

Queensland



# COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

**Reprinted as in force on 7 February 2000  
(includes amendments up to Act No. 59 of 1999)**

**Reprint No. 2B**

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# Information about this reprint

This Act is reprinted as at 7 February 2000. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



## COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

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# COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

[as amended by all amendments that commenced on or before 7 February 2000]

**An Act to provide for support, administrative services and assistance for communities resident in Torres Strait or deemed so to be and for management of lands for use by those communities and for related purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Community Services (Torres Strait) Act 1984*.

### Commencement

2.(1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided by subsection (1), this Act shall commence on 31 May 1984 or on such earlier date as is appointed by proclamation.

(3) The date on which this Act, other than sections 1 and 2, commences as prescribed is in this Act referred to as the “**commencement of this Act**”.

### Savings

5.(1) An area that at the commencement of this Act is a reserve within the meaning of the *Torres Strait Islanders Act 1971* shall continue as a trust area for the purposes of this Act.

*Community Services (Torres Strait) Act 1984*

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(2) A community for Islanders that exists at the commencement of this Act shall continue to be a community for Islanders for the purposes of this Act.

(2A) The community of Islanders resident at Bamaga shall be deemed for the purposes of this Act to be resident in the Torres Strait.

(4) Every by-law, resolution or order lawfully made by an Island Council before the commencement of this Act that subsists at such commencement shall continue to have force and effect as if it had been made pursuant to this Act.

(5) Every order and decision made by an Island Court before the commencement of this Act that is operative at such commencement shall continue to be operative as if it had been made by that court constituted pursuant to this Act.

(6) A person who at the commencement of this Act holds an appointment for the purposes of the *Torres Strait Islanders Act 1971* shall, subject to the conditions of the person's appointment, continue to hold the appointment for the purposes of this Act, if the appointment is material to the purposes of this Act.

(7) A management of property of a person that was undertaken when the person was an assisted Islander within the meaning of the *Aborigines' and Torres Strait Islanders' Affairs Act 1965* and that is maintained at the commencement of this Act shall be deemed to be a management of property under this Act and, unless it is terminated in accordance with this Act, shall be maintained in accordance with this Act.

(8) A management of property of an Islander that is maintained at the commencement of this Act shall continue to be maintained in accordance with this Act unless it is terminated in accordance with this Act.

## Definitions

6. In this Act—

“by-laws”, in relation to an Island Council, includes—

- (a) by-laws made by the council as the authority charged with the functions of local government of an area; and
- (b) by-laws made by the council as trustee of an area by reason of the

land comprising the area having been granted in trust or reserved and set apart by the Governor in Council under the provisions of law relating to Crown lands and vested in or placed under the control of the council.

**“corporation”** means the corporation sole preserved, continued in existence and constituted under the *Community Services (Aborigines) Act 1984* by the name and style Aboriginal and Islander Affairs Corporation.

**“council area”** means a part of the State declared to be a council area under section 14.

**“Islander”** means a descendant of an indigenous inhabitant of the Torres Strait Islands.

**“non-Torres Strait Islander land”** means land that is not Torres Strait Islander land.

**“Torres Strait Islander land”** has the meaning given by section 9 of the *Torres Strait Islander Land Act 1991*.

### Meaning of “conclusion” of election for Island council

**6A.** The **“conclusion”** of the election of a councillor is—

- (a) if the councillor is elected at an election of all councillors of the Island council—the day on which the last declaration of a poll conducted in the election is displayed as required under a regulation; or
- (b) if the councillor is elected at a by-election and—
  - (i) a poll is conducted—the day on which the declaration of the poll is displayed as required under a regulation; or
  - (ii) a poll is not conducted—the day after the nomination day for the by-election; or
- (c) if, because the number of candidates nominated for election is the same or less than the number of councillors to be elected, the councillor is elected (other than at a by-election) and—
  - (i) 1 or more polls are conducted in the council’s area—the day on which the last declaration of a poll is displayed as required under a regulation; or

- (ii) a poll is not conducted—6 p.m. on the day that a poll would otherwise have been required under a regulation to be conducted.

## **PART 2—ADMINISTRATION**

### **Responsible officer**

7. The chief executive is the officer charged with the responsibility for the administration of this Act, subject to the Minister.

### **Corporation may function for purposes of this Act**

8. The corporation may exercise for the purposes of this Act all or any of the powers conferred on it by the *Community Services (Aborigines) Act 1984* in addition to the powers conferred on it by this Act.

### **Agents of department**

9.(1) The chief executive may make arrangements with any person holding an appointment under any Act, any officer of the public service, any person concerned in the local government of any area or any other person with a view to the person who from time to time holds an appointment specified in the arrangements at a place in Queensland specified in the arrangements to be an agent of the department within an area described in the arrangements.

(2) An arrangement made under subsection (1) may include a provision for the payment to the agent or to the person with whom the arrangement is made of an amount by way of remuneration for the agent's services.

(3) An agent of the department shall discharge such functions and duties and may exercise such powers as are imposed or conferred on the agent by this Act or as the chief executive from time to time requests of the agent.

**Power of delegation**

**10.(1)** The Minister or chief executive may, either generally or otherwise as provided by the instrument of delegation, by writing delegate to any person all or any of his or her powers, functions and duties except this power of delegation or a function imposed on the Minister or chief executive pursuant to section 12(1).

**(2)** A power, function or duty so delegated, if exercised or performed by the delegate, shall be exercised or performed by the delegate in accordance with the instrument of delegation.

**(3)** A delegation may be made subject to such terms and limitations as the Minister or chief executive thinks fit including a requirement that the delegate shall report to the Minister or, as the case may be, chief executive upon the delegate's exercise or performance of the delegated power, function or duty.

**(4)** The Minister or chief executive may make such and so many delegations of the same power, function or duty and to such number of persons as the Minister or chief executive considers necessary or desirable.

**(5)** A delegation is revocable at the will of the Minister or, as the case may be, chief executive and does not prevent the exercise of a power or the performance of a function or duty by the Minister or chief executive.

**Visiting justices**

**11.(1)** The Governor in Council may appoint a justice to be a visiting justice to 1 or more council areas.

**(2)** At least once in every period of 3 months the visiting justice shall visit every council area to which the person is visiting justice and shall—

- (a)** investigate any complaints by Islanders resident in the area concerning the administration of the area;
- (b)** inspect the record of punishments imposed on Islanders in the area by any Island Court that functions in the area;
- (c)** if the visiting justice is a stipendiary magistrate, constitute a Magistrates Court there and hear and determine summarily complaints against Islanders in the area in cases where an Island Court does not exist in the area;

- (d) report to the chief executive as soon as is practicable after completion of the visit on—
- (i) administration of the area; and
  - (ii) matters that in the visiting justices' opinion affect the welfare of residents in the area; and
  - (iii) such other matters as the chief executive requests.

### **Official inquiries**

**12.(1)** The Governor in Council may authorise any person to make and hold such inspections, investigations and inquiries for the purposes of this Act as the Governor in Council considers desirable and for the purposes of such an inspection, investigation or inquiry the person so authorised may exercise and shall have the powers, authorities, protection and jurisdiction of a commission under the *Commissions of Inquiry Act 1950* and of a chairperson of such a commission except such as are by those Acts confined to a chairperson who is a judge of the Supreme Court, unless the person is such a judge.

**(2)** A person who makes or holds an inspection, investigation or inquiry pursuant to subsection (1) shall, as soon as is practicable after its completion, furnish a full report thereon to the Minister, who shall submit the report to the Governor in Council.

### **Annual report on administration**

**13.(1)** As soon as is practicable after 30 June in each year the chief executive shall furnish to the Minister a report on the administration of this Act during the preceding 12 months.

**(2)** The Minister shall table each such report received by the Minister in the Legislative Assembly within 14 sitting days after the Minister has received it.

## **PART 2A—INTERVENTION BY THE STATE**

### *Division 1—Powers of intervention*

#### **Procedures before exercise of certain powers**

**13A.(1)** Before the Governor in Council or Minister exercises a power under this division in relation to an Island council, the Minister must give written notice of the proposed exercise of the power to the council.

**(2)** However, notice need not be given if—

- (a) the power is proposed to be exercised at the Island council's request; or
- (b) the Minister considers giving notice—
  - (i) is likely to defeat the purpose of the proposed exercise of the power; or
  - (ii) would serve no useful purpose.

**(3)** The notice must state—

- (a) the reasons for the proposed exercise of power; and
- (b) a period within which the Island council may make submissions to the Minister about the proposed exercise of power.

**(4)** Reasons stated in the notice are the only reasons that can be relied on in support of the exercise of the power.

**(5)** The Minister must have regard to all submissions made by the Island council within the stated period.

**(6)** The power may be exercised without further notice to the Island council if—

- (a) the proposed exercise of power is to proceed despite the council's submissions; or
- (b) no submissions of the council are received by the Minister within the stated period.

**Revocation and suspension of resolutions and orders**

**13B.(1)** The Governor in Council may, by regulation—

- (a) revoke, or suspend the operation of, a resolution of an Island council or an order issued by an Island council to give effect to a resolution; and
- (b) end the suspension of the resolution or order.

**(2)** However, the Governor in Council may make a regulation revoking, or suspending the operation of, a resolution or order of an Island council only if the Minister is satisfied, on reasonable grounds, that—

- (a) the resolution or order is unlawful; or
- (b) the resolution or order was made for an improper purpose.

**(3)** The suspension may be for a stated period or indefinite.

**Effect of revocation or suspension**

**13C.(1)** A resolution or order of an Island council that is revoked by regulation—

- (a) ceases to have effect on the day stated by the regulation; or
- (b) if no day is stated—is taken never to have had effect.

**(2)** A resolution or order of an Island council whose operation is suspended by a regulation does not have effect while it is suspended.

**(3)** The State is not legally liable for any loss or expense incurred by a person because of the revocation or suspension by regulation of an Island council's resolution or order.

**Overruling by-laws**

**13D.(1)** The Governor in Council may, by regulation, declare that a by-law, or a provision of a by-law, ceases to have effect, if the Governor in Council considers that it is necessary to make the declaration to protect State interests.

**(2)** The Governor in Council may, by regulation, later declare that the by-law or provision again has effect, if the Governor in Council considers



that it is no longer necessary for the declaration under subsection (1) to continue to have effect to protect State interests.

(3) In this section—

“State interests” means—

- (a) interests that affect economic, social or environmental interests of the State or a region; or
- (b) interests in ensuring there is an efficient, effective and accountable system of local government in the council area to which the by-law relates.

### **Appointment of financial controller**

**13E.** The Governor in Council may, by regulation, appoint a financial controller for an Island council if the Minister is satisfied that the council—

- (a) has made a disbursement from a fund that is not provided for in the council’s budget; or
- (b) has made a disbursement from grant monies for a purpose other than the purpose for which the grant was given; or
- (c) has contravened a provision of part 3, division 1A<sup>1</sup> relating to its budget or another financial matter; or
- (d) has failed to implement adequate financial management strategies for the funds under its control; or
- (e) has acted, or is about to act, in a way that—
  - (i) caused, or may cause, a significant deterioration in its financial viability; or
  - (ii) will or may cause it to become insolvent.

