

Local Government and Other Legislation (Indigenous Regional Councils) Amendment Bill 2007

Explanatory Notes

Introduction

The *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Bill 2007* (the Bill) will ensure governance in the Torres Strait and Northern Peninsula areas is conducted in an effective, efficient and accountable manner. It will bring the new Torres Strait Island Regional Council (TSIRC) and the Northern Peninsula Area Regional Council (NPARC) in line, as far as practicable, with other councils already operating fully under the *Local Government Act 1993* (LGA) while providing specific provisions to recognise the unique Torres Strait Island customs and Aboriginal traditions and practices of the two areas.

In October 2005, a Green Paper titled *Torres Strait Community Government Review* (the Green Paper) was released to seek input from stakeholders on the review of governance arrangements for the Torres Strait Islands. A key focus was how to transition the Torres Strait Island arrangements from the *Community Services (Torres Strait) Act 1984* (Torres Strait Act) to the LGA.

In April 2007, a White Paper titled *Community Government in the Torres Strait: the way forward* (the White Paper) was released, which proposed both governance and structural changes needed to ensure the sustainability of Torres Strait Island governance. The White Paper acknowledged that a number of reviews had been undertaken and had revealed concerns about: council workload and capacity to meet community needs; deficiencies in corporate governance and accountability; and a perceived lack of alignment between current arrangements and the unique challenges facing Torres Strait communities.

On 27 July 2007, the *Report of the Local Government Reform Commission* (the Report) was released. The Report endorsed a governance structure tailored for TSIRC and NPARC, based on the proposals in the White Paper. The Report also made eight recommendations specific to Aboriginal and

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Torres Strait Island local government, including the establishment of TSIRC and NPARC.

The *Local Government Reform Implementation Act 2007* (the Reform Act) gave effect to the Report's recommendation for the establishment of TSIRC and NPARC, which will be formed on the changeover day after the local government elections.

This Bill will provide the governance framework for TSIRC and NPARC in a new part in the LGA for indigenous regional councils. The LGA will apply to TSIRC and NPARC, except to the extent provided in the new part, in recognition of the unique circumstances of these two new indigenous regional councils.

TSIRC will be comprised of 15 divisions and a mayor (replacing 15 of the existing 17 Torres Strait Island councils), and NPARC will be comprised of five divisions and a mayor (replacing two mainland Torres Strait Island Councils – namely Bamaga and Seisia – and the three Aboriginal Councils of Injinoo, New Mapoon and Umagico).

The Bill will also move the three Aboriginal Councils that will form part of NPARC from the auspices of the *Local Government (Community Government Areas) Act 2004* (Community Government Areas Act) to full operation under the LGA; repeal the Torres Strait Act, as the municipal components will be largely redundant; and abolish the Island Court existing under the Torres Strait Act, as it has been replaced with Justices of the Peace (Magistrates Courts).

Additionally, the Bill will transfer the remaining provisions of the Torres Strait Act, which concern community justice groups, alcohol management, community policing and entry upon public areas, to the *Aboriginal Communities (Justice and Land) Matters Act 1984*, which will be renamed the *Aboriginal and Torres Strait Island Communities (Justice, Land and Other Matters) Act 1984*. The Bill will also make consequential amendments to other statutes resulting from the Reform Act, and remaining amendments required to give effect to the recommendations of the Commission.

The Bill will also make amendments to the *Bail Act 1980*, *Criminal Code*, *Penalties and Sentences Act 1992* and *Juvenile Justice Act 1992* to ensure appropriate protections and obligations exist for members of community justice groups who make submissions about the bail and sentencing of Indigenous offenders in their community. These amendments implement

the Government's response to the recommendations made in the *Report on the Review of the Murri Court* (December 2006).

Amendments are included to section 35 of the *Justice of the Peace and Commissioners for Declarations Act 1991* to clarify that a daily sitting fee may be paid to Justices of the Peace (Magistrates Courts) when they constitute Magistrates Courts in remote Indigenous communities.

Short title of the Bill

The short title of the Bill is the *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Bill 2007*.

Objectives of the Bill

The policy objectives of the Bill are to provide the governance framework for the new regional councils – TSIRC and NPARC (indigenous regional councils) as established under the Reform Act. This legislation, which commenced on 10 August 2007, followed the July 2007 release of the Report.

The Reform Act did not provide for the new indigenous regional council's governance framework, due to the need for new land tenure and trusteeship arrangements to be developed to accommodate the new structure and the need for consultation to occur in the development of these arrangements.

This Bill will apply the LGA to the new indigenous regional councils, except to the extent provided for in a specific new part, in recognition of the unique circumstances of these two new regional councils.

The Bill also makes consequential amendments to other statutes resulting from the Reform Act, as well as further amendments to facilitate the operation of the Reform Act.

Policy rationale

The Bill is essential to the successful conduct of the March 2008 local government elections and to provide the governance framework for TSIRC and NPARC to ensure that after the local government elections, systems and procedures will be in place to ensure a smooth transition to a more accountable, transparent and efficient system of regional local government for the Torres Strait Island and Northern Peninsula areas.

How objectives are achieved

The objectives of providing the governance framework for TSIRC and NPARC will be achieved by the following:

1. Providing for the membership of TSIRC and NPARC.

Each indigenous regional council will be headed by an elected mayor and an appointed chief executive. The other members of the indigenous regional council will be representatives of each community or division as defined by the Reform Act.

2. Outlining the capacity of TSIRC and NPARC

The new regional councils will have the same capacity as other councils under the LGA to establish community boards and standing committees but not local service committees as provided for under the Community Government Areas Act.

3. Providing requirements for candidates for election to TSIRC and NPARC

The requirements of a candidate for election to TSIRC to be an Aborigine or Torres Strait Islander and having resided in the area for two years will be retained in accordance with community wishes expressed during consultation.

In recognition of the unique cultural composition of NPARC, the LGA requirements that already apply to the three Aboriginal councils within NPARC will apply to the whole of NPARC (i.e. no requirement to be an Aborigine or Torres Strait Islander, but to have resided in the area for at least one month, the period required under the Electoral Act 1993). One set of criteria for each indigenous regional council is necessary for the successful conduct of elections.

4. Providing for the appointment of financial controllers

The provisions of the LGA for the appointment of financial controllers and administrators will apply to TSIRC and NPARC. However, the additional provisions giving the power for a financial controller to revoke, suspend or end a council resolution will continue for TSIRC and NPARC for operational convenience.

5. Establishing regional council meeting practices and procedures

TSIRC and NPARC will be required to meet monthly and notice of these meetings will be required to be given at least four days before the meeting

in recognition of the remoteness of the Torres Strait region and to accommodate the transportation challenges of the region.

6. Discontinuing loans to individuals

In recognition that the findings of successive reports of the Auditor-General have highlighted that the repayment of loans continues to be an issue, the current practice of council providing loans to individuals will cease. This provision will apply to all councils.

7. Maintaining the status quo for land access

The current provisions for rights of access to, and residence on, land for Torres Strait Islanders and Aborigines will be preserved.

8. Facilitating a new land tenure model

TSIRC and NPARC will be appointed as trustees of any land held as a deed of grant in trust (DOGIT) and some contiguous land. It should be noted that these are separate trusts (i.e. TSIRC will have responsibility for fourteen separate DOGITS, noting the Reserve is held in trust to the Department of Communities for Mer Island). They will effectively manage these lands and any assets upon the land. The regional councils will hold separate, public meetings, in their role as trustees, when making decisions about these lands.

9. Establishing community forums

To recognise and protect the unique Torres Strait Island customs and Aboriginal culture and traditions, it will be a requirement for each community/division to have a community forum. The community forum will be comprised of the councillor, three to seven elected community members, and a convenor. The community forums will perform distinct advisory roles to TSIRC or NPARC in the capacity of a community forum and a land panel. The community forums will hold meetings to consider general community or cultural matters and separate meetings to consider land trustee matters.

Community forum function – non land matters

The role of the community forums in matters not relating to land will be to provide advice to TSIRC and NPARC on matters relating to Torres Strait Islander customs and Aboriginal culture and traditions and on local service delivery, planning and performance.

Land panel function of the community forum

The role of the community forums in their capacity as a land panels will be to provide advice to TSIRC and NPARC on land matters. The indigenous regional councils will be required to consider this advice and if the council decision on a land matter is not consistent with the advice of the land panel, the reason(s) must be provided to the land panel.

10. Facilitating the transfer of enterprises and services

All existing enterprises and services will be transferred to TSIRC and NPARC on a transitional basis and revenue will be quarantined for the use by respective divisions/communities but be managed centrally by TSIRC and NPARC.

11. Facilitating the transfer of social housing

TSIRC and NPARC will assume responsibility for social housing within the communities on the same basis as enterprises and services.

12. Ensuring the transfer of assets and liabilities

The assets and liabilities of the abolished councils will be transferred to TSIRC and NPARC, effectively creating two regional bodies responsible for the financial management of each regional council's assets under the *Local Government Finance Standard 2005*.

13. Abolishing the Island Coordinating Council

The Island Coordinating Council is currently the peak body for the seventeen Island Councils and it will be abolished after TSIRC and NPARC are established. Its assets will be allocated accordingly as provided for in a regulation.

Alternative method of achieving the policy objectives

There are no alternatives to the proposed legislation that will achieve the desired policy objectives.

