

2008

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

**ABORIGINAL AND TORRES STRAIT ISLANDER ELECTED
BODY BILL 2008**

EXPLANATORY STATEMENT

**Presented by
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Minister for Indigenous Affairs**

Overview of Bill

The main purpose of this Bill is to establish the ACT Aboriginal and Torres Strait Islander Elected Body. Its goal is to ensure maximum participation by Aboriginal and Torres Strait Islander People in the ACT in the formulation, co-ordination and implementation of government policies that affect them.

In October 2004 following the Commonwealth abolition of ATSIC, the Minister for Indigenous Affairs announced support for the establishment of a democratically elected Aboriginal and Torres Strait Islander representative body for the ACT. In 2006 the Aboriginal and Torres Strait Islander Community Consultative Council held a series of consultations with the local Aboriginal and Torres Strait Islander community on the structure of a possible representative body.

The Elected Body will have seven Members elected every three years and there will be a requirement in the Act for the Elected Body to consult with and to consider the views of the United Ngunnawal Elders Council.

To be eligible to vote, or to nominate or be nominated as a candidate, one must be an Aboriginal or Torres Strait Islander person (self-declaration), 18 years or over, and on the ACT Electoral Roll or eligible to be on it by having resided within the boundaries of the ACT for one month.

Voting can be through postal or attendance ballots, but will not be compulsory.

The ACT Aboriginal and Torres Strait Islander Elected Body will be required to meet at least six times per year. Its functions will be:

- To receive, and pass on to the Minister, the views of Aboriginal People and Torres Strait Islanders living in the ACT on issues of concern;
- To represent Aboriginal People and Torres Strait Islanders living in the ACT and to act as an advocate for their interests;
- To conduct regular forums for Aboriginal People and Torres Strait Islanders living in the ACT and report the outcomes of those forums to the Minister;

- To conduct research and community consultation to assist the Elected Body in the exercise of its functions;
- To propose programs and design services for Aboriginal People and Torres Strait Islanders living in the ACT for consideration by the government and its agencies;
- To monitor and report on the effectiveness of programs conducted by government agencies for Aboriginal People and Torres Strait Islanders living in the ACT;
- To monitor and report on the accessibility by Aboriginal People and Torres Strait Islanders living in the ACT to programs and services conducted by government agencies for the general public; and
- In consultation with the United Ngunnawal Elders Council, to recommend any reasonable action it considers necessary to protect Aboriginal and Torres Strait Islander cultural material or information considered sacred or significant by Aboriginal People and Torres Strait Islanders living in the ACT.

Notes on Clauses

PART 1 PRELIMINARY

Clause 1 Name of Act

This Bill, once enacted, will be known as *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

Clause 2 Commencement

This Act will commence on the day after notification day.

Clause 3 Objects

Clause 3 sets out the Objects of the Act.

The Objects recognises the disadvantaged position of Aboriginal People and Torres Strait Islanders living in the ACT. The Objects sets out the how the Act empowers the Aboriginal and Torres Strait Islander (ATSI) community through the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) to have a role in the decision making process within Government and Agencies. It also sets out how the ATSIEB is to engage with the ATSI community, government and its Agencies to further their economic, social and cultural development.

The Objects set out ATSIEB responsibilities for the Aboriginal and Torres Strait Islander Community living in the ACT and to the ACT Government and its Agencies in terms of the policies, programs and services that impact on the ACT Aboriginal and Torres Strait Islander community.

Clause 4 Dictionary

Clause 4 states that the Dictionary is part of the Act. The dictionary also defines certain terms used in this Act and refers to sections of the Act where the term is defined in that particular section of the Act. For example, the Dictionary will refer you to Part 3 (ATSIEB elections) - section 28 for its definition. This is referred to as signpost definitions.

Clause 5 Notes

Clause 5 states that Notes are explanatory and not part of the Act. Throughout the Act there are Notes that will provide references to other legislations and explanations on how they relate to the *ATSIEB Act*.

Clause 6 Offences against Act – application of Criminal Code etc

Clause 6 provides for the application of Criminal Code to Offences against this Act. References are made to the Criminal Code Ch 2.1, which sets out the general principles of criminal responsibility, and *Legislation Act Section 133* to deal with the meaning of offence penalties.

PART 2

ABORIGINAL AND TORRES STRAIT ISLANDER ELECTED BODY

DIVISION 2.1 ESTABLISHMENT AND FUNCTIONS OF ATSIEB

This part of the Act provides for the establishment of the ATSIEB and what are to be its functions.

