islander people living in the ACT to programs and services conducted by government agencies for the general public.
- (3) The executive officer of a government agency must—
  - (a) attend a public hearing if requested by ATSIEB; and
  - (b) provide information and answer questions from ATSIEB in relation to the matters in subsection (2).
- (4) ATSIEB may conduct proceedings at a public hearing as it considers appropriate.
- (5) However, at least 4 ATSIEB members must be present at a public hearing.

## **10B Reports from ATSIEB**

- (1) ATSIEB must report to the Minister on a public hearing held under section 10A.
- (2) The report—
  - (a) must be in writing; and
  - (b) may make recommendations about changes to programs and services for Aboriginal and Torres Strait Islander people living in the ACT.
- (3) The Minister must—
  - (a) present the report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report; and



- (b) present a response to the report not later than the first sitting week after the end of 6 months after the day the Minister receives the report.

## **17 Sections 11 to 13**

*substitute*

### **11 Requirement to consult**

- (1) In exercising its functions ATSIEB must consult Aboriginal and Torres Strait Islander people living in the ACT.
- (2) Every Aboriginal and Torres Strait Islander person living in the ACT is eligible to participate in community consultation conducted by ATSIEB.

### **12 ATSIEB to develop consultation plan**

- (1) ATSIEB must, within 6 months of the commencement of each ATSIEB term, develop a plan for how it will consult Aboriginal and Torres Strait Islander people living in the ACT (a *community consultation plan*).
- (2) The community consultation plan must—
  - (a) cover the ATSIEB term; and
  - (b) include a description of the grounds relevant to a determination by ATSIEB that a person has a traditional connection to the ACT region for section 9 (1) (a) (iii); and
  - (c) maximise the participation of Aboriginal and Torres Strait Islander people living in the ACT by providing reasonable opportunities to participate in each consultation.

#### **Examples—reasonable opportunities to maximise participation**

- providing more than 1 form of consultative mechanism such as forums, face-to-face meetings, online surveys, inviting written submissions

- giving advance notice of consultation events
- holding face-to face events at accessible locations

*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) ATSIEB must take reasonable steps to tell Aboriginal and Torres Strait Islander people living in the ACT about the community consultation plan.

**Examples—reasonable steps**

- notice posted on an ATSIEB website
- notice sent on an email network
- advertisements in local and Indigenous newspapers

## 13 Conduct of consultation

In carrying out community consultation, ATSIEB must give effect to the following principles:

- (a) consultation should focus on the particular area of interest to be discussed;
- (b) consultation should be open and transparent;
- (c) consultation should lead to sustainable decisions by involving effective community engagement;
- (d) without limiting paragraph (c), ATSIEB 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.

**13A Reporting on consultation**

- (1) ATSIEB must prepare a written report about its community consultation activities and publish the report on an ATSIEB website.
- (2) The report must state—
  - (a) the topic of the consultation; and
  - (b) ATSIEB’s view about the topic; and
  - (c) any issues raised by the community during consultation; and
  - (d) any recommendations of ATSIEB in relation to the topic.
- (3) ATSIEB must give a copy of the report to the Minister.
- (4) The Minister must give ATSIEB a response to the report not later than 3 months after the day the Minister receives the report under subsection (3).

**18 ATSIEB chair  
New section 15 (3A)**

*insert*

- (3A) The position of ATSIEB chair becomes vacant if a resolution of no confidence in the ATSIEB chair is passed in accordance with section 16A.

**19 Section 15 (5)**

*substitute*

- (5) ATSIEB must tell the Minister, in writing, if the ATSIEB chair becomes vacant under subsection (3A) or (4).

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

*insert*

- (4A) The position of ATSIEB deputy chair becomes vacant if a resolution of no confidence in the ATSIEB deputy chair is passed in accordance with section 16A.

**21      New section 16 (6)**

*insert*

- (6) The ATSIEB chair or, if there is no chair, ATSIEB, must tell the Minister, in writing, if the ATSIEB deputy chair becomes vacant under subsection (4A) or (5).

**22      New section 16A**

*insert*

**16A      Resolution of no confidence in ATSIEB chair or ATSIEB  
deputy chair**

- (1) A resolution of no confidence in the ATSIEB chair or the ATSIEB deputy chair has no effect unless it is passed by ATSIEB in accordance with this section.
- (2) A resolution of no confidence must affirm a motion that is expressed to be—
- (a) in relation to a resolution of no confidence in the ATSIEB chair—a motion of no confidence in the ATSIEB chair; or
  - (b) in relation to a resolution of no confidence in the ATSIEB deputy chair—a motion of no confidence in the ATSIEB deputy chair.
- (3) All members must be given notice of the motion at least 1 week before it is moved at a meeting of ATSIEB.

- (4) The motion must be passed by at least 4 ATSIEB members.

**23 Removal of ATSIEB member  
Section 19 (b)**

*substitute*

- (b) if the member contravenes the prescribed code of conduct;

**24 Quorum at ATSIEB meetings  
Section 23**

*omit*

5 members

*substitute*

4 members

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

*omit*

**26 Regulation-making power  
New section 36 (1A) and (1B)**

*insert*

- (1A) A regulation may make provision in relation to—
- (a) a code of conduct for ATSIEB members; and
  - (b) the roles and responsibilities of the ATSIEB chair and ATSIEB deputy chair; and
  - (c) any other governance matter in relation to ATSIEB.
- (1B) The Executive must consult with ATSIEB before making a regulation under subsection (1A).

**27 Dictionary, note 2**

*omit*

- administrative unit
- head of service

**28 Dictionary, new definition of *ATSIEB term***

*insert*

*ATSIEB term* means the period between ATSIEB elections.

**29 Dictionary, definition of *community forum***

*omit*

**30 Dictionary, new definitions**

*executive officer*, of a government agency, means—

- (a) the director-general; or
- (b) for a public sector body—the person responsible for the management of the public sector body; or
- (c) for a territory instrumentality—the head (however described) of the instrumentality.

*representative Aboriginal organisation*—see the [Heritage Act 2004](#), section 14.

**31 Dictionary, definition of *UNEC***

*omit*

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 30 March 2017.

**2 Notification**

Notified under the [Legislation Act](#) on 15 June 2017.

**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 Amendment Bill 2017, which was passed by the Legislative Assembly on 6 June 2017.

Clerk of the Legislative Assembly

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