### **Dissolution of Island council**

**13F.(1)** The Governor in Council may, by regulation, dissolve an Island council if the Minister is satisfied that the council—

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<sup>1</sup> Pt 3 (Local government of areas), div 1A (Financial operations of Island councils)

- (a) has acted unlawfully or corruptly; or
- (b) has acted in a way that puts at risk its capacity to exercise properly its jurisdiction of local government; or
- (c) is incompetent or can not properly exercise its jurisdiction of local government.

(2) Subsection (1) is subject to the *Constitution Act 1867*, section 55.<sup>2</sup>

(3) On dissolution of the Island council—

- (a) its councillors go out of office; and
- (b) an administrator must be appointed; and
- (c) the council continues in existence as a body corporate and is constituted by the administrator.<sup>3</sup>

### **Abolition of joint Island council and its area**

**13G.(1)** The Governor in Council may, by regulation, abolish a joint Island council and its area.

(2) A regulation may provide for—

- (a) the apportionment of the joint Island council's assets and liabilities among its component councils; and
- (b) any other matter for which it is necessary or convenient to make provision on the dissolution of the joint Island council.<sup>4</sup>

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<sup>2</sup> *Constitution Act 1867*, section 55 (Manner of appointing persons to exercise powers, authorities, duties and functions of local government)

<sup>3</sup> For timing of fresh election see section 13Q(2).

<sup>4</sup> The *Local Government Act 1993*, section 13 provides for the application of certain provisions of the Local Government Act to Island councils. In particular, section 13(2) provides that the provisions of chapter 2, part 2 about joint local governments apply to Island councils.

### ***Division 2—Administrators***

#### **When administrator may be appointed**

**13H.** If an Island council is dissolved under section 13F, the Governor in Council must, by gazette notice, appoint a person as administrator of the council.

#### **Jurisdiction, powers and duties of administrator**

**13I.(1)** The administrator of an Island council has all the jurisdiction, powers and duties of the council concerned.

**(2)** However—

- (a)** a regulation may limit the jurisdiction, powers and duties of the administrator; and
- (b)** the administrator does not have a duty of an Island council appropriate only to a body of persons.

**(3)** If the chairperson of an Island council is required or permitted by law to exercise a power, the administrator is required or permitted to exercise the power instead of the chairperson.

**(4)** This Act and other Acts apply to the administrator, with all necessary changes, as if the administrator were the Island council.

#### **Title of administrator**

**13J.** For the purpose of exercising its jurisdiction of local government, the title of an administrator is ‘Administrator of the (name of the Island council)’.

#### **Committee to help administrator**

**13K.(1)** When an administrator is appointed, the Minister may appoint a committee of persons to help the administrator in exercising the jurisdiction of local government of the Island council concerned.

**(2)** A person may be appointed as a member of a committee for a limited time or indefinitely.

(3) The administrator is chairperson of the committee and must preside at every meeting of the committee at which the administrator is present.

(4) If, because of absence or incapacity, the administrator can not perform the functions of chairperson of the committee, the other members of the committee must appoint a member to act as chairperson at meetings of the committee until the administrator is able to perform the functions.

### **Conditions of appointment as administrator or member of committee**

**13L.(1)** An administrator or a member of a committee is entitled to the fees, allowances and expenses decided by the Governor in Council.

(2) The fees, allowances and expenses are payable by the Island council concerned.

(3) A public service officer who is appointed as an administrator or as a member of a committee may hold the appointment as well as the public service office.

### **Recovery of amounts from Island councils**

**13M.(1)** The Governor in Council may direct an Island council for which an administrator is appointed to pay to the Minister an amount stated in the direction as the costs and expenses of the administrator.

(2) The stated amount may include salary and allowances payable to a public service officer who is appointed as administrator or a member of a committee.

(3) The direction may state a time for payment.

(4) The stated amount is a debt payable to the State.

### **Role of committee**

**13N.(1)** An administrator appointed for an Island council must ensure that every decision of the committee about the exercise of the jurisdiction of local government for the council's area is implemented as soon as is practicable after the committee's decision is taken.

(2) However, if the administrator considers that implementing a decision

of the committee would not be in the best interests of the area, the administrator must refer the issue to the Minister for decision.

(3) The referral must be made within 14 days after the administrator becomes aware of the committee's decision.

### **Decision by Minister on referral by administrator**

**13O.(1)** If an issue is referred to the Minister by an administrator under section 13N(2), the Minister may cause the chief executive of the department to make the inquiries, investigations and inspections that the Minister considers appropriate.

(2) The Minister's decision on the issue is taken to be the decision of the committee and is final and binding on the administrator and the committee.

(3) The administrator must ensure the Minister's decision is implemented as quickly as practicable.

### **Procedures of committee**

**13P.(1)** A relevant provision applies to a committee appointed to help an administrator as if—

- (a) the committee were an Island council; and
- (b) the administrator, or person acting as chairperson of the committee, were the chairperson of the council.

(2) In this section—

**“relevant provision”** means a provision of this Act, or a provision of a regulation made under this Act, that deals with any of the following matters for an Island council—

- (a) the times of its meetings;
- (b) the quorum at its meetings;
- (c) notice of its meetings;
- (d) adjournment of its meetings;
- (e) entitlements of members to vote at its meetings;
- (f) disability of a member to vote because of a pecuniary interest in a

matter;

- (g) registers of pecuniary interests disclosures;
- (h) minutes of its proceedings;
- (i) revocation or amendment of its resolutions;
- (j) a matter prescribed under a regulation.

### **Termination of administrator's appointment**

**13Q.(1)** The appointment of an administrator—

- (a) may be terminated by the Governor in Council for any reason; or
- (b) ceases on the conclusion of a fresh election of the councillors of the Island council concerned.

(2) It is the intention of the Parliament that a fresh election of the councillors of the Island council should be held as soon as possible after the appointment of an administrator for the council.

### **Termination of appointment of committee member etc.**

**13R.(1)** The appointment of all members or any member of a committee to help an administrator may be terminated by the Minister, for any reason, by written notice signed by the Minister and given to the members or member.

(2) A committee appointed to help an administrator ceases to exist on the conclusion of a fresh election of councillors of the Island council concerned.

## *Division 3—Financial controller*

### **Functions of financial controller**

**13S.(1)** A financial controller appointed for an Island council is responsible for ensuring the council adheres to its budget.

(2) Also, the financial controller—

- (a) may give advice about financial management to the Island

- council; and
- (b) may undertake other administrative duties requested by the Island council; and
- (c) must undertake other administrative duties directed by the Minister.

### **Power of financial controller to revoke and suspend resolutions and orders**

**13T.(1)** A financial controller for an Island council may, by written notice to the council's clerk—

- (a) revoke, or suspend the operation of, a resolution of the council or an order issued by a council to give effect to a resolution; and
- (b) end the suspension of the resolution or order.

**(2)** However, the financial controller may revoke or suspend a resolution or order under subsection (1) only if the financial controller reasonably believes—

- (a) the resolution or order will result in unlawful expenditure by the Island council; or
- (b) the resolution or order will result in expenditure from grant monies for a purpose other than the purpose for which the grant was given; or
- (c) the resolution or order will cause the council to become insolvent.

**(3)** The notice must state the reasons for the revocation or suspension.

**(4)** The suspension may be for a stated period or indefinite.

### **Effect of revocation or suspension**

**13U.(1)** A resolution or order of an Island council that is revoked under section 13T—

- (a) ceases to have effect on the day stated in the notice to the council's clerk; or
- (b) if no day is stated—is taken never to have had effect.

(2) A resolution or order of an Island council whose operation is suspended under section 13T does not have effect while it is suspended.

(3) Neither the State nor the financial controller is legally liable for any loss or expense incurred by a person because of the revocation or suspension of an Island council's resolution or order under section 13T.

### **Financial controller's employment conditions**

**13V.** A financial controller for an Island council is to be employed under the *Public Service Act 1996*.

### **Recovery of amounts from Island councils**

**13W.(1)** The Governor in Council may direct an Island council for which a financial controller is appointed to pay to the Minister an amount stated in the direction as the costs and expenses of the financial controller.

(2) The stated amount may include salary and allowances payable to the financial controller as a public service officer.

(3) The direction may state a time for payment.

(4) The stated amount is a debt payable to the State.

### **Termination of financial controller's appointment**

**13X.** The appointment of a financial controller may be terminated by the Governor in Council for any reason.

## **PART 3—LOCAL GOVERNMENT OF AREAS**

### *Division 1—Island Councils*

#### **Declaration of council areas**

**14.(1)** A regulation may declare a part of the State to be a council area.



- (2) However, a regulation may not—
- (a) declare more than 1 council area for a part of the State; or
  - (b) declare a council area for a part of the State that is, or is included in—
    - (i) a council area under the *Community Services (Aborigines) Act 1984*; or
    - (ii) a local government area under the *Local Government Act 1993*; or
    - (iii) the area of the City of Brisbane under the *City of Brisbane Act 1924*.

### **Island council required for each council area**

**14A.** There must be an Island council for each council area.

### **Implementation of council area**

**14B.(1)** A regulation may provide for the implementation of a council area.

- (2) Without limiting subsection (1), the regulation may provide for—
- (a) holding an election for an Island council for the council area, including, for example, the date of the election and payment of the cost of the returning officer and election; and
  - (b) the appointment of an interim council clerk for the Island council; and
  - (c) notice of the day the council area starts; and
  - (d) payment of the expenses incurred by the appointment, or administrative activities, of the interim council clerk; and
  - (e) the adoption of a budget for the Island council for the period from changeover day until the following 30 June; and
  - (f) any other matter for which it is necessary or convenient to provide for the implementation of the council area.
- (3) If the election for the Island council concludes less than 18 months

before the next triennial elections for Island councils are held the next triennial election is not required to be held for the area.

### **Incorporation of Island Councils**

**15.(1)** Every Island Council existing at the commencement of this Act is preserved, continued in being and constituted as a body corporate and shall continue as such until it is dissolved as prescribed.

**(2)** Every Island Council established after the commencement of this Act shall upon its establishment be a body corporate and shall continue as such until it is dissolved as prescribed.

**(3)** A body corporate referred to in subsection (1) or (2) shall have perpetual succession and an official seal which shall be judicially noticed and shall, under its name, being (name of the council area) Island Council, be capable in law of suing and being sued, of acquiring, holding (absolutely or subject to trusts), letting, leasing, hiring, disposing of and otherwise dealing with property real and personal and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

**(4)** The persons who at the commencement of this Act comprise an Island Council shall continue in office until their successors are appointed as prescribed.