Clause 7 Aboriginal and Torres Strait Islander Elected Body

Clause 7 provides for the establishment of the Elected Body.

Clause 8 Functions of ATSIEB

Clause 8 sets out the Functions of the Aboriginal and Torres Strait Islander Elected Body.

As an Elected Body ATSIEB will provide a broad representative voice across the ACT for Aboriginal and Torres Strait Islander communities in the ACT and providing an opportunity for the community to have a say as to what their needs are and whether services are adequate and whether current programs are meeting community needs.

It provides for an opportunity to improve the way the ACT Government and its Agencies work together with the Community to achieve desired outcomes, build and maintain support and enhance a coordinated whole of government approach for planning, strategic development, monitoring and evaluation.

Clause 9 Consultations etc with UNEC

Clause 9 provides for ATSIEB to consult with the United Ngunnawal Elders Council (UNEC).

A requirement of the ATSIEB is that it must consult with and consider the views of UNEC when carrying out its functions.

Clause 10 Discussions etc with non-government entities

Clause 10 provides for ATSIEB consultation with non-government entities.

Another consultation requirement for the ATSIEB is it should engage with non-government organisations any matters relating to the services they provide to the ATSI community in the ACT. Non-government are not accountable for operational matters.

Clause 11 Community forums

Clause 11 provides that ATSIEB must hold Community Forums at least 2 times a year.

The ATSIEB in carrying out its functions must hold community forums on areas of interest to the ATSI community in the ACT. Every ATSI person in the ACT is eligible to attend the forums.

Clause 12 Telling people about community forums

Clause 12 provides for ATSIEB to take reasonable steps to let Aboriginal and Torres Strait Islander People living in the ACT know about community forums.

The ATSIEB is to develop effective communication strategies to connect with the ATSI community in the ACT.

Clause 13 Community forums – attendance and conduct

Clause 13 provides for who should be invited to the forums and how they are to be conducted. Aboriginal Organisations that are declared as such under the *Heritage Act 2004 Sec 14* are invited to participate in the forums.

Division 2.2 ATSIEB Members

Clause 14 ATSIEB members

Clause 14 provides for the makeup of the elected members and their terms of office.

The ATSIEB is made up of 7 elected members and they will hold office for 3 years on a part time basis.

Clause 15 ATSIEB Chair

Clause 15 provides for the election of the Chair of ATSIEB.

The ATSIEB will elect the Chair at their first meeting and is for a term of 3 years.

Clause 16 ATSIEB Deputy Chair

Clause 16 provides for the election of the Deputy Chair. Again the Deputy Chair is elected at the first ATSIEB meeting and is for a term of 3 years.

Clause 17 Resignation of ATSIEB member

Clause 17 provides for when an ATSIEB member wants to resign. A member must resign when they are no longer a resident of the ACT.

Clause 18 Member taken to have resigned in certain circumstances

Clause 18 provides for the circumstances when an ATSIEB member is taken to have resigned. A member can be taken to have resigned where they no longer live in the ACT and have not lived in the ACT in the preceding 6 months. A member can be on approved leave where they maybe absent from the ACT.

Clause 19 Removal of ATSIEB Member

Clause 19 provides for the circumstances where the Minister can remove a member from the ATSIEB. The circumstances include misbehaviour or breach of a territory law when functioning as an ATSIEB member, convicted for at least 1 year, bankruptcy, failure to disclose interests, miss 3 consecutive meetings without approval and is either mentally or physically incapacitated.

Clause 20 Leave of ATSIEB members

Clause 20 provides for ATSIEB members to take leave. The approval of leave is both conditionally and unconditional and can be for more than one year.

Division 2.3 ATSIEB meeting

Clause 21 Time and place of ATSIEB meetings

Clause 21 provides for ATSIEB meeting arrangements. The Minister may also call a meeting. The ATSIEB must meet at least 6 times a year at a time and place where the ATSIEB decides.

Clause 22 Presiding member at ATSIEB meetings

Clause 22 provides for the presiding member at the ATSIEB meetings. The presiding member is the Chair or in the Chair's absence the Deputy Chair.

Clause 23 Quorum at ATSIEB meetings

Clause 23 provides for the quorum at ATSIEB meetings. A quorum is at least 5 members.

Clause 24 Voting at ATSIEB meetings

Clause 24 provides for the voting at ATSIEB meetings. The majority of votes decides and if equal the member presiding has the deciding vote.