Estimated cost for Government implementation

To assist in transitioning from existing arrangements, TSIRC has been allocated \$720,000 in pre-election funding and \$675,000 in post-election funding. NPARC has been allocated \$320,000 in pre-election funding and \$675,000 in post-election funding.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

The Green Paper - *Torres Strait Community Government Review*, released in October 2005, was used as the basis for extensive community consultation throughout 2005 and 2006 on the legislative framework under which Torres Strait Island councils operate. This process was conducted in collaboration with a reference group nominated by the Island Coordinating Council.

The White Paper - *Community Government in the Torres Strait: the way forward*, which was released in early 2007, formed the basis of the Commission's consultation with the affected communities.

In August 2007, the former Minister for Local Government, Planning and Sport visited the Torres Strait region to discuss key policy considerations of the reform process and made a commitment to further consultation.

On 5-7 September 2007, representatives of the existing Torres Strait Island and Northern Peninsula Aboriginal councils were consulted on the proposed legislative model, land tenure model and the proposal for Community Boards.

In June 2007, the Torres Strait Governance Review Steering Committee (Steering Committee) was established by the Department and has met six times (24/07/07, 16/08/07, 04/09/07, 25/09/07, 10/10/07, 16/10/07). It comprises representatives of the key Government departments that have a strategic role in the reform of local government in the Torres Strait and Northern Peninsula areas including:

- The Department of the Premier and Cabinet;
- The Department of Natural Resources and Water;
- The Department of Justice and the Attorney-General;
- The Department of Communities; and
- The Department of Housing.

The Local Government Reform Taskforce (LGRT), State Transition Committee (STC) and Indigenous Sub Committee (ISC), which were

established as part of the local government reform process, were consulted on the key policy issues.

The CEO Committee – A Modern Federation has also been consulted on the policy proposals.

On 23 September 2007, the Honourable Warren Pitt, Minister for Main Roads and Local Government visited the Torres Strait to consult with local communities about the legislative proposals.

- The following government entities were supportive of the proposals:
- The Department of the Premier and Cabinet;
- The Department of Justice and the Attorney-General;
- The Department of Natural Resources and Water;
- The Department of Communities;
- The Department of Housing;
- The Queensland Police Service;
- The Department of Tourism, Fair Trading and Wine Industry Development;
- The Auditor-General from the Queensland Audit Office; and
- Queensland Treasury.

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that the short title of this Act is the *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Bill 2007*.

Clause 2 Commencement

Clause 2 provides that the Bill will commence on proclamation, except for part 11 amendments to the LGA, which will commence on assent (but with some exceptions). In addition, those amendments to the *Judicial Review Act 1991* and the *Local Government (Chinatown and the Valley Malls) Act 1984* will commence on assent.

Those clauses in part 11 which are not commencing on assent, but on proclamation are sections 93, 95 to 97, 108, 109, 113, 114, 120 and 122 to 125.

Those clauses in part 11 which are commencing on assent concern the establishment of the two new indigenous regional councils, the creation of community forums, land panels and the role of trustee. Whilst they are commencing on assent, they will not have any effect until after changeover day when the indigenous regional councils are formed. In addition, some minor amendments for the remuneration tribunal and adjustments to some local government boundaries will also commence on assent.

Part 2 Amendment of Aboriginal Communities (Justice and Land Matters) Act 1984

Clause 3 Act amended in pt 2

Clause 3 provides that this part amends the *Aboriginal Communities (Justice and Land Matters) Act 1984*.

The *Aboriginal Communities (Justice and Land Matters) Act 1984* will largely retain all the provisions relating to community justice groups, alcohol management, community policing and entry upon public areas with some minor amendments to improve the workability of sections relating to community justice groups and community policing.

That Act will now relate to Aboriginal and also Torres Strait Island and Northern Peninsula communities.

Clause 4 Amendment of long title

Clause 4 amends the long title of the Act to change the reference from ‘community government areas’ to ‘community areas’ to encompass the new indigenous regional councils under this Act.

Clause 5 Amendment of s 1 (Short title)

Clause 5 provides for section 1 to be amended so that the *Aboriginal Communities (Justice and Land Matters) Act 1984* will be renamed and cited as the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Aboriginal and Torres Strait Act).

The title of the Act is to reflect the inclusion of provisions for Torres Strait Islands from the *Community Services (Torres Strait) Act 1984* (Torres Strait Act), which is to be repealed, and Northern Peninsula Area communities from the *Local Government (Community Government Areas) Act 2004* (Community Government Areas Act).

Clause 6 Amendment of s 4 (Definitions)

Clause 6 deletes some definitions that are no longer relevant and inserts some definitions of words and acronyms that will now be used in the Aboriginal and Torres Strait Act as a result of these amendments.

The definition for *Aboriginal police officer* is substituted with *community police officer* as Torres Strait Island police officers will now be provided for under the Aboriginal and Torres Strait Act along with Aboriginal police officers and both will be known as community police officers.

Clause 7 Amendment of s 8 (Delegation by Minister or chief executive)

Clause 7 deletes a definition that was defined just for section 8. The definition is now used elsewhere in the Act and has been re-inserted in the definitions section by clause 5(2) of this Bill.

Clause 8 **Amendment of pt 3, hdg and pt 3, div
1, hdg**

Clause 8 provides for the insertion of the reference to indigenous regional council areas as the law and order provisions under the Aboriginal and Torres Strait Act will now apply to the new indigenous regional council areas along with the Aboriginal community government areas.

Clause 9 **Insertion of new s 8A**

Clause 8 inserts a definition that is used in division 1 as a result of these amendments.

Clause 10 **Amendment of s 9 (Jurisdiction and
powers of police)**

Clause 10 amends section 9 to add references to indigenous regional council areas and change the term *Aboriginal police officer* to *community police officer* to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula area communities.

The jurisdiction and powers of Island police officers will remain unchanged but be provided for in the Aboriginal and Torres Strait Act as community police officers.

Clause 11 **Amendment of s 10 (Entry upon
community government areas etc.)**

Clause 11 amends section 10 to add references to indigenous regional council areas to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

The reason a police officer is permitted to enter a council area will remain unchanged but be provided for in the Aboriginal and Torres Strait Act.

Clause 12 **Amendment of s 11 (Application to
community government areas of laws
relating to public places)**

Clause 12 amends section 11 to add references to indigenous regional council areas to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

The application to indigenous regional council areas of laws relating to public places remains unchanged but is to be provided for in the Aboriginal and Torres Strait Act.

Clause 13 **Amendment of s 12 (Aboriginal
police)**

Clause 13 amends section 12 to add references to indigenous regional council areas and change the term *Aboriginal police officer* to *community police officer* to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

The functions and appointment of Island police officers remains unchanged, but are to be provided for in the Aboriginal and Torres Strait Act under name of community police officers.

Clause 14 **Amendment of s 13 (Discharge of
Aboriginal police officers' functions
etc.)**

Clause 14 amends section 13 to add references to indigenous regional council areas and change the term *Aboriginal police officer* to *community police officer* to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

The way a community police officer exercises their functions, performs their duties and uses their powers, remains unchanged but is to be provided for in the Aboriginal and Torres Strait Act.

Clause 15 **Amendment of s 14 (Other functions
of Aboriginal police officers)**

Clause 15 amends section 14 to add references to indigenous regional council areas and change the term *Aboriginal police officer* to *community police officer* to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

The matters for which an indigenous regional council may make local laws regarding the functions of a community police officer remains the same, but are to be provided for in the Aboriginal and Torres Strait Act.

Clause 16 **Amendment of s 15 (Indemnification
of Aboriginal police officer for liability
for tort)**

Clause 16 amends section 15 to change the term *Aboriginal police officer* to *community police officer* to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

A community police officer will have the same level of indemnity when honestly performing their duties and functions, but the indemnification is to be provided for in the Aboriginal and Torres Strait Act.

Clause 17 **Amendment of s 16 (Authorised
officers)**

Clause 17 amends section 16 to add references to indigenous regional councils and Islander land and custom to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

An indigenous regional council may still appoint authorised persons to protect natural and cultural resources in the same manner, but this power is to be provided for in the Aboriginal and Torres Strait Act.

Clause 18 Amendment of s 17 (General powers of authorised officers)

Clause 18 amends section 17 to encompass the indigenous regional council areas under this provision to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities. It also changes the term *Aboriginal police officer* to *community police officer* to include Torres Strait police officers under the provision under their new name *community police officers*.

The powers of authorised persons remain unchanged but are to be provided for under the Aboriginal and Torres Strait Act.

Clause 19 Amendment of s 19 (Functions and powers)

Clause 19 amends section 19 which sets out the functions of a community justice group for a community area. This amendment will omit the current function of community justice groups in section 19(1)(b) to carry out local strategies to address justice issues affecting members of the community in the area. This will be replaced with a description of functions that better reflects the broad range of work in the criminal justice system that community justice groups are funded to perform, namely to:

- (i) participate in court hearings and sentencing and bail processes in accordance with the *Penalties and Sentences Act 1992*, *Bail Act 1980* and *Juvenile Justice Act 1992*;
- (ii) develop networks with agencies to ensure that crime prevention, justice, community corrections and related issues impacting on Indigenous communities are addressed; and
- (iii) support Indigenous victims and offenders at all stages of the legal process.

The amendment in clause 43 of the Bill will ensure that a community government or an indigenous regional council can also make local laws conferring additional functions on community justice groups for an area.