### **Tenure of office of councillors**

**16.** Subject to this Act, every member of an Island Council shall hold office for 3 years commencing on the day of the member's election as a member and terminating at the conclusion of the next triennial election of members of the council.

### **Times for election of councillors**

**17.(1)** In each council area a triennial election of members of the Island Council established for the area and existing for the time being shall be held.

**(2)** Every triennial election held pursuant to subsection (3) shall be held on the date on which are held the triennial elections for the purpose of reconstituting local governments pursuant to the *Local Government Act 1993*.

(3) The first constitution of an Island Council shall be by means of an election therefor held on a date appointed for the purpose by the Governor in Council or, if there be no such date appointed, on the date on which are held the triennial elections for the purpose of reconstituting local governments pursuant to the *Local Government Act 1993*.

### **Voters roll**

18. For the purpose of every triennial election for an Island Council and, if necessary, for any other election for the council held pursuant to this Act there shall be compiled a voters roll, which shall be in accordance with the provisions relating to voters rolls of the *Local Government Act 1993* or, if the regulations prescribe with respect to voters rolls, with the provisions of the regulations.

### **Relationship of council area to local government area**

19.(1) Notwithstanding any provision of the *Local Government Act 1993*—

- (a) land within a council area is not rateable land for the purposes of that Act;
- (b) a person whose name is properly on a voters roll for the purpose of an election of an Island Council—
  - (i) shall not be entitled to vote at an election of the local government of the area within the meaning of the *Local Government Act 1993* of which the area of the Island Council forms a part or at an election to fill any vacancy on that local government;
  - (ii) is not qualified to be enrolled on the voters roll for the purpose of an election such as is referred to in subparagraph (i);
- (c) the returning officer, for the purpose of an election such as is referred to in paragraph (b)(i), is authorised to make such eliminations from and corrections of any electoral roll in use for the purpose of the election as are necessary to give effect to paragraph (b).

(2) Upon the assumption by an Island Council of the discharge of the functions of local government of an area that forms part of an area within the meaning of the *Local Government Act 1993*—

- (a) the local government of that area shall cease to have delegated to it the functions of local government of the area affected by the assumption; and
- (b) the local laws of that local government shall cease to be of force and effect in the area affected by the assumption;

for as long as the Island Council continues to assume the discharge of the functions of local government of that area, without prejudice to the continued operation and effect of anything duly done pursuant to the local laws before they ceased to be of force and effect.

### **Functions of Island Councils**

**23.(1)** An Island Council has and may discharge the functions of local government of its council area and is hereby charged with the good rule and government thereof in accordance with the customs and practices of the Islanders concerned and for that purpose may make by-laws and enforce the observance of all by-laws lawfully made by it.

(1A) By-laws made by an Island Council may adopt wholly or partly local laws made by any local government within the meaning of the *Local Government Act 1993* or by any other Island Council or other authority or the provisions of any Act or regulations made under any Act.

(2) Without limiting the functions and powers of an Island Council, a council may make by-laws for promoting, maintaining, regulating and controlling—

- (a) the peace, order, discipline, comfort, health, moral safety, convenience, food supply, housing and welfare of its council area;
- (b) the planning, development and embellishment of its council area;
- (c) the business and working of the local government of its council area.

(2A) Without limiting the functions and powers of an Island Council, a council may make by-laws for the purpose of regulating and controlling the possession or consumption of alcohol in its council area.

**(3)** Matters with respect to which an Island Council may exercise its powers and discharge its functions include—

- (a) the provision, construction, maintenance, management, and control of roads, bridges, viaducts, culverts, baths and bathing places;
- (aa) the undertaking and execution of work in connection therewith;
- (ab) the regulation of the usage thereof;
- (b) health, sanitation, cleansing, scavenging and drainage, the removal, suppression and abatement of nuisances, public conveniences, water conservation, agricultural drainage, village planning, subdivision of land, the usage and occupation of land, building, the usage and occupation of buildings, protection from fire, boundaries and fences, disposal of the dead, the destruction of weeds and animals;
- (c) works, matters and things that, in its opinion, are necessary or conducive to the good rule and government of its council area or to the wellbeing of its inhabitants;
- (d) the doing of anything (other than the mere making available of information) that a local government within the meaning of the *Local Government Act 1993* is required or authorised to do by any other Act, other than the *Local Government Act 1993*.

**(3A)** Where any other Act, other than the *Local Government Act 1993*, requires or authorises a local government within the meaning of the *Local Government Act 1993* to do anything (other than the mere making available of information), then, for the purpose of applying that other Act in a council area, that other Act shall be so construed that—

- (a) the expression local government therein shall be deemed to include the Island Council established for the area; and
- (b) the Island Council established for the area shall be the local government for the area to the exclusion of any local government within the meaning of the *Local Government Act 1993*.

**(3B)** For the purpose of exercising its powers and discharging its functions, an Island council has the powers to carry on any business enterprise that the council believes can be profitably or effectually carried on.

(4) The power conferred on an Island Council to regulate or control includes power to license or permit or to refuse to license or permit and to prohibit by by-law made in that behalf.

(5) Fees, charges, fares, rents, and dues may be imposed by by-law or resolution of an Island Council.

(6) A by-law of an Island Council may impose a penalty in respect of any breach thereof or of another by-law but any such penalty—

- (a) shall not exceed an amount equal to 7 penalty units; or
- (b) if it is expressed as a daily penalty—shall not exceed an amount equal to 1 penalty unit per day.

(7) For the purposes of exercising its powers and discharging its functions an Island Council may engage such servants and agents as it thinks fit.

### **Provisions concerning making of by-laws**

**24.(1)** A by-law of an Island Council shall be made and shall take effect in accordance with the provisions of this section.

(2) A by-law shall be made by resolution of the council and shall be of no force or effect until it has been approved by the Governor in Council.

(3) Before proceeding to make a by-law a notice of intention to make the proposed by-law shall be exhibited in at least 1 prominent place in the council area for which the council is established.

**(3A)** Every such notice—

- (a) shall contain a copy of the proposed by-law; and
- (b) shall specify a date by which or a time within which objections to the making of the by-law may be made to the clerk of the council.

(4) Where, after considering all objections duly made to the making thereof, an Island Council has proceeded to the making of the by-law it shall submit the by-law to the Minister for the approval of the Governor in Council.

**(4A)** Every such submission shall be accompanied by—

- (a) a certificate of the chairperson and the clerk of the council that the

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provisions of subsections (3) and (3A) have been complied with; and

- (b) all objections to the making of the by-law that were duly made and lodged with the clerk of the council; and
- (c) the representations (if any) of the council in respect of the objections; and
- (d) if section 66(2) applies—
  - (i) a certificate of the chairperson and the clerk of the council that section 66(2) has been complied with; and
  - (ii) the written consent of the grantees concerned to the making of the by-law.

(5) The Governor in Council shall consider every by-law submitted to the Minister and all objections and representations accompanying the submission and may reject the by-law or may approve the by-law wholly or in part.

(6) Where the Governor in Council approves a by-law or part of a by-law the Governor in Council's approval and the by-law or part shall be published in the gazette and thereupon the by-law as approved shall have the force of law and shall not be questioned in any proceedings whatever.

(7) A by-law as approved shall come into operation on the date of its publication in the gazette unless it specifies a later date for its commencement, in which case it shall come into operation on such later date.

### **Subsequent action as to by-laws**

**25.** Where a by-law made by an Island Council has been approved by the Governor in Council the council—

- (a) shall cause a copy of the by-law as approved to be exhibited for a reasonable time in at least 1 prominent place within its council area; and
- (b) shall cause a reasonable number of copies of the by-law as approved to be kept at the council's office and available to residents of its council area; and

- (c) may at any time repeal or amend the by-law by another by-law made in accordance with section 24.

### **Disclosure of interests at meetings**

**25A.(1)** A member of an Island Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the council must, as soon as possible after the relevant facts have come to the member of the council's knowledge, disclose the nature of the interest at a meeting of the council.

**(2)** A disclosure under subsection (1) is to be recorded in the minutes of the meeting of the council and the member of the council should not—

- (a) be present during any deliberation of the council with respect to that matter; or
- (b) take part in any decision of the council with respect to that matter.

### *Division 1A—Financial operations of Island councils*

### **Issue of standards**

**25B.(1)** The Minister may make accounting standards (“**Island Council Accounting Standards**”) about—

- (a) the policies and principles to be complied with by Island councils in financial management, including, for example, internal audit; and
- (b) the content of financial statements by Island councils; and
- (c) any other matter that is required or permitted to be prescribed by standard.

**(2)** Before making a standard, the Minister must—

- (a) consult with the auditor-general about the standard; and
- (b) have regard to relevant standards made by appropriate professional bodies.

**(3)** The standards may include practice statements if the Minister considers a uniform standard of practice or procedure is necessary or



desirable.

(4) A standard made under subsection (1) is subordinate legislation.

### **Standards must be complied with**

**25C.** An Island council must comply with the Island Council Accounting Standards.

### **Island rate and other charges**

**26.(1)** An Island Council may make and levy a rate upon such basis as is prescribed by by-law of the council.

(2) An Island council may, by resolution, make and levy a charge on residents of residential premises in its council area.

(3) However, the council may exempt a resident from payment of the charge.

(4) Without limiting subsection (3), the council may give an exemption if another fee, charge, rent or due is payable in relation to the premises.

(5) In subsection (2), the reference to the council area of an Island council means the council's trust area.

(6) Subsection (5) and this subsection expire on the commencement of the *Community Services Legislation Amendment Act 1999*, section 22.

### **Annual budget to be prepared**

**27.** On or before the first ordinary meeting in the month of August in each year every Island Council is to cause to be framed the budget for the current year commencing on 1 July in the form and manner prescribed.

### **Adoption of budget**

**27B.(1)** Every budget is to be adopted by the Island Council concerned on or before 31 August in the year for which the budget is framed, and the rates or charges or both to be made and levied by the Island Council concerned for such year is to be founded thereon.

(2) Every budget adopted by an Island Council is to be open to inspection by persons resident in its council area.

### **Framing of budget**

**27C.(1)** In framing its budget, the Island Council is to estimate for the current year—

- (a) the amounts to be disbursed upon the several works, matters and things to which the general fund is applied; and
- (b) the amounts expected to be received from the general rate and all other moneys to be paid into the general fund.

(2) The estimates of receipts are to be set out as nearly as may be separately in accordance with the several sources of receipts and disbursements and as nearly as may be in accordance with each particular function, and where receipts and disbursements are for corresponding functions, such receipts and disbursements are to be set out opposite each other in the budget.

(3) The Island Council is, subject to this Act, to observe the budget by taking all reasonable steps to expend moneys in accordance with the budget and to ensure a balanced budget.

(4) If, at the end of a year, there is a surplus or deficit in the general fund, the surplus or deficit must be carried forward and taken into account by the Island council—

- (a) in framing the budget for the next year; and
- (b) in making and levying rates and charges for the next year.

