

2017

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Aboriginal and Torres Strait Islander Affairs)

# Aboriginal and Torres Strait Islander Elected Body Amendment Bill 2017

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Objects	
Section 3	2
5 Section 3 (e)	3
6 Functions of ATSIEB	
Section 8 (a)	3
7 Section 8 (b)	3
8 Section 8 (d), (e) and (f)	3

## Contents

	Page
9 Section 8 (g)	4
10 Section 8 (i)	4
11 Section 8 (j)	4
12 Section 9	4
13 Section 10 heading	5
14 Section 10 (1)	5
15 Section 10 (4), definition of <i>executive officer</i>	5
16 New sections 10A and 10B	5
17 Sections 11 to 13	7
18 ATSIEB chair	
New section 15 (3A)	9
19 Section 15 (5)	9
20 ATSIEB deputy chair	
New section 16 (4A)	10
21 New section 16 (6)	10
22 New section 16A	10
23 Removal of ATSIEB member	
Section 19 (b)	11
24 Quorum at ATSIEB meetings	
Section 23	11
25 Executive officer at ATSIEB meeting	
Section 26 (3)	11
26 Regulation-making power	
New section 36 (1A) and (1B)	11
27 Dictionary, note 2	12
28 Dictionary, new definition of <i>ATSIEB term</i>	12
29 Dictionary, definition of <i>community forum</i>	12
30 Dictionary, new definitions	12
31 Dictionary, definition of <i>UNEC</i>	12

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## A Bill for

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	<b>1</b>	<b>Name of Act</b>
2		This Act is the <i>Aboriginal and Torres Strait Islander Elected Body</i>
3		<i>Amendment Act 2017</i> .
4	<b>2</b>	<b>Commencement</b>
5		This Act commences on a day fixed by the Minister by written
6		notice.
7	<i>Note 1</i>	The naming and commencement provisions automatically commence on
8		the notification day (see <a href="#">Legislation Act</a> , s 75 (1)).
9	<i>Note 2</i>	A single day or time may be fixed, or different days or times may be
10		fixed, for the commencement of different provisions (see <a href="#">Legislation</a>
11		<a href="#">Act</a> , s 77 (1)).
12	<i>Note 3</i>	If a provision has not commenced within 6 months beginning on the
13		notification day, it automatically commences on the first day after that
14		period (see <a href="#">Legislation Act</a> , s 79).
15	<b>3</b>	<b>Legislation amended</b>
16		This Act amends the <i>Aboriginal and Torres Strait Islander Elected</i>
17		<i>Body Act 2008</i> .
18	<b>4</b>	<b>Objects</b>
19		<b>Section 3</b>
20		<i>omit</i>
21		disadvantaged position of Aboriginal and Torres Strait people living
22		in the ACT
23		<i>substitute</i>
24		rights of Aboriginal and Torres Strait Islander peoples to freely
25		determine their political status and to freely pursue their economic,
26		social and cultural development in line with the right to
27		self-determination

1	<b>5</b>	<b>Section 3 (e)</b>
2		<i>omit</i>
3	<b>6</b>	<b>Functions of ATSIEB</b>
4		<b>Section 8 (a)</b>
5		<i>after</i>
6		them
7		<i>insert</i>
8		and, when asked by the Minister, to give the Minister information or
9		advice about the views of Aboriginal and Torres Strait Islander
10		people on matters stated by the Minister
11	<b>7</b>	<b>Section 8 (b)</b>
12		<i>omit</i>
13		for their interests
14		<i>insert</i>
15		on systemic or whole-of-government issues affecting their interests
16	<b>8</b>	<b>Section 8 (d), (e) and (f)</b>
17		<i>substitute</i>
18		(d) to conduct regular consultation with Aboriginal and Torres
19		Strait Islander people living in the ACT and report the
20		outcomes of that consultation to the Minister and any other
21		Minister responsible for the matter that is the subject of the
22		consultation;
23		(e) to make recommendations to government agencies about
24		research proposals that further the objects of this Act;

- 1     **9           Section 8 (g)**
- 2                 ~~omit~~
- 3                 effectiveness of programs
- 4                 ~~insert~~
- 5                 effectiveness and accessibility of programs and services
- 6     **10          Section 8 (i)**
- 7                 ~~substitute~~
- 8                 (i) to provide advice to government agencies on appropriate
- 9                         representation of Aboriginal and Torres Strait Islander people
- 10                        living in the ACT on consultative bodies established by
- 11                        government agencies;
- 12     **11          Section 8 (j)**
- 13                 ~~omit~~
- 14                 and in consultation with UNEC,
- 15     **12          Section 9**
- 16                 ~~substitute~~
- 17     **9           Consultation on cultural heritage**
- 18                 (1) Before recommending action under section 8 (j) in relation to
- 19                         cultural material or information, ATSIEB—
- 20                         (a) if the cultural material or information is specific to an
- 21                                 Aboriginal object or an Aboriginal place that is in, or
- 22                                 apparently originated in, the ACT—must consult at least 1 of
- 23                                 the following:
- 24                                 (i) the United Ngunnawal Elders Council;
- 25                                 (ii) a representative Aboriginal organisation;

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

### 8 **13 Section 10 heading**

9 *substitute*

### 10 **10 Discussions etc with non-government entities on** 11 **systemic issues**

### 12 **14 Section 10 (1)**

13 *after*

14 functions

15 *insert*

16 under section 8 (b)

### 17 **15 Section 10 (4), definition of *executive officer***

18 *omit*

### 19 **16 New sections 10A and 10B**

20 *insert*

### 21 **10A Public hearings about government service provision**

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

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

17       **10B       Reports from ATSIEB**

- 18           (1) ATSIEB must report to the Minister on a public hearing held under  
19           section 10A.
- 20           (2) The report—
- 21           (a) must be in writing; and
- 22           (b) may make recommendations about changes to programs and  
23           services for Aboriginal and Torres Strait Islander people living  
24           in the ACT.
- 25           (3) The Minister must—
- 26           (a) present the report to the Legislative Assembly within 6 sitting  
27           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, other than the function under section 8 (j), ATSIEB must consult Aboriginal and Torres Strait Islander people living in the ACT.

*Note* Section 9 provides specific consultation arrangements for ATSIEB in exercising its function under section 8 (j).

- (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) 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.

1     **13A       Reporting on consultation**

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

13     **18       ATSIEB chair**  
14     **New section 15 (3A)**

15             *insert*

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

19     **19       Section 15 (5)**

20             *substitute*

- 21             (5) ATSIEB must tell the Minister, in writing, if the ATSIEB chair  
22               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.

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

2 **23 Removal of ATSIEB member**  
3 **Section 19 (b)**

4 *substitute*

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

6 **24 Quorum at ATSIEB meetings**  
7 **Section 23**

8 *omit*

9 5 members

10 *substitute*

11 4 members

12 **25 Executive officer at ATSIEB meeting**  
13 **Section 26 (3)**

14 *omit*

15 **26 Regulation-making power**  
16 **New section 36 (1A) and (1B)**

17 *insert*

18 (1A) A regulation may make provision in relation to—

19 (a) a code of conduct for ATSIEB members; and

20 (b) the roles and responsibilities of the ATSIEB chair and ATSIEB  
21 deputy chair; and

22 (c) any other governance matter in relation to ATSIEB.

23 (1B) The Executive must consult with ATSIEB before making a  
24 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 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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