Clause 20 Amendment of s 20 (Membership)

Clause 20 amends section 20 to clarify the existing appointment process for members of community justice groups whereby members are appointed by the Minister by gazette notice and appointments are revoked in the same manner.

Clause 20 also amends section 20 to provide that a community justice group must include at least one representative of each of the main Indigenous social groupings in the area to the greatest extent practicable. While community justice groups make every effort to ensure that there is a representative of each of the main Indigenous social groupings, there have been some rare instances where community justice groups have experienced difficulties in meeting this requirement.

Clause 21 Replacement of s 21 (Criminal history checks)

Clause 21 amends section 21 to substitute it with a new section.

The amendment amends section 21 consistent with similar legislative provisions dealing with assessment of a person's suitability for appointment to a position. The new section 21 will allow the chief executive to make inquiries to decide whether a person is suitable for appointment as, or to continue as, a member of a community justice group.

Under the existing section, a regulation may provide for the disclosure by the commissioner of the police service to a stated entity of a person's criminal history for deciding whether the person is suitable to be nominated as a member.

The *Aboriginal Communities (Justice and Land Matters) Regulation 1998* provides that for section 21 of the Act, the chief executive may ask the commissioner of the police service to give the chief executive a written report about a person's criminal history and that the commissioner must comply with the request.

The new section 21 will allow the chief executive, with a person's consent, to ask the commissioner of the police service for a person's criminal history for the purpose of assessing whether they are suitable for appointment as a member of a community justice group and also whether

they are suitable to continue as a member once they have been appointed. It will also ensure that:

- the chief executive can seek information to clarify information pertaining to a person's criminal history;
- the person to whom the information relates, is provided with a copy of the information; and
- the information gained under this section is destroyed as soon as practicable after it is no longer needed.

A power has also been included to allow the chief executive to delegate their powers. The definitions of *criminal history* and *spent conviction* in the new section have not been amended.

New section 63A of the Act, to be inserted by clause 42 of this Bill, will ensure the confidentiality of information obtained by the chief executive under this section.

To ensure natural justice, fairness and consistency, clause 21 also inserts a new section 21A into the Act. This section provides for the chief executive to make guidelines regarding the handling of information obtained under the new section 21.

Clause 22 Amendment of s 22 (Coordinator)

Clause 22 amends section 22 by clarifying the appointment procedure for the community justice group, where an incorporated entity administers funding arrangements for the community justice group. The community justice group retains the power to appoint the coordinator if funding is not administered by an incorporated entity. The amendments will require that the incorporated entity consult with the community justice group about the proposed appointment.

Clause 23 Amendment of s 23 (Authentication of documents)

Clause 23 amends the requirement that for a document to be taken to be sufficiently made by a community justice group, the document needs to be signed by the coordinator and also another member of the group. This will

increase accountability and the likelihood that a document properly reflects the views of the community justice group.

Clause 24 Amendment of s 27 (Definitions for pt 5)

Clause 24 amends section 27 to add references to indigenous regional councils and Islander custom to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

Clause 25 Amendment of s 28 (Declaration)

Clause 25 amends section 28 to add references to indigenous regional councils and Islander custom to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

Torres Strait community justice groups may still declare dry places in the same manner with the same requirements and conditions, but the declaration is to be made under the Aboriginal and Torres Strait Act.

Clause 26 Amendment of s 30 (Objections and supporting submissions)

Clause 26 amends section 30 to add references to Islander custom to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

Objections to the declaration of a dry place may still be made to the person(s) who controls access to that place under Island custom, but the objection is to be made under the Aboriginal and Torres Act.

**Clause 27 Amendment of s 48 (Definitions for
pt 6)**

Clause 27 amends section 48 to add references to indigenous regional councils and Torres Strait Islanders to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

**Clause 28 Amendment of s 50 (Entry on trust
area etc. by non-residents)**

Clause 28 amends section 50 to add references to indigenous regional councils and Torres Strait Islander land to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

Non-residents of trust land may still have access to that land if an indigenous regional council has resolved for the access to be permitted, but the resolution is to be made under the Aboriginal and Torres Strait Act.

**Clause 29 Amendment of s 51 (Notice about
resolution)**

Clause 29 amends section 51 to add references to indigenous regional councils to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

**Clause 30 Amendment of s 52 (Community
government may impose restrictions
on entry etc.)**

Clause 30 amends section 52 to add references to indigenous regional councils to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

Clause 31 **Amendment of s 53 (General authority
to enter etc. trust area)**

Clause 31 amends section 53 to add references to indigenous regional councils and Torres Strait Islanders to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

Clause 32 **Amendment of s 55 (Removal from
trust area)**

Clause 32 amends section 55 to change the term *Aboriginal police officer* to *community police officer* to include Torres Strait police officers under the provision.

Clause 33 **Amendment of pt 7 hdg (Assistance
sought by Aborigines)**

Clause 33 amends the heading for part 7 to include reference to Torres Strait Islanders, in addition to the references to Aborigines. The arrangements for assistance to Torres Strait Islanders are to continue and remain unchanged, but be provided for under the Aboriginal and Torres Strait Act.

Clause 34 **Amendment of s 56 (Grant of aid)**

Clause 34 amends section 56 to include reference to Torres Strait Islanders, in addition to the references to Aborigines to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

The chief executive can grant aid to a Torres Strait Islander on the same conditions but this is to be provided for in the Aboriginal and Torres Strait Act.

**Clause 35 Amendment of s 57 (Deposit of
savings with banker)**

Clause 35 amends section 57 to include reference to Torres Strait Islanders, in addition to the references to Aborigines to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

Clause 35 also adds a subsection to authorise the Island Industries Board (IIB), as well as the chief executive, to establish new facilities for the deposit of Aboriginal, and also Torres Strait Islander savings.

**Clause 36 Amendment of s 58 (Continuation of
management of money)**

Clause 36 amends section 58 to include reference to Torres Strait Islanders and the repealed Torres Strait Act, to allow for the continuation of the management of Torres Strait Islanders money under the Aboriginal and Torres Strait Act.

**Clause 37 Amendment of s 60 (Administration of
Aborigines' estates)**

Clause 37 amends section 60 to include reference to Torres Strait Islanders to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

The chief executive may administer a Torres Strait Islander's estate in the same manner and with the same conditions and requirements, but this is to be provided for under the Aboriginal and Torres Strait Act.

Clause 38 Insertion of new pt 7A

The IIB trades as the Islander Board of Industry and Service (IBIS). It operates retail outlets to meet the needs of local residents. Thursday Island

has a supermarket, petrol station and stores at Rosehill and Tamwoy. Torres Strait Travel Centre is an agent for Sunstate Airlines and also provides sea and land travel between Thursday Island and Horn Island. There are 14 stores on the outer Torres Strait Islands. On the mainland, a supermarket is operated in Bamaga.

Clause 38 provides for part 7A (Island Industries Board) to be inserted after section 60. The IIB is to continue in operation under the Aboriginal and Torres Strait Act.

The inserted part transfers the provisions relating to the detail for the administrative arrangements, functions and powers of the IIB from the Torres Strait Act which will be repealed. The provisions remain largely the same with updated references to TSIRC and relevant Bamaga and Seisia areas. Some provisions have been redrafted to conform with current drafting practice and for simplicity, but retain their original meaning.

The fundamental difference as a result of this Bill for the IIB is that the provisions relating to the proposal of a panel for nomination to membership of the IIB have been redrafted to take into account the new structure for Torres Strait government. For example, the panel should consist of:

- at least five qualified persons proposed by TSIRC; and
- at least two qualified persons proposed by the Torres Shire Council; and
- one qualified person proposed by the councillor for what will be the division for Bamaga in NPARC; and
- one qualified person proposed by the councillor for what will be the division for Seisia in NPARC.

Clause 39 Amendment of s 61 (Aborigines' right to certain natural resources)

The rights and obligations about certain natural resources which apply to Torres Strait Islander people under the repealed Torres Strait Act are to continue in the Aboriginal and Torres Strait Act. Therefore, clause 39 amends section 61 to include reference to Torres Strait Islanders, in addition to the references to Aborigines, to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

This will continue Torres Strait Islanders' rights to certain natural resources taken by traditional means for consumption by members of the community.

**Clause 40 Amendment of s 62 (Aborigines' right
to certain forest products and quarry
material – Aboriginal land)**

The rights and obligations about certain forest products and quarry material which apply to Torres Strait Islander people under the repealed Torres Strait Act are to continue under the Aboriginal and Torres Strait Act. Therefore, clause 40 amends section 62 to include references to Torres Strait Islanders and indigenous regional councils to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

This will continue Torres Strait Islanders' rights to certain forest products and quarry material on their land for use in their local government area under certain circumstances.

**Clause 41 Amendment of s 63 (Aborigines' right
to certain forest products and quarry
material – non-Aboriginal land)**

The rights and obligations about certain forest products and quarry material, which apply to Torres Strait Islander people under the repealed Torres Strait Act, are to continue under the Aboriginal and Torres Strait Act. Therefore, clause 41 amends section 63 to include references to Torres Strait Islanders and indigenous regional councils to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities.

This will continue Torres Strait Islanders' rights to certain forest products and quarry material on non-Islander land for use in their local government area under certain circumstances.