### **Amendment of budget**

**27CA.** An Island council may amend its budget for a financial year at any time before the year ends.

### **Unexpended votes to lapse**

**27D.(1)** At the close of each year terminating on 30 June all authorisations of expenditure and votes of money therefor shall lapse.

**(1A)** Any vote so lapsing may be revoked.

**(2)** Any ordinary disbursement of an Island Council in the months of July and August in any year is authorised and is to be included in the budget for that year.

### **Provisions in respect of loan repayments**

**27F.** In framing its budget, an Island Council is to make provision for interest and redemption of any loan liability incurred by that Island Council.

### **Illegal expenditure**

**27G.** If an Island Council makes any disbursement in any year that has not been provided for in the budget for such year, except in emergent or extraordinary circumstances, all the members of the Island Council who have knowingly voted for such expenditure shall be jointly and severally liable to repay to the Island Council the amount involved in such illegal disbursement, and any such amount may be recovered from such members or any of them by action in any court of competent jurisdiction at the suit of any elector of the council area or any creditor of the Island Council who, on recovery of the same, must pay the amount into the general fund of the Island Council, but shall be personally entitled to full costs of suit, including costs as between solicitor and client.

### **Accounts**

**30.(1)** An Island Council shall keep proper accounts to record the receipts and disbursements into and from each fund of the council, including such accounts as may be directed by the Minister.

**(2)** The chief executive or a person authorised by the chief executive is entitled to enter into and be in the council area and premises of an Island Council, to inspect the records of accounts kept by that council and to make copies of or extracts from such records.

**(3)** Upon the request of the chief executive or such authorised person, a person having custody of the records of accounts on behalf of an Island Council shall produce the records in accordance with the request.

**Preparation of financial statements**

**30A.** Every Island Council must, as soon as practicable after 30 June but before 31 August in each year, prepare in respect of the year ended on 30 June annual financial statements in a form as prescribed and submit such statements to the auditor appointed for that council pursuant to this Act.

**Certification of annual financial statements**

**30B.** The chairperson and the clerk of the Island Council concerned must certify—

- (a) that the annual financial statements with other information and notes to and forming part thereof are in agreement with the accounts and records of the council;
- (b) whether in their opinion—
  - (i) the prescribed requirements in respect of the establishment and keeping of accounts have been complied with in all material respects; and
  - (ii) the statements have been drawn so as to present a true and fair view, on a basis consistent with that applied in the year last preceding, of the transactions of the council for the year and the financial position as at the close of that year.

**Auditor-general to audit accounts of council**

**30C.(1)** The accounts of every Island Council are to be audited by the auditor-general who shall have, with respect to such audit and accounts, all the powers and authorities conferred on him or her by the *Financial Administration and Audit Act 1977*.

**(2)** The auditor-general may appoint a person who in the opinion of the auditor-general is appropriately qualified to perform the audit of any Island Council that is required under this Act.

**(3)** The auditor or auditors for an Island Council are to be paid out of the general fund of the council such remuneration as the auditor-general may fix.

**(4)** When an officer of the audit office is appointed to be the auditor for

an Island Council the amount fixed as his or her remuneration shall be paid by the Island Council to the auditor-general.

### **Auditor-general to certify annual financial statements**

**30D.(1)** The auditor-general is to certify on and in respect of the annual financial statements and may certify in respect of other statements of account prepared on behalf of every Island Council whether or not—

- (a) he or she has received all the information and explanation required by him or her; and
- (b) such statements are in the form required by the prescribed requirements and are in agreement with the accounts; and
- (c) in his or her opinion—
  - (i) the requirements of this Act have been complied with in all material respects in respect of the establishment and keeping of accounts; and
  - (ii) the statements have been drawn up so as to present a true and fair view, on a basis consistent with that applied in the year last preceding, of the transactions of the council for the year then ended and of the financial position as at the close of that year.

**(2)** The auditor-general is to transmit the certified annual financial statements and other certified financial statements to the Island Council concerned.

### **Presentation of annual financial statements**

**30E.(1)** The annual financial statements of an Island Council in respect of a particular year, as soon as practicable after certification by the auditor-general, must be—

- (a) reproduced in the same form and content as the documents certified and must include the management and audit certificates, names of signatories and dates that certificates were signed; and
- (b) tabled at the next ordinary meeting of the Island Council and be made available for and remain open to inspection by persons

resident in the council area during such reasonable times and at such place as are determined by the council.

(3) No annual financial statement or copy of it is to be made available to any person other than the auditor-general or person acting on his or her behalf or a councillor or officer of the council until such statement has been audited and certified.

### **Access to accounts**

**30F.(1)** Without prejudice to the powers conferred by any other provision of this Act or by any other Act or law, the auditor-general or an auditor appointed by him or her shall, at all reasonable times, have full and free access to all accounts required by this Act to be audited by the auditor-general and to all moneys and property relating to such accounts that are in the possession of any person and may make copies of or extracts from those accounts.

(2) A person who has in his or her possession any accounts, moneys or property referred to in subsection (1) must, at all reasonable times, upon request by the auditor-general or an auditor appointed by him or her, produce to the auditor-general or the auditor such accounts, moneys or property as are specified in the request.

### **Power to require furnishing of information and the like**

**30G.(1)** The auditor-general or an auditor appointed by him or her may require any person having responsibility with respect to accounts that are subject to audit by the auditor-general to furnish to him or her such information, advice or explanation as he or she thinks necessary with respect to the audit and a person so required must furnish the information, advice or explanation required to be furnished.

(2) The auditor-general may at any time cause a search to be made of and extracts taken from any account, book, document or record in the custody of an Island Council without payment of any fee.

### **General reporting provisions**

**30H.(1)** The auditor-general may prepare a report on any audit

performed under this Act by him or her or by an auditor appointed by him or her in accordance with this Act.

(2) A person appointed by the auditor-general under section 30C(2) is to prepare a report on every audit performed by him or her under this Act and forward it to the auditor-general.

(3) Where the auditor-general is of the opinion that any observations or suggestions made in a report under this section require attention or further consideration he or she is to forward the observations and suggestions and his or her comments to the chairperson of the Island Council who must table them at the next ordinary meeting of the council.

(4) Where the auditor-general is of the opinion that the observations and suggestions made under subsection (3) are of major significance the auditor-general is to forward the report and his or her comments to the Minister.

### **Financial statements**

**31.(1)** The clerk of an Island Council must cause to be prepared and furnish to the chairperson of the Island Council at the beginning of each month a statement of receipts and disbursements with respect to each fund of the council during the month.

(2) The clerk of an Island Council shall certify whether the statements furnished by the clerk under subsection (1) are in agreement with the accounts of the council.

### **Island Councils are statutory bodies**

**32.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, an Island Council is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the powers under this Act of an Island Council are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

(3) The *Local Government Act 1993*, section 526 applies to an Island Council as if it were a local government and its members were councillors of the local government.

***Division 2—Law and order in areas*****Jurisdiction and powers of police**

**34.(1)** Police officers have and may exercise in a council area and in respect of persons therein the functions, duties and powers imposed or conferred on them by law that they have and may exercise in any other part of Queensland.

**(2)** In respect of the discharge or exercise in a council area of any function, duty or power a police officer has the protection accorded by law to a police officer in the discharge or exercise of that function, duty or power elsewhere in Queensland.

**(3)** Police officers are authorised to perform such acts and so such things in a council area as may be authorised or required to be done by Island police under the by-laws of the Island Council established for that area as if such by-laws were part of the law of Queensland.

**(4)** In respect of the performance in a council area of any act or thing referred to in subsection (3) a police officer has the protection accorded by law to a police officer in the discharge or exercise by the officer of the officer's functions, duties and powers elsewhere in Queensland.

**Entry upon council areas etc.**

**35.** A police officer is entitled to enter on and to be in a council area—

- (a) for the purpose of discharging or exercising a function, duty or power imposed or conferred on the officer by law; or
- (b) for the purpose of performing any act or thing that the officer is by this Act authorised to perform pursuant to an authority or requirement of a by-law of an Island Council;

and, in the case referred to in paragraph (b), the officer shall be deemed to be acting in the discharge of the officer's duty as a police officer.

**Application to council areas of laws relating to public places**

**36.(1)** For the purpose only of applying the provisions of laws in force in respect of any public place in Queensland to council areas—



- (a) the right of access to or use of any place in a council area by the general body of persons resident in the area is to be taken to have effect in law as if it were a right of access or use by the public; and
- (b) where any place would, but for its being in a council area be taken in law to be a public place, road, park or place of any other description it is to be taken so to be notwithstanding that it is in the area in question.

(2) This section is not to be construed as conferring on any person a right of entry to council areas.

### **Island police**

**37.(1)** The function of maintaining peace and good order in all parts of a council area is that of persons who hold appointments for the time being as Island police for the area.

(2) An Island Council, with the Minister's approval, may appoint such number of persons as it considers necessary for the peace and good order of its area and the council shall equip the persons appointed with a uniform and such other marks of authority as it thinks fit to enable them to discharge their function.

### **Discharge of Island police function**

**38.(1)** Island police appointed for a council area shall have and may exercise within that area the functions, duties and powers conferred on them by by-law of the Island Council established for the area.

(2) If at any time a police officer is, in execution of the officer's duty, stationed in or present in a council area for which Island police are appointed they shall discharge and exercise their functions, duties and powers subject to the direction and control of that police officer.

(3) It is lawful for an Island police officer to use reasonable force in the discharge of the officer's function of maintaining peace and good order in the council area for which the officer is appointed.

**Other functions of Island police**

**39.** An Island Council may by its by-laws or otherwise as it thinks fit charge Island police appointed for its council area with responsibility for ambulance services, firefighting services, emergency services and such other services associated with the local government of the area as it thinks fit.

**Indemnification of Island police officer for liability for tort****39A.(1)** If—

- (a) an Island police officer incurs legal liability for committing a tort while acting, or purporting to act, in the execution of duty as an officer; and
- (b) the officer acted honestly and without gross negligence;

the State may indemnify the officer for the liability.

**(2)** If—

- (a) an Island police officer incurs legal liability for helping, directly or indirectly, a person suffering, or apparently suffering, from illness or injury in circumstances that the officer reasonably considers to be an emergency; and
- (b) the officer acted honestly and without gross negligence;

the State must indemnify the officer for the liability.

***Division 3—Determination of matters of complaint in areas*****Island Courts**

**40.(1)** For any council area there may be constituted a court under the title, Island Court.

**(2)** An Island Court shall be constituted—

- (a) by 2 justices of the peace each of whom is an Islander resident in its area and is a person not disentitled by subsection (3) to sit as a member of the court in the case in question; or

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- (b) where paragraph (a) cannot be readily complied with—by the members of the Island Council established for its area who are persons not disentitled by subsection (3) to sit as a member of the court in the case in question or by a majority of such members.

(3) A person is not entitled to sit as a member of an Island Court constituted to hear and determine a matter in which the person is a party.