Clause 25 Conduct of ATSIEB meetings

Clause 25 provides for how the ATSIEB meetings are to be conducted. The ATSIEB will decide proceedings, as it considers appropriate. Meetings can be communicated by phone link, satellite link, and Internet or intranet link. All resolutions are to be passed in writing or by electronic communication. Minutes must be kept of all meetings.

Clause 26 Chief executive at ATSIEB meeting

Clause 26 provides for the attendance of a Chief Executive of a Government Agency to attend an ATSIEB meeting as invited to discuss any issues relating to the functions of the ATSIEB or the Government Agency.

Clause 27 Disclosure of interests by ATSIEB members

Clause 27 provides for the disclosure by ATSIEB members if they have a conflict of interests. Where a member of ATSIEB has a material interest in an issues being discussed they must disclose the interest. The interest must be recorded and the member cannot be present when the issue is discussed or being decided on. This clause also defines the following terms - an associate, executive officer, indirect interest and material interest.

Part 3 ATSIEB elections

Clause 28 Definitions – pt 3

Clause 28 sets out the definitions of terms used in the Act.

Clause 29 Timetable for ATSIEB elections

Clause 29 sets out the timetable for an ATSIEB election. The ATSIEB election must be held in accordance with the timetable. The timetable sets out the start of the electoral process, closing dates for rolls, nominations and polling. Also when the nominations are declared, order of ballot and polling start date.

Clause 30 Telling people about ATSIEB elections etc

Clause 30 provides for the Electoral Commission to take reasonable steps in telling people about the ATSIEB elections. It entitles electors to be told about the ATSIEB election, who is eligible to nominate and vote, dates for the election, location of polling places and any other relevant information.

Clause 31 Application of Electoral Act

Clause 31 provides for the application of the Electoral Act as it applies to an ATSIEB election. The following sections of the Electoral Act are modified as follows –

Item	Provision of Electoral Act to be applied	Part in sch 1 with modifications
1	section 4A (Meaning of available for public inspection)	
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
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

Clause 32 Interpretation of applied provisions of Electoral Act

Clause 32 provides for the how the Electoral Act is to be interpreted as it applies to an ATSIEB election.

References made in the Electoral Act are taken to be a reference to the provision as it applies to an ATSIEB election. For example the term ‘an election’ as stated in the Electoral Act also applies to an ATSIEB election.

Clause 33 Application of Electoral Regulation 1993

Clause 33 provides for the application of the Electoral Regulation 1993 as they apply to an ATSIEB election.

Clause 34 Approved forms

Clause 34 provides for the ACT Electoral Commissioner to approve forms.

Part 4 Miscellaneous

Clause 35 Protection of ATSIEB members from liability

Clause 35 provides for the protection of ATSIEB members from liability.

Clause 36 Regulation-making powers

Clause 36 provides for the Executive to make regulations for the Act.

Part 5 Transitional

Division 5.1 Transitional – general

Clause 37 Transitional – community forums

Clause 37 provides clarification of the term financial year so that the ATSIEB is not obligated to holding 2 community forums for the 2007-08 financial year.

Clause 38 Transitional – time and place of ATSIEB meeting

Clause 38 also provides for the same as Clause 37 where the ATSIEB is not obligated to having their own meetings. The first meeting of the ATSIEB is scheduled for July 2008.

Division 5.2 Transitional – first ATSIEB election

Clause 39 Conduct of first ATSIEB election

This division is referring to Part 3 that applies to ATSIEB elections.

Clause 40 Transitional – timetable for first ATSIEB election

Clause 40 is providing for specific dates for the first ATSIEB election rather than the general dates mentioned in section 29(1). A table sets out the dates for the election events. The election start date is Monday, 26 May 2008 and polling starts on Monday, 16 June 2008 to Saturday 21 June 2008. Scrutiny starts on Tuesday, 1 July 2008 with the results declared as soon as possible after that date.

Clause 41 Transitional – modification of Electoral Act, s33, s111 and s125A

This clause provides for the reference to ATSIEB will apply to UNEC for the first election. Section 33 of the Electoral Act is about the appointment of an Aboriginal and Torres Strait Islander Liaison Officer. Section 111 refers to where there are no candidates, the Minister is to seek recommendations from the UNEC; and Section 125A refers to appointments to the review panel where UNEC must be consulted.

Clause 42 Transitional – modification of Electoral Act, s80

Clause 42 provides for a specific date for the closing of the polls for the first ATSIEB election.

Clause 43 Transitional regulations

Clause 43 provides for regulations that may be required for any of the transitional matters as prescribed above.

Division 5.3 Expiry – pt 5

Clause 44 Expiry – pt 5

This clause provides for the 6 months expiry of Part 5.