Clause 42 Insertion of new s 63A

Clause 42 inserts a new section 63A (Confidentiality) that applies to anyone involved with the administration of the Aboriginal and Torres Strait Act and who has gained, or has access to, protected information obtained by the chief executive under the new section 21 of the Act (as inserted by clause 19 of the Bill). Protected information specifically relates to the suitability of a person for appointment as, or to continue as, a member of a community justice group.

The new section sets out the requirements for the recording, use and disclosure of that information and creates an offence for misuse of protected information for which the maximum penalty is 100 penalty units or two years imprisonment.

This new section incorporates the current restriction on the use of criminal history information in section 21 of the Act, and is consistent with confidentiality of information requirements under similar legislation.

Clause 43 Amendment of s 66 (Making local laws about particular matters)

Clause 43 amends section 66 to include references to indigenous regional councils and their areas to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area communities in relation to the power to make local laws regarding consumption of alcohol.

Section 66 will now specify that a community government or an indigenous regional council can also make local laws regarding conferring functions on their community justice groups for any community area or division within its community government area.

Clause 44 Amendment of s 67 (Evidentiary aids)

Clause 44 amends section 67 to include references to indigenous regional councils and their areas to reflect the application of the Aboriginal and Torres Strait Act to the Torres Strait Island and Northern Peninsula Area

communities in relation to evidence in a proceeding against the Aboriginal and Torres Strait Act.

Clause 45 Amendment of s 71 (Regulation-making power)

Clause 45 amends section 71 to outline the certain matters for which a regulation may be made, in addition to those currently in existence for the Island Councils and the Aboriginal community governments

It changes references from *Aboriginal police forces* to *community police forces* to encompass the Torres Strait Island police. It adds references to Torres Strait Islanders where Aborigines are mentioned and adds references to indigenous regional councils where community government is mentioned.

Provisions specific to the Torres Strait and IIBs are inserted to allow regulations to be made regarding the IIB's proceedings and functions.

Clause 46 Replacement of pt 10 (Validating provisions)

Clause 46 replaces the current part 10, which is now redundant. The new part 10 provides for transitional provisions for the dissolution of the Island Coordinating Council (ICC) upon the commencement of the Bill.

A regulation may be used to provide for any matters necessary to allow for the dissolution of the ICC, for example: matters regarding references to the dissolved ICC and agreements, proceedings, assets and liabilities of the ICC at the time of dissolution.

The new part 10 also provides the transitional provisions for the name change for Aboriginal police officers and Island police officers to community police officers under the Aboriginal and Torres Strait Act. Community police officers hold their appointment in the same area with the same responsibilities as they did before the commencement of this Bill.

Transitional provisions for the IIB and its members are provided for in the new part 10 to ensure that despite the repeal of the Torres Strait Act, each member and chairperson will continue to hold membership for the term for

which they were appointed and be subject to the disqualification and vacation of office requirements as inserted by this Bill for that duration.

The deputy chairperson continues to hold membership until the IIB otherwise decides. All matters under the repealed Torres Strait Act relating to the IIB are not affected by the repeal of that Act, or insertion of new provisions regarding IIBs into the Aboriginal and Torres Strait Act.

Transitional arrangements for the Aboriginal community justice groups of Injino, New Mapoon and Umagico as well as the Torres Strait community justice groups of Bamaga and Seisia (the five areas that will comprise NPARC) are provided for in the new part 10.

The transitional arrangements ensure that anyone who was a member of a community justice group when the Torres Strait Act is repealed will continue as a member of the new community justice group under the Aboriginal and Torres Strait Act until the end of their term of appointment, the Minister revokes the appointment, or the office is otherwise vacated. The person who held the appointment of coordinator of a community justice group when the Torres Strait Act is repealed, will also continue to be appointed as a coordinator under the Aboriginal and Torres Strait Act.

Subject to part 4 of the Aboriginal and Torres Strait Act, all other matters relating to any existing community justice groups for those areas making up NPARC are not affected by the repeal of the Torres Strait Act and transition to the renamed Aboriginal and Torres Strait Act.

No transitional arrangements were necessary for TSIRC as no community justice groups have been established under the Torres Strait Act for the areas within this new indigenous regional council.

Part 3 Amendment of Aboriginal and Torres Strait Islanders (Land Holding) Act 1985

Clause 47 Act amended pt 3

Clause 47 provides that this part amends the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

Clause 48 Amendment of s 4 (Interpretation)

Clause 48 amends definitions as a consequence of the new local government arrangements for the Torres Strait.

The definition *Island council* has been substituted to update the new reference to those councils as indigenous regional councils. A definition has also been inserted for these councils' *areas*.

The definition *visiting justices* has been substituted as the references within the previous definition are redundant to council areas are removed and instead have been replaced with reference to trust areas. There is a new provision about visiting justices inserted by clause 61.

A number of definitions are amended to update references to the renamed Aboriginal and Torres Strait Act.

As there will be specific land trustee provisions within the Aboriginal and Torres Strait Act relating to the new indigenous regional councils, the definition *trustee council* has been amended to remove references to Island councils and Aboriginal councils.

Clause 49 Amendment of s 10 (Divesting and vesting of title to land)

Clause 49 amends section 10 by inserting references to Torres Strait Islander council areas to clarify that subsection's application to Island councils as defined under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

The provision outlines the process and procedures of land divested from councils becoming unallocated State land.

Clause 49 also amends a reference to the renamed Aboriginal and Torres Strait Act.

**Clause 50 Amendment of s 16 (Assessment of
rent)**

Clause 50 amends section 16 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

This amendment will ensure an indigenous regional council or Aboriginal council is still provided for under this provision regarding the assessment of rent payable to it after the changeover day.

Clause 51 Amendment of s 17 (Payment of rent)

Clause 51 amends section 17 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

This amendment will ensure an indigenous regional council or Aboriginal council is still provided for under this provision regarding the advance payment of rent to it after the changeover day.

**Clause 52 Amendment of s 18 (Dealings with
leases)**

Clause 52 amends section 18 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

This amendment will ensure an indigenous regional council or Aboriginal council is still provided for under this provision so that a person who is not qualified can not hold land, or an interest in land, for which that indigenous regional council is charged with the functions of local government.

**Clause 53 Amendment of s 21 (Forfeiture upon
default in rent)**

Clause 53 amends section 21 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

This amendment will ensure an indigenous regional council or Aboriginal council is still provided for under this provision regarding the process and procedure for default in rent payments owing to it.

**Clause 54 Amendment of s 22 (Action upon
nonoccupation)**

Clause 54 amends section 22 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

This amendment will ensure an indigenous regional council or Aboriginal council is still provided for under this provision regarding the process and procedure for giving a show cause notice to a lessee if the council believes the relevant land is unoccupied.

**Clause 55 Amendment of s 23 (Action upon
nonutilisation)**

Clause 55 amends section 23 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

This amendment will ensure an indigenous regional council or Aboriginal council is still provided for under this provision regarding the process and procedure for giving a show cause notice to a commercial lessee if the council believes the relevant land is not being utilised or developed.

**Clause 56 Amendment of s 25 (Procedure upon
forfeiture)**

Clause 56 amends section 25 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

This amendment will ensure an indigenous regional council or Aboriginal council is still provided for under this provision regarding the process and procedure for giving a show cause notice to a lessee to appear before a visiting justice if the council believes there is reason for the land to be forfeited.

**Clause 57 Amendment of s 27 (Consequences
of forfeiture)**

Clause 57 amends section 27 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

This amendment will ensure an indigenous regional council or Aboriginal council is still provided for under this provision regarding forfeited land. That is, land forfeited under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* shall revert to, and vest in, an indigenous regional council or Aboriginal council.

**Clause 58 Amendment of s 28 (Appeal against
classification as nonqualified person)**

Clause 58 amends section 28 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

Clause 59 Amendment of s 29 (Nomination of panels)

Clause 59 amends section 29 by updating references to TSIRC and the renamed Aboriginal and Torres Strait Act.

Clause 60 Amendment of s 30 (Constitution of appeal tribunals)

Clause 60 amends section 30 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

Clause 61 Amendment of s 31 (Representations to council or appeals tribunal)

Clause 61 amends section 31 to update references to ‘Aboriginal council’ and ‘Island council’ to ‘indigenous council’ as defined under the LGA (for TSIRC and NPARC) and provided for under the Community Government Areas Act (for Aboriginal councils).

Clause 62 Amendment of s 32 (Land deemed part of trust area for certain purposes)

Clause 62 amends section 32 by inserting references to Torres Strait Islander council area to clarify that subsection’s application to ‘Island councils’ as defined under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. Clause 62 also amends a reference to the renamed Aboriginal and Torres Strait Act.

Clause 63 Insertion of new s 32A

Clause 63 inserts a new section 32A (Visiting justices) to specifically provide for the appointment of visiting justices for land granted in trust by the Governor in Council for the benefit of Aboriginals and Torres Strait Islanders.

The visiting justice is to be appointed if a lessee is called, by an indigenous regional council, to appear before the visiting justice regarding the forfeiture of a lease. The visiting justice is also appointed when required to sit on an appeal tribunal.

Clause 64 Amendment of s 33B (Transitional)

Clause 64 amends section 33B to update a reference to ‘Aboriginal council or Island council’ to ‘Indigenous council’ to create consistency in the use of this term.

Part 4 Amendment of Bail Act 1980

Clause 65 Act amended in pt 4

Clause 65 provides that this part amends the *Bail Act 1980*.