(4) In this section—

**“justice of the peace”** means—

- (a) a justice of the peace preserved in office by section 41(a) of the *Justices of the Peace and Commissioners for Declarations Act 1991*; or
- (b) a justice of the peace (magistrates court) holding office under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(5) For the purposes of this division, the powers of a person who holds office as a justice of the peace (magistrates court) under the *Justices of the Peace and Commissioners for Declarations Act 1991* are not affected by section 29(4) of that Act.

### **Jurisdiction of Island Courts**

**41.(1)** Subject to this Act, an Island Court has and may exercise the jurisdiction, powers and authorities conferred on it—

- (a) by this Act; or
- (b) by the by-laws of the Island Council established for the council area for which the court is constituted.

(2) An Island Court has jurisdiction to hear and determine—

- (a) matters of complaint that are breaches of the by-laws applicable within its area; and
- (b) disputes concerning any matter that—
- (i) is a matter accepted by the community resident in its area as a matter rightly governed by the usages and customs of that community; and

(ii) is not a breach of the by-laws applicable within its area or of a law of the Commonwealth or the State or a matter arising under a law of the Commonwealth or the State; and

(c) matters committed to its jurisdiction by the regulations;

and shall exercise that jurisdiction referred to in paragraph (a) in accordance with the appropriate by-law having regard to the usages and customs of the community within its area and that jurisdiction referred to in paragraph (b) in accordance with the usages and customs of the community within its area.

(3) The decision of an Island Court that any matter before it is a matter of a description referred to in subsection (2)(b)(i) shall be final and conclusive and no proceeding shall be brought or heard to restrain the Island Court from disposing of a dispute concerning that matter by reason that such a decision is incorrect.

### **Limitation of jurisdiction**

42. On and after the date of commencement of section 13 of the *Community Services (Torres Strait) Act Amendment Act 1990* the jurisdiction of an Island Court extends to any persons, whether Islanders or not, who are in or who enter upon or reside in the council area for which the court is constituted.

### **Right of appeal against conviction**

43. Any person aggrieved by his or her conviction of an offence by an Island Court shall have the same right of appeal against or review of the conviction and order made thereon as if the person had been convicted and the order had been made by a Magistrates Court and the provisions of the *Justices Act 1886* shall, with all necessary adaptations, apply in respect of that right and the exercise thereof.

***Division 4—Authorised officers*****Authorised officers**

**43A.(1)** An Island Council may appoint any person to be an authorised officer for the council area for such period as the council specifies, to protect the natural and cultural resources of the area.

(2) Subject to subsection (3), an authorised officer appointed under subsection (1) is to perform such functions and duties and may exercise such powers as are prescribed in the by-laws for the council area in which the authorised officer is appointed, which by-laws may have regard to Islander custom, tradition and belief.

(3) An authorised officer may only perform a function or exercise a power, in respect of Torres Strait Islander land in the council area for which the authorised officer is appointed, under an agreement between the Island Council and the grantees of the land.

**General powers of authorised officers**

**43B.(1)** An authorised officer, in addition to such other powers and duties as from time to time devolve upon that officer under this Act or the by-laws for the council area for which the officer is appointed may—

- (a) call to his or her aid any police officer or member of the Island police for the area where he or she has reasonable cause to apprehend any obstruction in the exercise of his or her powers or in the execution of his or her duties;
- (b) be accompanied and aided by any person the officer may think competent to assist him or her in making any inspection or examination for the purposes of the by-laws for the area;
- (c) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act or the relevant by-laws have been or are being complied with by any person or in respect of the area concerned;
- (d) at any time, stop any vehicle or vessel that he or she suspects on reasonable grounds to be used in the commission of a breach of the by-laws for the area and search and examine that vehicle or

vessel and all containers or other receptacles for any evidence of such a breach, and for that purpose may require the owner or person in charge thereof to open any such vehicle, vessel, container or other receptacle and expose its contents to view;

- (e) perform such other functions and duties and exercise such other powers and authorities as may be prescribed in the by-laws for the area concerned.

(2) An authorised officer who—

- (a) finds any person committing or believes on reasonable grounds that any person has committed an offence against this Act or the relevant by-laws; or
- (b) is making inquiries or investigations with a view to establishing whether or not an offence against this Act or those by-laws has been committed by any person; or
- (c) is of the opinion that the name, age and address or place of residence of any person is required for the purpose of giving effect to any provision of this Act or the relevant by-laws, or for the purpose of enabling the authorised officer to carry out his or her powers and duties under this Act or the relevant by-laws;

may require such person to state his or her name, age and address or place of residence, and, if the authorised officer believes on reasonable grounds that any information given in this regard is false, may require evidence of the correctness thereof.

(3) A person who fails to comply with a request of an authorised officer under subsection (2) commits an offence against this Act.

Maximum penalty—4 penalty units.

## **PART 4—ISLAND COORDINATING COUNCIL**

### **Continuation and incorporation of Island Coordinating Council**

**44.(1)** The body known as the Island Advisory Council existing at the commencement of this Act shall continue in being under the name Island

Coordinating Council and be constituted from time to time in accordance with this part.

(2) The Island Coordinating Council shall be a body corporate having perpetual succession and an official seal which shall be judicially noticed and shall, under its name, be capable in law of suing and being sued, of acquiring, holding (absolutely or subject to trusts), letting, leasing, hiring, disposing of and otherwise dealing with property real and personal and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

### **Membership of council**

**45.(1)** On and from the passing of the *Community Services (Torres Strait) Act Amendment Act 1986* the Island Coordinating Council shall be constituted by—

- (a) the persons who are chairpersons of the Island Councils; and
- (b) 1 person appointed by the members of the TRAWQ communities on Thursday Island whose names are on the electoral roll for the State Electoral District of Cook, as a representative of that community.

(2) The person referred to in subsection (1)(b) shall be appointed from time to time by means of an election held on the date on which are held the triennial elections for the purpose of reconstituting local governments pursuant to the *Local Government Act 1993* or, if at any time it becomes necessary to fill a casual vacancy in the office of a person so appointed, on a date appointed for the purpose by the Governor in Council.

(3) A person appointed by the members of the Tamwoy community by means of an election held before the passing of the *Community Services (Torres Strait) Act Amendment Act 1986* to represent that community is a person duly appointed for the purposes of subsections (1) and (2).

(4) From time to time—

- (a) each member of the Island Coordinating Council, being a chairperson of an Island Council, may appoint another member of the Island Council of which the first member is chairperson to be his or her delegate to the Island Coordinating Council; and

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- (b) the member of the Island Coordinating Council, being the representative of the TRAWQ communities, may appoint another person appointed in like manner and at the same time as the member was appointed or, if there be no such other person, a member of the Tamwoy community to be his or her delegate to the Island Coordinating Council.

(5) In the event of a member of the Island Coordinating Council being unable to attend a meeting of that council or a meeting of the executive committee of that council (if the member is a member of the executive committee) the member's delegate appointed for the time being shall be entitled to attend the meeting in place of the member and for that purpose shall have and may exercise the powers and entitlements of the member by whom he or she is appointed for the time being as a delegate except the powers and entitlements had by that member by reason of that member being chairperson or deputy chairperson of that council.

(6) In this section—

“**TRAWQ communities**” means the communities living in the suburbs of Tamwoy, Rose Hill, Aplin, Waiben and Quarantine on Thursday Island.

### **Functions of council**

**46.(1)** The functions of the Island Coordinating Council are—

- (a) to consider and advise any person on matters affecting the progress, development and wellbeing of Islanders; and
- (b) to recommend to the Minister and the chief executive concerning matters affecting the progress, development and wellbeing of Islanders and the administration of this Act; and
- (c) from time to time to select as prescribed 5 persons who are members of communities resident in the Torres Strait to be members of the Island Industries Board and 5 persons, being members of the Island Coordinating Council, to be members of an executive committee of the council; and
- (d) to accept grants or loans of money from the Government of the Commonwealth or the State or contributions of money from any other source and, subject to subsection (2), to expend that money



in accordance with the terms and conditions on which the money is received or, if there be no such terms and conditions, in securing the progress, development and wellbeing of Islanders in all or any of the areas; and

- (e) to establish and operate such lawful businesses as the council thinks fit, for the promotion, progress, development and wellbeing of Islanders; and
- (f) to act on behalf of 1 or more of the Island Councils for such lawful purposes as are requested of it by the Island Council or councils concerned; and
- (g) to employ such agents and servants as are necessary for the proper and efficient discharge of its functions and powers under this Act; and
- (h) to make, perform, and enter into and upon all such lawful contracts, transactions and activities as are necessary or expedient for the efficient conduct of any business operated by it or for the proper discharge of any of its functions; and
- (i) to attend to such other matters as are prescribed.

(2) The Island Coordinating Council shall not expend money for works or any purpose within a council area until it has first consulted with the Island Council established for that area and the Island Council has approved of the works or purpose.

### **Meetings of council**

47. The members of the Island Coordinating Council shall meet at such times and places as are approved by the Minister and may meet at such other times and places as they determine.

### **Divisions of Torres Strait**

48.(1) For the purpose of the selection of members of the Island Industries Board and the executive committee under section 46 the Minister shall (and may from time to time) delineate, by such means as the Minister thinks fit, the communities of Islanders resident in the Torres Strait into 5 divisions.

(2) The membership of the Island Coordinating Council shall be deemed to be divided into 5 divisions corresponding to the divisions delineated for the time being by the Minister, each division being represented on that council by the members thereof who are members of communities of Islanders resident in that division.

### **Selection of board members**

49.(1) For the purpose of the selection of members of the Island Industries Board and the executive committee under section 46 the members of each division referred to in section 48(2) shall select 1 person, being a member of a community of Islanders resident in that division, to be a member of the board or, as the case may be, the executive committee.

(2) A person selected to be a member of the Island Industries Board or, as the case may be, the executive committee under section 46 or to fill a casual vacancy in the office of such a member shall hold office as such member until the person dies or resigns or a successor is selected as prescribed in the person's place or in the case of a member of the executive committee the person ceases to be a member of the Island Coordinating Council.

(3) A successor to a member of the Island Industries Board or the executive committee selected under this part may be selected at any time in the same manner as that member was selected.

(4) A person selected under this part to be a member of the Island Industries Board or the executive committee shall be taken to have assumed office when the person's name is notified by the Island Coordinating Council to the Minister.

### **Casual vacancy in office of selected member**

50. In the event of a vacancy occurring in the office of a member of the Island Industries Board or the executive committee selected under this part the division of members of the Island Coordinating Council by which that member was selected shall select as prescribed a person to hold the office.

**Particular functions of council**

**51.(1)** The Island Coordinating Council shall apply property acquired by it (other than property acquired by it for its own use) towards the progress, development and wellbeing of the communities resident in the Torres Strait by such means as, in its opinion, are best calculated to achieve the purpose.