Schedule 1 Modifications of Electoral Act as applied to ATSIEB elections

Schedule 1 provides for the amendments to the ACT Electoral Act as it applies to the ATSIEB elections.

Part1.1 Modifications of s33, s34 and s80

1.1 Officers New section 33(2A) to (2C)

Provides for the appointment of an Aboriginal and Torres Strait Islander liaison officer.

1.2 Section 33(3)

Provides for ‘under this section’ to be inserted.

1.3. Section 34 Electorate for ATSIEB elections

Provides for the electorate for the purposes of an ATSIEB election.

1.4 Closed rolls section 80(1)

Provides for the closing of the rolls.

Part 1.2 Modifications of pt 9 (Arrangements for elections)

Part 1.2 provides for the eligibility, nominations, numbers of candidates, ballot papers and appointment of scrutineers arrangements for the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted or inserted.

1.5 Eligibility – MLAs section 103(1) to (4)

1.6 Qualifications for nomination Section 104(b)

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

1.8 Section 105(4)(d)

1.9 Section 105(4)(f) and (g)

1.10 Section 105(9) to (11)

1.11 Multiple nominations invalid Section 106

- 1.12 Withdrawal etc of consent to nominations Section 107(1)
- 1.13 Section 107(2) and (3)
- 1.14 Place and hour of nomination Section 108(3)
- 1.15 Section 108(4) and (5)
- 1.16 Declaration of Candidates Section 109(1)
- 1.17 New section 109(1A)
- 1.18 Section 109(2)(b)
- 1.19 Section 109 (4)
- 1.20 Section 110
 - Section 110 Invalid Nominations
 - Section 110A Retention of nomination papers
- 1.21 Section 111
 - Section 111 If more positions than candidates
 - Section 111A If same number of positions as candidates
 - Section 111B If no candidates
 - Section 111C If more candidates than positions
- 1.22 Deposit – return or forfeiture Section 113
- 1.23 Section 114
 - Section 114 Ballot papers
- 1.24 Grouping of candidates’ names Section 115
- 1.25 Printing of ballot papers Section 116
- 1.26 Names on ballot papers Section 117
- 1.27 Section 118
 - Section 118 Draw for positions on ballot papers
- 1.28 Polling places and scrutiny centres Section 119(1)(a)
- 1.29 New section 119(2A)
- 1.30 Certified list of electors Section 121(1)(c)
- 1.31 Scrutineers - appointment Section 122(1)
- 1.32 New section 125A
 - 125A Review panel
- 1.33 Supplementary elections Section 126

Part 1.3 Modifications of pt 10 (Voting)

Part 1.3 provides for the voting arrangements for the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted or inserted.

- 1.34 Entitlement to vote Section 128(1)
- 1.35 Section 128(3)
- 1.36 Section 129
 - Section 129 Voting not compulsory
- 1.37 Section 130
 - Section 130 Multiple votes prohibited
- 1.38 Procedures for voting Section 131(1)(b)
- 1.39 Section 131(2)
- 1.40 Claims to vote Section 133(1)
- 1.41 New sections 133A and 133B
 - Section 133A Challenge whether claimant to vote is Aboriginal person or Torres Strait Islander
 - Section 133B Declaration voting – challenged claims to vote
- 1.42 New section 134A and 134B

- Section 134A Review of challenge under section 133A
- Section 134B Challenged claimant to leave polling place
- 1.43 New section 135A
 - Section 135A Evidence of living in ACT
- 1.44 Applications for postal voting papers Section 136A(2)(c)
- 1.45 Section 136A(6)
- 1.46 Ordinary or declaration voting in ACT before polling day Section 136B
- 1.47 Declaration voting outside ACT on or before polling day Section 136C
- 1.48 Record of issue of declaration voting papers Section 137(1)
- 1.49 Inspection of records Section 138(1)
- 1.50 Receipt of declaration voting papers Section 139(2)
- 1.51 Registered declaration voters Section 140
- 1.52 Issue of voting papers to registered declaration voters Section 141
- 1.53 Requirements for casting postal votes Section 144A(1)
- 1.54 New sections 144B and 144C
 - Section 144B Review panel – eligibility of person who postal votes
 - Section 144C Review panel – residence of person who postal votes
- 1.55 Mobile polling Division 10.5
- 1.56 Section 154
 - Section 154 Arrangements at polling places – opening and closing
 - Section 154A Arrangements at polling places – ballot boxes
- 1.57 Extension of time for conducting elections Section 159(1)
- 1.58 Suspension and adjournment of polling Section 160(1)
- 1.59 Section 160(5)
- 1.60 Failure to vote Division 10.7

Part 1.4 Modification of pt 12 (The scrutiny)

Part 1.4 provides for the scrutiny arrangements for the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted and inserted.