Clause 66 Amendment of s 6 (Definitions)

Clause 66 amends section 66 to update references to the renamed Aboriginal and Torres Strait Act in the definition *community justice group* in section 6 of the *Bail Act 1980*.

Clause 67 Insertion of new ss 34C – 34E

Clause 67 inserts new sections 34C, 34D and 34E into the *Bail Act 1980*. These new sections ensure that representatives of a community justice group have access to information relevant to making submissions under that Act, and members of community justice groups are subject to appropriate obligations and protections in performing this role under the Act.

The new section 34C allows the court to direct, whether or not upon application, that a representative of a community justice group in an Aboriginal or Torres Strait Islander offender's community may inspect, or obtain a copy of, a court file or a document in a court file that may be relevant to making a submission about the offender under section 15(1)(f) or 16(2)(e) of the Act.

New section 34D ensures that members of community justice groups are subject to obligations in relation to ensuring the confidentiality of information gained through performing a function under the Act.

New section 34E also provides protection to members of community justice groups from civil liability for acts done and omissions made honestly and without negligence, in making submissions about a defendant to a court or police officer under the Act.

Part 5 Amendment of Criminal Code

Clause 68 Act amended in pt 5

Clause 68 provides that this part amends the Criminal Code.

Clause 69 **Amendment of s 119B (Retaliation
against judicial officer, juror, witness
or family)**

Clause 69 amends section 119B of the *Criminal Code* to include references to a ‘member of a community justice group’. Recognising the important role community justice groups have in the criminal justice system, this amendment ensures that it is an offence to retaliate against a member of a community justice group for which a representative makes a submission under the *Bail Act 1980*, *Juvenile Justice Act 1992* or the *Penalties and Sentences Act 1992*, or against a member of their family for anything lawfully done by the member.

The amendment will apply where submissions are made by a representative of a community justice group to a court or police officer under the *Bail Act 1980*, *Juvenile Justice Act 1992* or the *Penalties and Sentences Act 1992* about a defendant, child or offender who is an Aboriginal or Torres Strait Islander person.

Clause 70 **Amendment of s 552C (Constitution
of Magistrates Court)**

Clause 70 amends section 552C(5)(a) of the *Criminal Code* to replace a reference to a council area under the Torres Strait Act with a reference to a local government area of an indigenous regional council under the LGA as a consequence of the repeal of the Torres Strait Act and to be consistent with other amendments in this Bill.

Under section 552C(5) the Attorney-General may specify, by gazette notice, a place appointed for holding a Magistrates Court that can summarily deal with an indictable offence under chapter 58A of the *Criminal Code*.

Part 6 **Amendment of Indigenous
Communities Liquor Licences
Act 2002**

Clause 71 **Act amended in pt 6**

Clause 71 provides that this part amends the *Indigenous Communities Liquor Licences Act 2002*.

Clause 72 **Amendment of schedule (Dictionary)**

Clause 72 replaces the definition *community justice group* to update references to the renamed Aboriginal and Torres Strait Act, and bring TSIRC and NPARC community justice groups under the scope of the *Indigenous Communities Liquor Licences Act 2002* for liquor licensing. It also replaces the definition *Indigenous council* to add references to TSIRC and NPARC to recognise these new councils in the *Indigenous Communities Liquor Licences Act 2002*.

Part 7 **Amendment of Justice of the
Peace and Commissioners for
Declarations Act 1991**

Clause 73 **Act amended in pt 7**

Clause 73 states that this part amends the *Justices of the Peace and Commissioners for Declarations Act 1991*.

**Clause 74 Amendment of s 35 (Prohibition on
reward)**

Clause 74 amends section 35 to provide that ‘reward’ does not include, for a justice of the peace (magistrates court), a daily sitting fee paid to the person for constituting a court at a place at which a Magistrates Court may be constituted if the place is within a community area as defined in the Aboriginal and Torres Strait Act.

A justice of the peace (magistrates court) qualification allows a justice to constitute a Magistrates Court and hear, for example, bail applications and domestic violence order applications.

Elders and respected persons from remote communities are often appointed as justices of the peace (magistrates court). The amendment to section 35 of the Act will clarify that a daily sitting fee of a specified amount may be paid to justices of the peace (magistrates court) when constituting courts in remote Indigenous communities. Under section 35, a justice of the peace or commissioner for declarations is not otherwise entitled to receive, directly or indirectly, any reward in connection with performing the functions of the office.

**Part 8 Amendment of Juvenile Justice
Act 1992**

Clause 75 Act amended in pt 8

Clause 75 states that this part amends the *Juvenile Justice Act 1992*.

**Clause 76 Amendment of s 285 (When does
someone gain information through
involvement in the administration of
this Act)**

Clause 76 amends section 285(1) of the Act to add reference to a member of a community justice group in a child's community. Section 288 of the Act provides that a person who has gained, gains, or has access to, confidential information relating to a child through involvement in the administration of the Act must preserve the confidentiality of information. Section 285(1) of the Act defines when someone is taken to have been, or to be, involved in the administration of the Act. This amendment will ensure that members of community justice groups are subject to the confidentiality requirements in section 288 of the Act.

**Clause 77 Amendment of s 289 (Recording, use
or disclosure for authorised purpose)**

Section 289 of the Act specifies certain circumstances where a person is authorised to record, use or disclose confidential information which would otherwise be prohibited under section 288 of the Act.

Clause 77 amends section 289 to insert a new paragraph which allows the recording, use or disclosure of confidential information by members of the community justice group in the child's community as part of making submissions about the child under the Act.

Clause 78 Insertion of new s 289A

Clause 78 inserts a new section 289A. This new section will authorise a person who is a member of a community justice group in the child's community, to disclose information to another member of the community justice group.

This amendment will ensure the community justice group can effectively make submissions about the child as provided for in section 48(3)(da) and section 150(1)(g) of the Act.

Clause 79 Insertion of new s 301A

Clause 79 inserts a new section 301A in relation to the protection of members of community justice groups from liability. This new section will protect a representative of a community justice group in a child's community who makes a submission, personally or otherwise, to a court or a police officer under the Act, and members of the community justice group who are involved in making the submission, from civil liability for any act done, or omission made, honestly and without negligence in relation to the making of the submission.

Clause 80 Amendment of sch 4 (Dictionary)

Clause 80 amends schedule 4 to update the reference to the renamed Aboriginal and Torres Strait Act in the definition *community justice group* in schedule 4 of the Act.

Part 9 Amendment of Liquor Act 1992

Clause 81 Act amended in pt 9

Clause 81 states that this part amends the *Liquor Act 1992*.

Clause 82 Amendment of s 4 (Definitions)

Clause 82 replaces the definitions *Aboriginal police officer* and *Island police officer* with *community police officer* as those police officers will now be provided for under the Aboriginal and Torres Strait Act and will be known as community police officers. The definition of *community police officer* retains provision for Aboriginal police officers under the *Local Government (Aboriginal Lands) Act 1978*.

Clause 82 also:

- replaces the definition of community area to reflect the definition of community area contained in the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters Act) 1984;
- updates the definitions in section 4 to reflect the renamed Aboriginal and Torres Strait Act;
- updates the references to the renamed police officers; and
- inserts definitions used as a result of this Bill and its amendments.

Clause 83 Amendment of s 174A (Powers of Aboriginal and Island police officers)

Clause 83 amends definitions in section 174A to reflect the renamed Aboriginal and Torres Strait Act and change references to the renamed Aboriginal and Island police officers to community police officers.

This amendment will ensure, despite the name change, Aboriginal and Torres Strait Islander police officers continue to hold the same powers under the *Liquor Act 1992*.

Clause 84 Amendment of s 176 (Entry and search – monitoring compliance)

Clause 84 amends definitions in section 176 to reflect the renamed Aboriginal and Torres Strait Act.

Clause 85 Amendment of s 187EB (Forfeiture of seized property to prevent commission of particular offences – chief executive)

Clause 85 amends section 187EB to add a reference to the division areas of the new indigenous regional councils (previously the Island councils) for the display of notice of particular seized property.

Part 10 **Amendment of Local
Government (Aboriginal Lands)
Act 1978**

Clause 86 **Act amended in pt 10**

Clause 86 states that this part amends the *Local Government (Aboriginal Lands) Act 1978*.

Clause 87 **Amendment of s 2 (Definitions)**

Clause 87 amends a reference in section 2, definition *liquor provisions*, to the renamed Aboriginal and Torres Strait Act.

Clause 88 **Amendment of s 14 (Composition of
committees)**

Clause 88 amends a reference in section 14 to the renamed Aboriginal and Torres Strait Act.

Clause 89 **Amendment of s 17 (Functions of
committee)**

Clause 89 amends a reference in section 17 to the renamed Aboriginal and Torres Strait Act.

Clause 90 **Insertion of new s 18A**

Clause 90 inserts a new section 18A (Application of pt 5) to specify that part 5 (except for section 32) of the Act does not apply to the newly incorporated areas of Sweers Island and the Bountiful Islands.

Clause 91 Replacement of sch 1 hdg

Clause 91 replaces the schedule 1 heading to conform to current drafting practice and styles.

**Part 11 Amendment of Local
Government Act 1993**

Clause 92 Act amended in pt 11

Clause 92 provides that this part amends the *Local Government Act 1993*.