**(2)** As soon as is practicable after the expiration of 4 years after the commencement of this Act the Island Coordinating Council shall furnish to the Minister a report concerning the operation of this Act and with that report shall submit its recommendation as to—

- (a) changes in the provisions and administration of this Act that in its opinion should be made to assist the progress, development and wellbeing of communities of Islanders resident in the Torres Strait;
- (b) such other matters as it considers appropriate.

**(3)** The Minister shall submit the report and recommendations furnished under subsection (2) to the Governor in Council within 28 days after they are furnished to the Minister.

**Budget of Island Coordinating Council**

**51A.** Sections 27 to 31 apply to the Island Coordinating Council as if it were an Island Council established under this Act, with all necessary changes and changes prescribed under a regulation.

**Declaration that Island Coordinating Council is statutory body**

**51B.(1)** The Island Coordinating Council is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

**(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the powers under this Act of the Island Coordinating Council are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **PART 5—ISLAND INDUSTRIES BOARD**

### **The board**

**52.(1)** The body corporate called ‘The Island Industries Board’ continued in being under the *Aborigines’ and Torres Strait Islanders’ Affairs Act 1965* is hereby preserved, continued in being and constituted under and for the purposes of this and in this Act is called the **“board”** or the **“Island Industries Board”**.

**(2)** The board is a body corporate under the name the Island Industries Board and by that name has perpetual succession and an official seal, which shall be judicially noticed.

**(3)** The board consists of—

- (a)** an officer of the department for the time being charged with management and control of the department’s affairs at Thursday Island; and
- (b)** 2 persons appointed by the Governor in Council by notification published in the gazette; and
- (c)** the 5 members for the time being selected by the Island Coordinating Council.

**(3A)** The persons appointed to the board by the Governor in Council shall hold office at the Governor in Council’s pleasure.

**(4)** For a period of 4 years after the commencement of this Act the chairperson of the board shall be the officer referred to in subsection (3)(a) and thereafter the chairperson shall be a member of the board nominated by the members for the time being.

### **Existing members and officers**

**53.** The persons who are members, officers or employees of the board at the commencement of this Act shall be deemed to have been appointed for the purposes of this Act and shall continue as such according to the respective terms of their appointments.

**Casual vacancy in appointed members of board**

**54.** In the event of a vacancy occurring in the office of a member of the board appointed by the Governor in Council the Governor in Council shall appoint another person to hold the office at the pleasure of the Governor in Council.

**Board meetings**

**55.(1)** A quorum of members of the board shall consist of a majority of those members including the chairperson or a person nominated by the chairperson as the chairperson's delegate for a particular meeting.

**(2)** The chairperson of the board shall preside at every meeting of the board at which the chairperson is present and a person nominated by the chairperson as the chairperson's delegate shall preside at any other meeting of the board.

**Officers and employees of board**

**56.(1)** Subject to the Minister's direction (if any) in that behalf the board—

- (a) shall appoint a secretary to the board;
- (b) may appoint such administrative and technical officers and clerks and employ such employees and agents as it considers necessary to the proper exercise of its powers and discharge of its functions.

**(2)** The secretary to the board may execute documents on behalf of the board, and may affix the official seal of the board to any document that requires the same and shall perform such duties as are assigned to the secretary by the board.

**(3)** Unless the secretary is employed under the *Public Service Act 1996* the secretary to the board and every officer, clerk, employee and agent of the board shall hold office or be so employed at the pleasure of the board.

**(4)** The chairperson of the board shall be its executive officer and is charged with control of and shall control the affairs of the board and of any business conducted by the board.

**Powers of board**

**57.(1)** The board is capable in law of suing and being sued, of compounding or proving in any court of competent jurisdiction all debts and sums of money due to it, of acquiring, holding, alienating, leasing, conveying, surrendering, charging and otherwise dealing with property within or outside the State, and of doing and suffering all such other acts and things as bodies corporate may in law do and suffer.

**(2)** The board may—

- (a) carry on the business of banker, blacksmith, building, carpenter, commission agent, common carrier (by land or water), dealer (wholesale or retail), engineer, exporter, factor, farmer, fisher (including the gathering of pearl-shell, trochus-shell, and beche-de-mer), forwarding agent, freight contractor, general merchant, grazier, importer, ironworker, joiner, labour agent, lighter navigator, manufacturer, mining, moneylender, plumber, shipping agent, ships' chandler, ship-broker, shipbuilder, shipowner, shopkeeper, stevedore, storekeeper, timber merchant, tinsmith, trustee, warehouse keeper, wharfinger, and any other business incidental or ancillary to any of the businesses specified or which, in the board's opinion can be profitably or effectually carried on in connection with any of the businesses specified;
- (b) acquire, lease, erect, maintain and renovate such buildings, wharves, vessels, tramways, plant and machinery, and undertake such works as, in the board's opinion, are necessary or desirable for the proper exercise of the powers conferred on it by this Act;
- (c) obtain and disseminate information with respect to the best manner of carrying on any business specified or referred to in paragraph (a), undertake the instruction of Islanders and other persons in any such business and, for that purpose, establish, maintain and conduct such schools and classes as the board considers necessary or desirable and enter into contracts of apprenticeship;
- (d) for the purpose of carrying on any business specified or referred to in paragraph (a), exercise all such powers, authorities and discretions and do all such acts and things as a natural person conducting such a business in the State might exercise and do;

- (e) cause investigations to be made and, from time to time, report and recommend to the chief executive concerning—
  - (i) any question touching trade, commerce or business carried on by Islanders or in which they are interested or engaged;
  - (ii) markets for the produce of Islanders, trade in and methods of marketing such produce;
  - (iii) the encouragement, development and protection of the trade, commerce and industries of Islanders.

### **Profits of board**

**58.** No part of the profits of the board shall be paid into consolidated fund but shall be applied for the general welfare of Islanders in such manner as the board from time to time directs with the approval of the Governor in Council.

### **Board is statutory body**

**58A.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, the board is a statutory body.

**(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the board's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **Audit of board's accounts**

**59.(1)** The accounts of the board shall be audited by the auditor-general or by a person authorised by the auditor-general, each of whom shall have with respect to such audit and accounts all the powers and authorities conferred on the auditor-general by the *Financial Administration and Audit Act 1977* as if the board were a department of government.

**(1A)** The board shall pay a fee for such audit in an amount determined by the auditor-general.

**(2)** The auditor-general shall, at least once in each year, report to the Minister the result of each audit carried out pursuant to this section and shall, if the auditor-general thinks fit, include with the report

recommendations to the Minister with respect to the accounts of the board.

(2A) A copy of such report and recommendation shall be furnished to the chairperson of the board who shall submit the report and recommendations to the board at its first ordinary meeting held after the report and recommendations are received by the chairperson.

(3) The Minister and the board's chairperson shall give due consideration to the report and recommendations of the auditor-general made pursuant to subsection (2).

### **Annual report by board**

60. As soon as practicable after 1 February in each year the board shall furnish to the Minister a full report of its operations during the 12 months period that expired on 31 January then last past.

### **Administrator may replace board members**

61.(1) The Governor in Council may at any time, on the recommendation of the Minister, dismiss the members for the time being of the board, whereupon they shall cease to hold office, and may from time to time appoint in the place of those members an administrator to administer the board's affairs.

(2) A person appointed as administrator under subsection (1) shall administer the board's affairs for a period specified by the Governor in Council, not exceeding in any case a period of 2 years, unless within that specified period the person's appointment is revoked by the Governor in Council.

(3) The continuity of existence of the board as a body corporate shall not be affected by a dismissal of members under subsection (1) and, for so long as the administrator administers the board's affairs, the administrator shall be taken to constitute the board.

(4) Upon an administrator ceasing to administer the board's affairs by reason of the expiration of the period of the administrator's appointment or the revocation of the administrator's appointment the board shall again be constituted by the persons referred to in section 52(3).



**Relinquishment of board's assets to local control**

**62.(1)** If the board receives a request in writing from an Island Council established for a council area in which are situated premises in which the board's business is carried on that the conduct of that business be transferred to it or to 1 or more members of the community resident in the area, the board may as soon as is practicable, enter into such contracts, transactions and arrangements as are necessary or desirable to transfer the conduct of the business to the council or to such member or members or other member or members of that community.

**(2)** In discharge of the obligation prescribed by subsection (1) the board shall have regard to the resources of the person or persons to whom it is proposed that the conduct of the business in question should be transferred and may transfer the conduct of the business on such terms and in such manner as it considers appropriate and prudent.

**(3)** Any person aggrieved by the terms on which or manner in which the board proposes to transfer the conduct of a business to the person may apply to the Minister to review those terms or that manner.

**(4)** The Minister may, after receiving the representations of the board and the applicant and making such inquiry as the Minister thinks fit, either confirm the board's decision or vary it to such extent and in such manner as the Minister thinks fit.

**(5)** The Minister's decision shall be final and binding and shall be given effect by the board and all persons concerned.

**PART 6—ENTRY UPON AREAS****Entry upon public parts of areas**

**63.(1)** Any person is authorised to enter upon and be in any public place, road, park or other place of public resort within a council area or any place of business within a council area in the course of visiting the area or doing business within the area, if the person is there for a lawful purpose.

**(2)** Any person is authorised to enter upon and be in any place within an area, other than a place referred to in subsection (1), if the person is there for

a lawful purpose as a guest or at the request of a member of the community resident in the area who is entitled to be in that place.

### **General authority to be in area**

**64.(1)** Subject to this part—

- (a) an Islander or other person who, in either case, is a member of the community resident in a council area; or
- (b) a person who is discharging a function under this Act or any other Act that requires the person's presence in a council area;

is authorised to enter upon, be in and reside in that area.

### **Entry upon and temporary stay in areas**

**65.(1)** The following persons are authorised to enter upon and to be in a council area and to remain therein until the purpose of their entry to the area is fulfilled—

- (a) the Governor-General of Australia and the Governor of Queensland;
- (b) a person whose purpose in the area is to bring to residents of the area religious instruction, material comforts or medical aid;
- (c) a person whose purpose in the area is to instruct himself or herself on affairs within the area as a member of the Legislative Assembly of Queensland or of either House of the Parliament of the Commonwealth;
- (d) a person whose purpose in the area is to campaign as a bona fide candidate for election to the Legislative Assembly of Queensland or either House of the Parliament of the Commonwealth at an election for which a writ that requires its holding has been duly issued;
- (e) a person who is assisting or is acting under the direction or control of a person referred to in paragraphs (a) to (d), if such lastmentioned person is in the area.

**(2)** A person shall not be taken to have the purpose of bringing religious instruction to residents of an area referred to in subsection (1) unless the

person is a person or is of a class of person ordinarily used by a church or other religious organisation, which itself is recognised as such throughout Australia, as a religious instructor.

### **Power of Island Council to regulate presence in area**

**66.(1)** An Island Council may—

- (a) make by-laws that authorise persons of a class specified therein to enter, be in or reside in its council area; or
- (b) make by-laws not inconsistent with this Act that exclude persons of a class specified therein from its council area or that prohibit or restrict persons of a class specified therein from entering, being in or residing in that area.