- 1.61 Scrutiny Section 178(3)(f)
- 1.62 Preliminary scrutiny of declaration voting papers etc Section 179(1)(c)
- 1.63 Section 179(6)
- 1.64 First count – ordinary ballot papers Section 182(2)
- 1.65 Section 182(5)(b), (c) and (d)
- 1.66 Section 182(6) and (7)
- 1.67 First count – electronic ballot papers Section 183A
 - Section 183A First Count – electronic ballot papers
- 1.68 Second count – first preferences Section 184
- 1.69 Ascertaining result of poll Section 185(1)(a)
- 1.70 Section 189
 - Section 189 Declaration of result of ATSIEB election
 - Section 189A Report of result of ATSIEB election

Part 1.5 Modification of pt 13 (Casual vacancies)

Part 1.5 provides for the arrangements of the casual vacancies for the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted and inserted.

- 1.71 Section 190, new definitions
- 1.72 Section 190, definition of *Speaker*

- 1.73 Notice of casual vacancy Section 191(1)
- 1.74 Section 191(2)
- 1.75 Publication of candidates' details Section 193(1)(b)
- 1.76 Determination of candidate to fill vacancy Section 194(3)
- 1.77 Sections 195 and 196
 - Section 195 ATSIEB nominees
 - Section 196 Term of ATSIEB member declared elected under pt 13

Part 1.6 Modification of pt 16 (Disputed elections, eligibility and vacancies)

Part 1.6 provides the mechanism for disputes for the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted and inserted.

- 1.78 Definitions for pt 16 Section 250, definition of *Speaker*
- 1.79 Section 251
 - Section 251 Meaning of *ATSIEB chair* – pt 16
- 1.80 Validity may be disputed after election New Section 256(2) (aa) and (ab)
- 1.81 Inquires by court Section 269(3)

Part 1.7 Modifications of part 17 (Electoral offences)

Part 1.7 provides for the arrangements of electoral offences for the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted and inserted.

- 1.82 Sections 286 and 287
 - Section 286 Interference with voting
- 1.83 Section 288
 - Section 288 Violence and intimidation
- 1.84 Dissemination of electoral matter- authorisers and authors Section 292(1)(b)
- 1.85 Publication of statements about candidates Section 301(3)
- 1.86 Canvassing within 100m of polling places Section 303(7), definition of *polling hours*
- 1.87 Section 307
 - Section 307 Voting fraud
- 1.88 New section 317A
 - Section 317A Influencing of votes by officers
- 1.89 New section 318A and 318B
 - Section 318A Giving completed ballot papers to commissioner
 - Section 318B Opening envelopes containing ballot papers

Part 1.8 Modifications of pt 18 (Enforcement proceedings)

Part 1.8 provides for enforcement proceedings for the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted and inserted.

- 1.90 Commissioner may prosecute enrolment and voting offences Section 326
- 1.91 Service of certain process by mail Section 327

Part 1.9 Modifications of pt 19 (Miscellaneous)

Part 1.9 provides for the administrative arrangements for the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted and inserted.

- 1.92 Administrative arrangements with Commonwealth and States Section 336
- 1.93 Evidentiary certificates Section 337 (1) (b) (ii)
- 1.94 Section 337 (1) (h) and (i)
- 1.95 Approved forms Section 340A
- 1.96 Regulation-making power Section 341

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

Part 1.5 provides for the arrangements for the preliminary scrutiny of the ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted and inserted.

- 1.97 Clause 6(1), definition of relevant provision, new paragraph (aa)
- 1.98 Clause 6(1), definition of relevant provision, paragraphs (b) and (c)
- 1.99 Clause 6 (2) (d)
- 1.100 Clause 11
- 1.101 New clause 12

Part 1.11 Modifications of dictionary

Part 1.5 provides for the modification of the dictionary to include terms used for ATSIEB election. The sections below are the sections of the Electoral Act that are being modified, omitted and inserted.

- 1.102 Definition of ballot paper, paragraph (b)
- 1.103 New definition of casual vacancy
- 1.104 New definition of declaration vote, new paragraph (aa)
- 1.105 New definition of liaison officer and partial failure
- 1.106 Definition of polling place
- 1.107 New definition of review panel

Dictionary

This section provides for the definition of terms used in the ATSIEB Bill.