**Clause 93 Omission of ch 1, pt 6 (Application of
Act to Torres Strait Islander local
governments)**

Clause 93 omits chapter 1, part 6 relating to the specific application of the LGA to Torres Strait Islander local governments. The LGA is to apply in full to TSIRC and NPARC, except where provided for in a specific part.

**Clause 94 Amendment of s 18 (Declaration of
classes of local government areas)**

Clause 94 amends section 18 to remove reference to certain classes of local government made redundant as a consequence of the Reform Act.

Clause 95 **Omission of s 40 (Application of part
to Torres Strait Islander local
governments)**

Clause 95 omits section 40. The LGA is to apply in full to TSIRC and NPARC, except where provided for in a specific part.

Clause 96 **Omission of s 56 (Application of part
to Torres Strait Islander local
governments)**

Clause 96 omits section 56. The LGA is to apply in full to TSIRC and NPARC, except where provided for in a specific part.

Clause 97 **Omission of ch 2A (Townsville-
Thuringowa water supply joint board)**

Clause 97 omits chapter 2A to provide for the abolition of the Townsville-Thuringowa water supply joint board as a consequence of the amalgamation of Townsville and Thuringowa City Councils on the changeover day.

Clause 98 **Amendment of s 159YA (Application
of pt 1B)**

Clause 98 amends section 159YA to provide that the requirements of pt 1B do not apply to joint local governments.

However, a reform implementation regulation may make provision for joint local governments to provide for:

- the transition of regulatory and administrative systems from joint local governments to new and adjusted local governments where joint local governments are abolished; and

- the transfer of employees, assets, liabilities and equity from joint local governments to new and adjusted local governments.

**Clause 99 Amendment of s 159YD (Definitions
for pt 1B)**

Clause 99 amends section 159YD, definition *transferring area C*, to update a reference to a revised map for *transferring area C*.

**Clause 100 Amendment of s 159YE (Changeover
day)**

Clause 100 amends section 159YE to correct a minor error and clarify the intention to refer to a local government area.

Clause 101 Insertion of new s 159YHA

Clause 101 inserts a new s 159YHA (Particular entities go out of existence) to clarify that a local government whose area is fully abolished by the amalgamations goes out of existence when the abolition is complete.

**Clause 102 Amendment of s 159ZB (Functions of
interim chief executive officer before
changeover day)**

Clause 102 amends section 159ZB to add a subsection specific to the interim chief executive for an indigenous regional council. It states an added function for those chief executives is to conduct the first election of the community forum members on behalf of the indigenous regional council.

**Clause 103 Amendment of s 159ZH (Local
government workforce transition
code of practice)**

Clause 103 amends section 159ZH to clarify that a workforce transition code of practice is a statutory instrument and not subordinate legislation no matter when it was made.

**Clause 104 Amendment of s 159ZK (Holding of
2008 quadrennial elections)**

To provide support and guidance during the reform process, clause 104 amends section 159ZK to apply the provisions of the LGA relating to local government elections to community governments for the 2008 quadrennial elections.

**Clause 105 Amendment of s 159ZM (Changed
application of s 220 for Northern
Peninsula Area and Torres Strait
Island regional councils)**

Clause 105 amends section 159ZM to provide for the differing and specific requirements for qualifications for membership for potential candidates for NPARC and TSIRC.

For NPARC, the candidacy provisions of the LGA apply, being that a candidate (other than a candidate for mayor) is required to live in the particular division for which they are a candidate. They are also required, under the *Electoral Act 1992*, to be enrolled on the electoral roll for their area, which means they must have lived in that area for at least the past month. Similarly, a candidate for mayor is required to have lived in the local government area (which comprises all the divisions) for the past month.

For TSIRC, the specific requirements are set out in new inserted section 159ZZF as discussed in detail below.

Clause 106 Insertion of new ch 3, pt 1C

Clause 106 inserts a new chapter 3, part 1C (Particular provisions for implementation of reform matters for indigenous regional councils). The new part deals with matters that are specific and unique to the new indigenous regional councils.

Inserted division 1 provides for definitions of words used within the new part.

Inserted division 2 provides for the operation of TSIRC.

Particular entities to go out of existence:

Specific mention, for the sake of clarity, is made to the Island councils that will no longer exist when TSIRC is formed.

Extension of jurisdiction:

In recognition of Torres Strait Island custom and the specific set of issues relating to the governance of the Torres Strait, a new provision within the LGA will empower TSIRC to make local laws and ensure the good rule of their area in accordance with Island custom.

Requirements for candidates:

Inserted section 159ZZE outlines the specific application of requirements for TSIRC candidates. A person is required to be an Aborigine or a Torres Strait Islander and to have lived for two years immediately prior to nomination day in the particular division for which they are a candidate.

A candidate for the mayor of TSIRC is also required to be an Aborigine or a Torres Strait Islander and to have lived for two years leading up to the election in the local government area of TSIRC.

The requirements for candidates for NPARC are provided for under the LGA as for other Queensland local governments for both councillors and mayor, except that councillors for NPARC must reside within the division for which they are contesting.

Inserted division 3 provides for the operation of NPARC.

Particular entities to go out of existence:

Specific mention, for the sake of clarity, is made to the two Island councils and three community governments that will go out of existence when NPARC is formed.

Extension of jurisdiction:

In recognition of Aboriginal culture and traditions and Torres Strait Island custom, and taking into account the specific set of issues relating to the governance of the Northern Peninsula Area, a new provision within the LGA will empower NPARC to make local laws and ensure the good rule of their area in accordance with Aboriginal culture and traditions and Island custom.

Inserted division 4 provides generally for both TSIRC and NPARC.

Function of community forum:

The role of the community forums will be to provide advice to TSIRC and NPARC on matters of Torres Strait Island custom and Aboriginal culture and traditions and on local service delivery and planning. The community forum's operational procedures will largely be at the discretion of the new indigenous regional councils.

Establishing community forums:

The new part, in an inserted division, establishes community forums for each division of TSIRC and NPARC. The establishment of a community forum for each division of TSIRC and NPARC will provide a mechanism to recognise and protect the unique Torres Strait Islander custom and Aboriginal culture and traditions of the region. The community forums will give community members an additional voice on matters of community importance and a platform to discuss views, ideas and opinions.

The indigenous regional councils can not establish any other body to carry out any of the functions of a community forum.

To provide a mechanism for accountability and transparency, any matter relating to the establishment of a community forum, including elections and filling of vacancies, must be carried out under a regulation.

The mayor or a candidate for mayor of an indigenous regional council can not become a member of a community forum.

The community forums will perform distinct advisory roles of both a community forum and a land panel. The community forums will hold separate meetings to consider general community or cultural matters from those held for the purpose of advising on land trustee matters.

To ensure openness and answerability, and to allow general community members to have representation, the meetings of the community forums

must be held publicly and at least 7 days notice given before the meeting is held. This includes the meetings as a community forum and the meetings as a land panel.

The community forums will comprise the councillor representing the particular division, three to up to seven elected community members and a convenor. A mayor or a candidate for mayor of an indigenous regional council cannot be a member of a community forum.

Members are not ordinarily entitled to be remunerated, but the indigenous regional council may authorise the payment of expenses to members.

The convenor can be a convenor of two or more community forums and will be a TSIRC or NPARC officer who is skilled and experienced in the administration of land. However, the convenor cannot be a councillor or mayor of an indigenous regional council.

The Minister must ensure the names of each community forum for each division, along with the names of all the members, are published in the gazette so as to ensure that the local communities are aware of who their forum members are.

Indigenous regional council as land trustee and community forum as land panel to deal with community deed of grant in trust:

Under the provisions of this Bill, TSIRC and NPARC will become trustees of any community deeds of grant in trust in their local government area. Inserted chapter 3, part 1C, division 4, subdivision 2 deals with the specific way in which councils deal with that land and how they make decisions regarding that land.

The indigenous regional council must separately constitute itself to perform its functions as the trustee. This includes establishing arrangements but having separate meetings and keeping separate records in relation to any land held in trust.

The indigenous regional councils must have regard to the *Land Act 1994* and any other law in relation to the land held in trust. The requirements inserted by this Bill and specific to TSIRC and NPARC are in addition to those other laws.

The mayor of the indigenous regional council that is the trustee chairs a meeting of that trustee for the community deed of grant in trust. However to ensure an equality of representation of all local areas represented at meetings of the trustee, the mayor cannot vote on any matter arising at the meeting, including a decision.

The Bill inserts a provision specifically relating to meetings of an indigenous regional council when acting in their role as trustee for land held in trust. The provision reinforces the requirement that the meetings must be open to the public, unless resolved for particular reasons outlined in inserted section 159ZZZ.

When the indigenous regional council makes a decision relating to the creation of interest, establishment of an improvement or any other matter in relation to land held in trust (a trustee decision), it must refer the matter to the community forum in the forum's capacity as a land panel.

A community forum must constitute itself separately as a land panel if required to do so to assist the indigenous regional council in making a trustee decision.

Community forums must ensure that for land held in trust by the indigenous regional council, and for which the community forum is acting as a land panel and formulating advice for the indigenous regional council:

- meetings are held separately from any other matter;
- the forum applies itself exclusively as a land panel;
- the forum advises the indigenous regional council separately from any other matter.

An indigenous regional council must seek a land panel's advice on any trustee decision relating to land held in trust. They can also, by resolution, seek a land panel's advice on any land matter if deemed necessary. The indigenous regional council must allow the land panel sufficient time to formulate its advice.