**(2)** An Island Council must not make a by-law under this section in respect of land for which it is not trustee in its area unless—

- (a) the council has—
  - (i) made a reasonable effort to locate any persons (the **“interested persons”**) who have the right to exclude persons from the land; and
  - (ii) explained the nature, purpose and effect of the proposed by-law to the interested persons; and
- (b) the interested persons have been given adequate opportunity to express their views on the proposed by-law; and
- (ba) the interested persons the council has located have consented to the making of the proposed by-law; and
- (c) it has subsequently given the interested persons notice of not less than 1 month of its intention to make the by-law.

**(3)** If land immediately before becoming Torres Strait Islander land was subject to a by-law made by an Island Council under this section, the by-law continues in force, but expires 1 year after the land becomes Torres Strait Islander land.

**(4)** If land for which the council is not trustee becomes part of the council’s council area after a by-law is made under this section regulating the presence of persons in the area, the by-law does not apply to the land

until the council has followed the procedure in subsection (2) in relation to the land.

### **Excluded person entitled to reason**

**67.** Any person who is aggrieved by being excluded or prevented from entry upon, being in or residing in a council area or by his or her entry upon, presence or residence in a council area being restricted shall be entitled, upon demand therefor, to be given by the Island Council concerned a notice in writing of the reason therefor.

### **Power of Island Council to eject**

**68.(1)** In addition to all other powers had by it to remove persons from land of which it is trustee or occupier an Island Council may cause its agents to remove from its council area—

- (a) any person who is there without authority conferred by this Act or the by-laws of the council;
- (b) any person—
  - (i) who belongs to a class of person that is excluded from the area by its by-laws;
  - (ii) who belongs to a class of person whose entry to the area is prohibited by its by-laws;
  - (iii) who, being a member of a class of person whose entry to, being in or residing in the area is restricted by its by-laws, has contravened or failed to comply with the relevant by-laws.

**(2)** Any police officer, upon being requested so to do by an agent of an Island Council, shall assist in the summary removal of any person under this section and, while so acting, is authorised to be in the area concerned.

**(2A)** No liability shall attach to any police officer by reason only of the fact that a person in whose removal from an area the officer has assisted should not have been so removed.

**(3)** It is lawful to use reasonable force in the exercise of the power conferred by subsection (1) and in assisting therein.

## **PART 7—ASSISTANCE SOUGHT BY ISLANDERS**

### **Grant of aid**

**69.(1)** Subject to and in accordance with the regulations (if any) applicable to the grant in question, the chief executive may grant aid to any Islander who applies to the chief executive therefor and, where necessary, may apply therein money appropriated by Parliament for the purpose or money held by the chief executive for the benefit of Islanders generally.

**(2)** Subject as prescribed by subsection (1), aid granted under that subsection may be of such a type (in money, in kind, or by way of services) and may be granted in such circumstances, on such terms and conditions and, where granted by way of secured loan, on such security as the chief executive thinks fit.

### **Deposit of savings with banker**

**70.(1)** The chief executive is authorised to continue the facilities established as at the commencement of this Act in areas for the acceptance by the chief executive of money deposited by Islanders by way of their savings and both the chief executive and the Island Industries Board are authorised to establish in areas new facilities of a like nature.

**(1A)** In this part the person providing such facilities is called “**the banker**”.

**(2)** The banker shall in the first instance pay all moneys deposited with the banker by Islanders by way of their savings—

- (a)** where the banker is the chief executive—to the credit of the trust fund established as at the commencement of this Act with the Commonwealth Savings Bank of Australia or such other trust fund or trust funds as the banker may from time to time establish for the purpose; or
- (b)** where the banker is the board—to the credit of such trust fund or trust funds as it may from time to time establish for the purpose.

**(3)** The banker shall cause to be properly kept a separate record and account of all moneys deposited with the banker by each Islander by way of his or her savings and each such account shall be credited at least once in

each year with an amount as interest earned by the amount standing to the credit of that account at a rate not less than the rate of interest payable by the Commonwealth Savings Bank of Australia in respect of its ordinary savings accounts.

(4) Money deposited with the banker by Islanders by way of their savings together with all interest accrued thereon shall be repayable at call and upon receipt of an authority signed or otherwise attested by the Islander on whose behalf money is so held or by another person authorised in writing by the Islander the banker shall arrange the withdrawal of the amount sought from the appropriate trust fund and the payment thereof to the Islander or as otherwise requested by the Islander.

### **Continuation of management of money**

71.(1) Where at the commencement of this Act property, being money, of an Islander is being managed under the *Torres Strait Islanders Act 1971* the chief executive is authorised to continue that management.

(2) Moneys of an Islander under the management of the chief executive pursuant to subsection (1) shall be deemed to be moneys deposited with the chief executive by the Islander by way of his or her savings and the provisions of section 70 shall apply accordingly.

### **Banker is a statutory body**

72.(1) The banker is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the banker's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **Administration of Islanders' estates**

73.(1) In the absence of a testamentary instrument duly made by an Islander who has died or is to be presumed to have died and if it should prove impracticable to ascertain the person or persons entitled in law to succeed to the estate of the Islander or any part of it, the chief executive may determine which person or persons shall be entitled to so succeed or

whether any person is so entitled.

(1A) The person or persons determined by the chief executive to be entitled to succeed to an estate or to any part of it shall be the only person or persons entitled in law to succeed to the estate or, as the case may be, part and, if more than 1 person is so determined, to succeed in the order and proportions determined by the chief executive.

(2) A certificate purporting to be signed by the chief executive that the person or persons named therein is or are entitled to succeed to the estate or any part of the estate of the person named therein (being a person to whose estate subsections (1) and (1A) apply), or that there is no person so entitled shall be conclusive evidence of the matters contained therein.

(3) If, so far as can be determined, there is no person entitled to succeed to the estate or a part of the estate of an Islander who has died or is to be presumed to have died the estate or, as the case may be, part shall vest in the chief executive who shall apply the moneys or the proceeds of the sale of any property (less the expenses (if any) of such sale) for the benefit of Islanders generally as provided by section 69.

## **PART 8—GENERAL PROVISIONS**

### **Islanders' right to certain natural resources**

76.(1) Subject to sections 62 and 93 of the *Nature Conservation Act 1992*, but despite the provisions of any other Act, a member of a community of Islanders resident in a council area shall not be liable to prosecution as for an offence for taking marine products or fauna by traditional means for consumption by members of the community.

(2) Subsection (1) shall not be construed to authorise the sale or other disposal for gain of any marine product or fauna taken by traditional means.

### **Islanders' right to certain forest products and quarry material—Torres Strait Islander land**

76A.(1) If there is no reservation to the Crown of forest products or

quarry material, within the meaning of the *Forestry Act 1959*, above, on or below the surface of Torres Strait Islander land, the Island Council for the council area in which the land is situated may, subject to subsection (2), authorise the gathering or digging, and removal, of forest products or quarry material for use in the council area.

- (2) An Island Council must not give an authority unless—
- (a) the authority is given under an agreement between the Island Council and the grantees of the land; or
  - (b) failing agreement, the Island Council pays the grantees of the land such compensation as is determined by the Land Court.

### **Islanders' right to certain forest products and quarry material—non-Torres Strait Islander land**

**76B.(1)** Subject to sections 62 and 93 of the *Nature Conservation Act 1992*, but despite any other Act, a member of a community of Islanders that lives in an Island council's council area is not liable to prosecution for an offence for taking forest products or quarry material, within the meaning of the *Forestry Act 1959*, from above, on or below the surface of trust land held by the council, for use within the council's area.

(2) Subsection (1) does not authorise the sale or other disposal for gain of forest products or quarry material taken under that subsection.

(3) Despite the *Forestry Act 1959*, an Island Council may authorise the gathering or digging, and removal of forest products or quarry material from above, on or below the surface of trust land held by the council, for use within the council's area.

(4) The forest products or quarry material may be gathered or dug, and removed, under subsection (3) without the payment of royalty.

(5) In this section—

**“trust land”** means land that is trust land for the benefit of Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes under the *Land Act 1994*.



**Obstruction, intimidation and assault**

77. A person shall not assault or wilfully obstruct or intimidate, or attempt so to do, another in the discharge or exercise by that other of the other's functions, duties or powers under this Act.

**General penalty for offence**

78. A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and, except where another penalty is expressly provided by this Act for that offence is liable to a penalty of 7 penalty units or to imprisonment for 6 months.

**Magistrates Court not to have jurisdiction for certain offences**

79.(1) If—

- (a) there is an Island Court for a council area; and
- (b) a regulation provides that a proceeding for a specified offence against a regulation must be started in an Island Court;

a Magistrates Court does not have jurisdiction for the area for the offence.

(2) In a proceeding before a Magistrates Court for an offence, it is a defence to prove the defendant has already been dealt with by an Island Court for the offence.

**Evidentiary aids**

80. In proceedings to enforce a penalty for an offence against this Act—

- (a) an averment in the complaint that a person named therein is part of the community resident in a council area shall be conclusive evidence thereof until the contrary is proved;
- (b) it shall not be necessary to prove the appointment or signature of the chief executive or the authority of the complainant to lay the complaint;
- (c) it shall not be necessary to prove the limits of a council area.

**Regulations**

**81.** The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) the functions, duties and powers of the chief executive and officers of the department, and the manner of discharging or exercising those functions, duties and powers; and
- (b) the extent of and the manner of exercising the jurisdiction of Island Courts and the procedures thereof; and
- (c) the manner of enforcing decisions of Island Courts; and
- (d) the self-management and good government of Islanders; and
- (e) the skills development, training and employment of Islanders; and
- (f) the composition of Island Councils; and
- (g) the qualification of candidates for membership of those councils; and
- (h) the franchise for elections of those councils and the conduct of those elections; and
- (i) the appointment, powers and duties of returning officers for those elections; and
- (j) the filling of casual vacancies in membership of those councils; and
- (k) the selection of chairperson and deputy chairperson of Island Councils and the Island Coordinating Council; and
- (l) the appointment of clerk of an Island Council; and
- (m) the inspection of records of an Island Council by or on behalf of the chief executive; and
- (n) the composition of Island Police Forces and conditions of service of Island police; and
- (o) the granting of aid to Islanders; and
- (p) the conditions on which aid may be granted; and
- (q) the obligations of persons to whom aid is granted; and
- (r) the management and control of the funds of Island Councils

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known as Island Funds or of the Island Coordinating Council;  
and

- (s) the payments into and disbursements from those funds; and
- (t) the establishment, maintenance, management and control of such trust funds and accounts as are necessary or desirable for the care of moneys of Islanders deposited with the chief executive or the Island Industries Board or for the administration of Islanders' estates or for the disposal of unclaimed money; and
- (u) the establishment, maintenance, management and control of funds to indemnify Islanders against loss of or damage to vessels, equipment or machinery, and to compensate Islanders and their dependants for death or personal injury sustained by a person in the course of the person's employment if compensation is not payable under the *WorkCover Queensland Act 1996*; and
- (v) the basis on which such indemnity or compensation is payable; and
- (w) meetings of the Island Industries Board and attendances thereat; and
- (x) the accounts and records to be kept by the board, either generally or in relation to a particular business of the board; and
- (y) the manner of keeping such accounts and records and of the performance of the board's activities; and
- (z) the functions, powers and duties of the board's officers, clerks and employees; and
- (za) the security and protection of the board's property; and
- (zb) the forms to be used for the purposes of this Act and the purposes for which they are to be used; and
- (zc) the procedure to be adopted in relation to any application to be made under this Act; and
- (zd) the fees to be paid for the purposes of this Act and the purposes for which they are to be paid; and
- (ze) penalties for breaches of the regulations not exceeding in any case \$200; and

- (zf) all matters required or permitted by this Act to be prescribed and in respect of which the manner of prescription is not otherwise provided for; and
- (zg) all matters and things for which it is necessary or convenient to provide for the proper administration of this Act or for achieving the objects and purposes of this Act.