When an indigenous regional council is acting as a trustee of land, and needs to make a decision regarding land that is the subject of a deed of grant in trust, it must consider the advice of the community forum in its capacity as a land panel. If the trustee's decision in relation to the land is not consistent with advice received from the land panel, the reason(s) for the decision must be provided to the land panel. However, land panels will not have any veto over a decision of TSIRC or NPARC acting as trustees.

To ensure absolute fairness and natural justice, a special requirement is inserted that will ensure a decision regarding land held in trust cannot be made unless the absolute majority of the councillors (except the mayor, who cannot vote) agree. For example, as there are to be 15 councillors representing 15 divisions of TSIRC, for an effective trustee decision to be made, the number of councillors in agreement would have to be eight. In

addition, the councillor for the affected division will also exercise a 'double majority'. For the resolution to be carried, the councillor for the affected division must be in favour.

The Bill also provides for the following:

- that the chairperson of the community forum as a whole, is the chairperson of the land panel;
- the functions of the convenor in relation to land panels;
- specification of the type of decisions the indigenous regional councils acting as trustees can refer to land panels for advice;
- a process for the trustee to submit proposals to the land panel and for the land panels to provide their advice back to the trustee;
- certain restrictions on the indigenous regional council's powers as trustee in relation to the *Land Act 1994*.

Further extension of jurisdiction:

Taking into account the unique needs and circumstances of the new indigenous regional councils, the Bill provides a mechanism to allow those councils to make local laws further to the provisions provided for in the Local Government Act.

The indigenous regional councils can, while taking into account Island custom under inserted section 159ZZE, and Aboriginal culture and traditions under inserted section 159ZZH, make local laws relating to peace and order and the delivery of services appropriate to the social needs of its communities. This phrase encapsulates the variety of functions that previously existed under section 45 of the repealed Torres Strait Act.

Financial controllers:

The provisions of the LGA will apply to the appointment of financial controllers and administrators to the indigenous regional councils. In addition, the Torres Strait Act gives a financial controller the power to revoke or suspend a council resolution, or end the suspension of a council resolution. It also provides for the termination of the appointment of a financial controller for any reason by the Governor in Council. These additional mechanisms do not currently exist in the LGA. As it is desirable to preserve them for operational convenience, both mechanisms will be brought into the LGA specifically for TSIRC and NPARC.

Additional role for councillors:

Due to the unique structure of the new indigenous regional councils with one community forum for each division, the councillor of each division is to be the chair of their respective community forum (consisting of separate community board and land panel meetings) in addition to their roles outlined in the LGA.

Financial management:

Due to the findings of successive Auditor-General reports on the financial standing of the Aboriginal and Torres Strait Island councils which state that the repayment of loans continues to be an issue, an indigenous regional council will not be able to lend money to an individual. This provision will apply to all local governments under the LGA and Aboriginal Councils under the Community Government Areas Act.

Payments made to indigenous regional councils under the *Indigenous Communities Liquor Licences Act 2002* must be accounted for separately and used for funding programs and services for the benefit of residents of its community area.

Power to levy charge on residents:

An indigenous regional council may charge a resident in its area a levy in addition to utility charges. These provisions maintain the capacity in communities without rateable land to levy a charge on residents to help maintain community services and infrastructure.

The indigenous regional council may exempt a resident from the charge if the council is receiving another payment from the resident in relation to the land.

Limited application of rates and charges provisions:

As land held in deed of grant in trust is not rateable, the Bill makes provision to exempt indigenous regional councils from basing their rates and charges on the value of land.

Disposal of land:

Special provision is made so that an indigenous regional council as trustee cannot dispose of any land the subject of a deed of grant in trust.

It should be noted the provisions relating to the procurement and disposal of assets under the LGA may have delayed application to indigenous regional councils via a regulation under inserted section 1290 (inserted by clause 128).

However, in addition to, and separate from, the conditions stated in the LGA for the disposal of land, a condition for the disposal of land not the subject of a deed of grant in trust is provided for, namely, if the disposal of the land would restore rights consistent with Aboriginal or Torres Strait Island custom.

**Clause 107 Amendment of s 188B (Appointment
of financial controller)**

For administrative convenience and expediency, clause 107 changes the requirement for the Governor in Council to appoint a financial controller by gazette notice instead of by regulation for all local governments.

**Clause 108 Omission of s 190 (Application of part
to Torres Strait Islander local
governments)**

Clause 108 omits section 190. The LGA is to apply in full to TSIRC and NPARC except where provided for in a specific part.

**Clause 109 Amendment of s 191 (Local
Government Grants Commission and
its members)**

Clause 109 amends section 191 to update the reference to Torres Strait local government to reflect the new governance arrangements for indigenous regional councils.

This amendment will ensure that the Local Government Grants Commission will continue to include one member with knowledge of Torres Strait local government.

**Clause 110 Amendment of s 242 (Requirements
of councillors before acting in office)**

Clause 110 amends section 242 to add the word ‘region’ to the councillor’s declaration of office to include reference to the new regional class of local government. The provisions for declaration of office remain unchanged.

**Clause 111 Amendment of s 250AK (Deciding
remuneration)**

Clause 111 amends section 250AK to clarify that the Remuneration Tribunal may decide the remuneration to be paid to-

- a councillor;
- a mayor; and
- a deputy mayor.

The amendment also clarifies that in deciding remuneration, the Remuneration Tribunal may provide for councillors performing duties under section 452 of the LGA (Appointment of committees).

The amendment also clarifies that any amount set by the Tribunal excludes a superannuation component payable by council. It is necessary to make this amendment to clarify the relationship between the chapter 4, part 3 (Entitlements and obligations) and the Remuneration Tribunal provisions.

**Clause 112 Amendment of s 250AN (Conduct of
inquiries)**

Clause 112 amends section 250AN for consistency with current drafting practice and to remove unnecessary words.

**Clause 113 Amendment of s 250B (Definitions for
pt 3A)**

Clause 113 inserts a definition for *special committee*, which is used throughout part 3A to describe a community forum for an indigenous regional council.

Clause 114 Insertion of new s 284AA

Clause 114 inserts a new section 284AA (Non-application of part to indigenous regional councils) to provide that the division requirements and provisions applying to all other local governments do not apply to the indigenous regional councils.

Indigenous regional councils have distinct divisional requirements applying after the 2008 local government elections that must be provided for under a regulation.

**Clause 115 Amendment of s 318 (Direction that
poll be conducted by postal ballot)**

Clause 115 amends section 318 to include large remote areas or extensive island areas (such as exist in the local government areas for TSIRC) in the regions for which a postal ballot can be called.

**Clause 116 Amendment of s 346A (Distribution of
ballot papers to certain electors who
may cast declaration vote)**

Clause 116 amends section 346A to ensure the reference 'Region' is included on the reply paid envelope for a declaration vote for certain electors, to include the indigenous regional council areas.

**Clause 117 Amendment of s 347 (Distribution of
ballot papers to other electors who
may or must cast declaration vote)**

Clause 117 amends section 347 to ensure the reference ‘Region’ is included on the reply paid envelope for a declaration vote for other electors, to include the indigenous regional council areas.

**Clause 118 Amendment of s 349 (Distribution of
ballot papers to electors for postal
ballot election)**

Clause 118 amends section 349 to ensure the reference ‘Region’ is included on the reply paid envelope for a postal vote, to include the indigenous regional council areas.

Clause 119 Amendment of s 444 (Other meetings)

Clause 119 amends section 444 to add the word ‘region’ to include the indigenous regional councils under the requirement to meet at least once in each month.

**Clause 120 Amendment of s 450 (Notice of
meetings)**

Clause 120 amends notice of meetings (i.e. four days instead of two days as for other local governments under the LGA). This recognises the remoteness of the Torres Strait and Northern Peninsula Area regions and accommodates any difficulty with transportation in the region.

**Clause 121 Omission of s 465 (Public notice of
resolution authorising remuneration
etc.)**

Clause 121 omits section 465 of the LGA, which would otherwise require councils to comply with notice requirements before resolving to adopt the remuneration determined by the Remuneration Tribunal.

As the schedule of remuneration determined by the Tribunal is binding on local governments, the public notification and submission requirements in section 465 are not required.

**Clause 122 Amendment of s 472 (Delegation by
local government)**

Clause 122 inserts a qualifying provision into section 472 that states an indigenous regional council cannot delegate its powers to its community forum. This provision supports and protects the forum's advisory role as distinct from the council's decision-making role.

Clause 123 Insertion of new s 493A

Clause 123 inserts a new section 493A (Non-application of part to indigenous regional councils) to clarify the LGA part regarding enterprises of local governments does not apply to indigenous regional councils.

Clause 124 Insertion of new ch 6, pt 6

Loaning money to individuals is not a valid local government function and could facilitate the misuse of community funds. To ensure council accountability and transparency, clause 124 inserts a new chapter 6, part 6 (Miscellaneous) to expressly provide any local government may not loan, give a guarantee or provide security to any individual.

**Clause 125 Omission of s 1193C (Application to
Torres Strait Islander local
governments)**

Clause 125 omits section 1193C. The LGA is to apply in full to TSIRC and NPARC except where provided for in a specific part.

Clause 126 Insertion of new ch 19, pt 14

Clause 126 inserts a new chapter 19, part 14 (Transitional provisions for *Local Government and Other Legislation (indigenous regional councils) Amendment Act 2007*).