## **PART 9—ASSISTANCE TO AND REVIEW OF ISLAND COUNCILS**

### **Assistance to Island Councils**

**82.(1)** Each of them, the Minister and the chief executive is authorised to provide to any Island Council, from the resources of the department, such assistance by way of—

- (a) making available the services of officers of the department; or
- (b) financial aid;

as in his or her opinion is necessary to enable the council to adequately discharge and exercise its functions, duties and powers.

**(2)** A person who is assigned to perform work by way of assistance to an Island Council shall be taken to be discharging a function under this Act while the person is engaged in that assignment.

### **Use of churches etc. for provision of assistance**

**83.(1)** Subject to subsection (2), the authority conferred by section 82 on the Minister and the chief executive includes authority—

- (a) to make arrangements with any church or religious organisation that works for the welfare of Islanders with respect to the provision of assistance under that section; and
- (b) to provide assistance under that section to the church or organisation with whom the arrangements are made for application in accordance with the arrangements.

(2) Where the provision of assistance referred to in subsection (1) is for a particular council area, the authority specified by that subsection shall not be exercised except with the approval of the Island Council established for that area first had and obtained.

## PART 10—TRANSITIONAL PROVISION

### Transitional provision for council areas

**84.(1)** On the commencement, each Island council's existing area continues as its council area, under the same name, as if—

- (a) the existing area had been declared to be a council area under a regulation under section 14; and
- (b) the council had been established for the area.

(2) To remove any doubt, it is declared that the continuance of an existing area as a council area under this section does not affect anything done in relation to the existing area before the commencement.

(3) For example, on the commencement—

- (a) Island police and authorised officers appointed for an existing area immediately before the commencement continue to be appointed for the area; and
- (b) an Island Court constituted for an existing area immediately before the commencement continues to be constituted for the area.

(4) A regulation under section 14 may declare a part of the State (the “**declared area**”) to be a council area even though all or part of the declared area is a council area because of subsection (1).

(5) In this section—

“**commencement**” means the commencement of the *Community Services Legislation Amendment Act 1999*, section 34.

“**existing area**”, for an Island council, means the area that, immediately before the commencement, was the trust area for which the council was established.

## **PART 11—VALIDATING PROVISIONS**

### **Validation of particular rates**

**85.(1)** This section applies to a rate that, before the commencement of this section, an Island council purported to make and levy on residents on the basis of a by-law made under section 26(1) or under a resolution made under section 23(5) or 26(2) as in force immediately before the commencement.

**(2)** On the commencement, the rate is taken to be, and to always have been, validly made and levied.

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 7 February 2000. Future amendments of the Community Services (Torres Strait) Act 1984 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only]

Reprint No.	Amendments included	Reprint date
1	to Act No. 15 of 1994	23 May 1994
1A	to Act No. 15 of 1994	3 October 1996
1B	to Act No. 75 of 1996	12 February 1997
1C	to Act No. 75 of 1996	19 November 1997
2	to Act No. 75 of 1996	21 September 1998
2A	to Act No. 59 of 1999	6 December 1999



## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Community Services (Torres Strait) Act 1984 No. 52**

date of assent 15 May 1984

ss 1–2 commenced on date of assent

remaining provisions commenced 31 May 1984 (see s 2(2))

as amended by—

### **Liquor Act and Other Acts Amendment Act 1985 No. 81 ss 1–3, 40**

date of assent 20 November 1985

ss 1–3 commenced on date of assent

remaining provisions commenced 1 July 1986 (proc pubd gaz 28 June 1986 p 1777)

### **Community Services (Torres Strait) Act Amendment Act 1986 No. 44**

date of assent 25 September 1986

commenced on date of assent

### **Public Service (Administration Arrangements) Acts 1990 (No. 2) No. 80 ss 1–3 sch 3 pts A, C**

date of assent 14 November 1990

ss 1–3 commenced on date of assent

s 3 sch 3 pt A commenced 7 December 1989 (see s 2(4)(a))

s 3 sch 3 pt C commenced 1 December 1990 (see 1991 No. 97 s 5 sch 5)

### **Referendums Legislation Amendment Act 1990 No. 101 pt 5**

date of assent 12 December 1990

commenced on date of assent

### **Community Services (Torres Strait) Act Amendment Act 1990 No. 105**

date of assent 18 December 1990

commenced on date of assent

### **Justices of the Peace and Commissioners for Declarations Act 1991 No. 50 pts 1, 5**

date of assent 10 September 1991

pt 1 commenced on date of assent

remaining provisions commenced 1 November 1991 (1991 SL No. 113)

**Aboriginal and Torres Strait Islander Land (Consequential Amendments) Act 1991 No. 76 pts 1, 5**

date of assent 21 November 1991

pt 1 commenced on date of assent

pt 5 commenced 21 December 1991 (1991 SL No. 223)

**Nature Conservation Act 1992 No. 20 pt 1, s 159 sch 2 (as amd 1994 No. 42 s 2 sch (as from 14 September 1994))**

date of assent 22 May 1992

pt 1 commenced on date of assent

remaining provisions commenced 19 December 1994 (1994 SL No. 472)

**Local Government Act 1993 No. 70 ss 1–2, 804 sch**

date of assent 7 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2(5))

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1**

date of assent 14 December 1993

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–3 sch 1**

date of assent 10 May 1994

commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

**WorkCover Queensland Act 1996 No. 75 ss 1–2, 535 sch 2**

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1997 (1996 SL No. 442)

**Community Services Legislation Amendment Act 1999 No. 53 pts 1, 3 s 35 sch**

date of assent 18 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 21 January 2000 (2000 SL No. 6)

**Local Government and Other Legislation Amendment Act (No. 2) 1999 No. 59 ss 1, 2(7) pt 6 s 60 sch**

date of assent 29 November 1999

commenced on date of assent

## **7 List of annotations**

### **Arrangement**

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### **Repeal**

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### **Savings**

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**s 6** amd 1986 No. 44 s 2; 1999 No. 53 s 19(5)

def “**Aborigine**” ins 1990 No. 105 s 3(a)

om R1 (see RA s 39)

def “**area**” om 1999 No. 53 s 19(2)

def “**area of a community**” om 1999 No. 53 s 19(2)

def “**by-laws**” amd 1999 No. 53 s 19(4)

def “**corporation**” sub 1990 No. 80 s 3 sch 3 pt C

def “**council area**” ins 1999 No. 53 s 19(3)

def “**Department**” sub 1990 No. 80 s 3 sch 3 pt A

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def “**Director-General**” ins 1990 No. 80 s 3 sch 3 pt A

om R1 (see RA s 39)

def “**Islander**” sub 1990 No. 105 s 3(b)

def “**Minister**” om R1 (see RA s 39)

def “**non-Torres Strait Islander land**” ins 1991 No. 76 s 22(1)

def “**Torres Strait Islander land**” ins 1991 No. 76 s 22(1)

amd 1999 No. 53 s 35 sch

def “**trust area**” amd 1990 No. 80 s 3 sch 3 pt A

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### **Power of delegation**

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### **Visiting justices**

**s 11** amd 1990 No. 80 s 3 sch 3 pt A; 1999 No. 53 s 35 sch

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sub 1999 No. 53 s 22**Island council required for each council area****s 14A** ins 1999 No. 53 s 22**Implementation of council area****s 14B** ins 1999 No. 53 s 22**Incorporation of Island Councils****s 15** amd 1999 No. 53 s 35 sch**Times for election of councillors****s 17** amd 1986 No. 44 s 4; R1 (see RA s 37); 1999 No. 53 s 35 sch**Voters roll****prov hdg** sub 1999 No. 53 s 35 sch**s 18** amd 1990 No. 101 s 18; R1 (see RA s 37); 1999 No. 53 s 35 sch**Relationship of council area to local government area****prov hdg** amd R1 (see RA s 23); 1999 No. 53 s 35 sch**s 19** amd 1986 No. 44 s 5; 1999 No. 53 s 35 sch**Power to dissolve Island Council****s 20** om 1999 No. 53 s 35 sch**Appointment of administrator****s 21** om 1999 No. 53 s 35 sch**Order for fresh election****s 22** om 1999 No. 53 s 35 sch**Functions of Island Councils****s 23** amd 1986 No. 44 s 6; 1990 No. 105 s 5; 1999 No. 53 ss 23, 35 sch**Provisions concerning making of by-laws****s 24** amd 1991 No. 76 s 23; 1999 No. 53 s 35 sch**Subsequent action as to by-laws****s 25** amd 1999 No. 53 s 35 sch**Disclosure of interests at meetings****s 25A** ins 1990 No. 105 s 6**Division 1A—Financial operations of Island councils****div hdg** ins 1999 No. 53 s 24**Issue of standards****s 25B** ins 1999 No. 53 s 24

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1999 No. 53 s 35 sch

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s 76 sub 1986 No. 44 s 17

amd 1991 No. 76 s 26; 1992 No. 20 s 159 sch 2 (as amd 1994 No. 42 s 2 sch); 1999 No. 53 s 35 sch

**Islanders' right to certain forest products and quarry material—Torres Strait Islander land**

s 76A ins 1991 No. 76 s 27

amd 1999 No. 53 s 35 sch

**Islanders' right to certain forest products and quarry material—non-Torres Strait Islander land**

s 76B ins 1991 No. 76 s 27

amd 1992 No. 20 s 159 sch 2 (as amd 1994 No. 42 s 2 sch); 1999 No. 53 ss 33, 35 sch

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**Use of churches etc. for provision of assistance**

**s 83** amd 1990 No. 80 s 3 sch 3 pt A; 1999 No. 53 s 35 sch

**PART 10—TRANSITIONAL PROVISION**

**pt 10 (s 84)** ins 1999 No. 53 s 34

**PART 11—VALIDATING PROVISIONS**

**pt 11 (s 85)** ins 1999 No. 59 s 42