The new part provides definitions for certain words used within the part and separates the transitional provisions for TSIRC and NPARC. The formation of TSIRC from fifteen Torres Strait Island councils under the Torres Strait Act requires different transitional provisions to the formation of NPARC from the three Aboriginal community governments under the Community Government Act and two Torres Strait councils under the Torres Strait Act.

TSIRC transitional provisions under the inserted part:

Loans to individuals:

The current function of Island councils which will comprise TSIRC of providing interest free loans to members of the community will be discontinued. Successive reports of the Auditor-General have highlighted that the repayment of loans continues to be an issue. All loans existing on changeover day become payable to TSIRC.

Financial matters:

In recognition of the issues involved with changing to the new financial arrangements under the LGA, the Torres Strait Island councils, upon becoming TSIRC, have until 1 July 2009 to fully transition to the new financial arrangements.

Up until that time, only a regulation may provide the extent to which TSIRC must comply with the financial operation and accountability provisions under the LGA. The regulation can utilise elements of the

repealed financial provisions of the Torres Strait Act to assist in the transition.

Change of trustee for lands subject to deeds of grant in trust:

On the day TSIRC is established, all land the subject of a deed of grant held by the abolished Torres Strait Island councils will be held in trust by TSIRC despite any provision of the *Land Act 1994*. The transfer does not affect any interest held in the land.

Local laws and subordinate local laws:

Any local or subordinate law of a Torres Strait Island council that will become part of TSIRC upon changeover day becomes a local law of TSIRC applicable to the relevant division (previously Island council) for which it was made.

Rates and charges:

Any rate or charge levied by a Torres Strait Island council that will become part of TSIRC upon changeover day, becomes a rate or charge payable to TSIRC after the changeover day.

Any exemption given from a rate or charge by a Torres Strait Island council that will become part of TSIRC upon changeover day continues in force after the changeover day.

NPARC provisions under the inserted part:

Loans to individuals:

The current function of the two Torres Strait councils and the three community governments which will comprise NPARC of providing interest free loans to members of the community will be discontinued. Successive reports of the Auditor-General have highlighted that the repayment of loans continues to be an issue. All loans existing on the changeover day become payable to NPARC.

Transitional arrangements for financial matters:

In recognition of the issues involved with changing to the new financial arrangements under the LGA, the Torres Strait councils and community governments, upon becoming NPARC, have until 1 July 2009 to fully transition to the new financial arrangements.

Up until that time only a regulation may provide the extent to which NPARC must comply with the financial operation and accountability provisions under the LGA. There is provision to utilise elements of the

repealed financial provisions of the Torres Strait Act and the financial provisions of the Community Government Act (as it applied to the three community governments before they became part of NPARC) to assist in the transition.

Change of trustee for lands subject to deeds of grant in trust:

On the day NPARC is established, all land the subject of a deed of grant held by the two Torres Strait councils and three community governments will be held in trust by NPARC despite any provision of the *Land Act 1994*. The transfer does not affect any interest held in the land.

Local laws and subordinate local laws:

Any local or subordinate law of a Torres Strait Island or Aboriginal council that will become part of TSIRC upon changeover day becomes a local law of NPARC applicable to the relevant division (previously Island or Aboriginal council) for which it was made.

Rates and charges:

Any rate or charge levied by a Torres Strait Island council or charge levied by an Aboriginal council that will become part of NPARC upon changeover day, becomes a rate or charge payable to NPARC after the changeover day.

Any exemption given from a rate or charge by a Torres Strait Island or charge by an Aboriginal council that will become part of NPARC upon changeover day continues in force after the changeover day.

Complaint process:

The Bill provides that a regulation may state when an indigenous regional councils must adopt a general complaints process.

Remuneration schedule:

The new part also provides that, for 2008, the remuneration schedule takes effect on 15 March 2008 (the day of the next local government elections) for all local governments, including those unaffected by reform.

Without this amendment, the Remuneration Tribunal would need to include in the remuneration schedule for 2008, provision for all merging councils as well as the new and adjusted councils.

Consequential transitional:

A provision is inserted for the repeal of chapter 2A (Townsville-Thuringowa water supply joint board) under clause 94 of this Bill. The

transitional provision provides a head of power to transfer all matters coming within the jurisdiction of the Townsville-Thuringowa water supply joint board to the Townsville City Council.

A provision is inserted transferring liquor licences to ensure that existing liquor licences transfer to the relevant local governments on changeover day. The provision ensures the licence is subject to the same conditions as before the changeover day. To ensure all liquor licences have a holder and the holder is aware of their obligations, extra provision is made to allow a regulation to specifically state which local government becomes the holder of the licence if doubt arises. A nominee for a liquor licence remains the nominee even when the licence is transferred to the new local government until it is changed under the normal processes.

Clause 127 Amendment of sch 1A (Local government reform implementation)

Clause 127 amends schedule 1A to reflect the local government areas that have changed from divided to undivided local governments and to update the references to the new maps showing this. This amendment is made as a result of further community consultation. The amendment also updates a map reference for *transferring area C*. This amendment also includes a boundary change related to reviewable local government matters for Ipswich and Scenic Rim local government areas.

Clause 128 Amendment of sch 2 (Dictionary)

Clause 128 inserts definitions for particular words used as a consequence of this Bill and its amendments. It also omits the definition *Torres Strait Islander local government*, as the term *indigenous regional council* is now used under the new Torres Strait governance structure.

Part 12 **Amendment of Local
Government (Community
Government Areas) Act 2004**

Clause 129 **Act amended in pt 12**

Clause 129 provides that this part amends the *Local Government (Community Government Areas) Act 2004*.

Clause 130 **Omission of s 5 (Notes in text)**

Clause 130 provides for section 5 to be omitted. The *Acts Interpretation Act 1954* section 14(4) provides the basis for the use of notes in all legislation and makes section 5 redundant.

Clause 131 **Amendment of pt 2 hdg (New local
government areas and local
governments)**

Clause 131 amends the heading to part 2 to reflect the omission of division 1 as explained below.

Clause 132 **Omission of pt 2, div 1**

Part 2, division 1 (Declaration of new local government areas and establishment of new local governments) provides for what was declared to be new local government areas at that time. Due to the local government reform and the announcement of different local government areas, these provisions are no longer relevant so are omitted under clause 132.

**Clause 133 Amendment of s 22 (Appointment of
financial controller)**

For administrative convenience and expediency, clause 133 changes the requirement for the Governor in Council to appoint a financial controller by gazette notice instead of by regulation.

**Clause 134 Omission of sch 2 (Declaration of new
local government areas)**

Due to the local government reform and the announcement of different local government areas, schedule 2 is no longer relevant so will be omitted under clause 134.

Clause 135 Amendment of sch 4 (Dictionary)

Clause 135 amends the definition of *community government area*. As part of NPARC, these councils will become divisions of an indigenous regional council under the LGA.

**Part 13 Amendment of Penalties and
Sentences Act 1992**

Clause 136 Act amended in pt 13

Clause 136 provides that this part amends the *Penalties and Sentences Act 1992*.

**Clause 137 Amendment of s 6 (Application to
children and certain courts)**

Clause 137 omits section 6(1). This amendment is consequential to other amendments in the Bill which repeal the Torres Strait Act.

**Clause 138 Amendment of s 9 (Sentencing
guidelines)**

Clause 138 amends section 9, updating references to the renamed Aboriginal and Torres Strait Act in the definitions *community justice group* and *offender's community*.

This clause also relocates the amended definitions to section 4 of the Act, which contains other definitions for the Act.

Clause 139 Insertion of new ss 195B – 195D

Clause 139 inserts new sections 195B, 195C and 195D. These new sections ensure that representatives of community justice groups can access information relevant to making submissions to the court in sentencing the offender, and members of the community justice group are subject to appropriate obligations and protections in performing this role under the Act.

New section 195B allows the court to direct, whether or not upon application, that a representative of a community justice group in an Aboriginal or Torres Strait Islander offender's community may inspect, or obtain a copy of, a court file or a document in a court file that may be relevant to making a submission about the offender under section 9(2)(o) of the Act.

New section 195C ensures that members of a community justice group protect the confidentiality of information gained through performing a function under the Act. Breaches of the confidentiality requirements will constitute an offence for which the maximum penalty is 100 penalty units or 2 years imprisonment. A member of a community justice group will be authorised under this new section to record, use or disclose information as

part of making submissions to the court under section 9(2)(o) or which is otherwise permitted by a law or to disclose information to another member of the community justice group.

New section 195D provides protection to a representative of a community justice group in a child's community who makes a submission, personally or otherwise, to a court under the Act and members of the community justice group who are involved in making the submission, from civil liability for any act done, or omission made, honestly and without negligence in relation to the making of the submission.

Part 14 Amendment of Valuation of Land Act 1944

Clause 140 Act amended in pt 14

Clause 140 provides that this part amends the *Valuation of Land Act 1944*.

Clause 141 Amendment of s 2 (Definitions)

Clause 141 provides for the definitions of *NPARC* and *TSIRC* to be inserted and the definition of *area* to be updated to include reference to these new indigenous regional councils.

Clause 142 Insertion of new pt 8, div 1A

Clause 142 provides for part 8, division 1A to be inserted (Special arrangements for implementation of local government reform).

The Department of Natural Resources and Water (NRW) does not provide annual valuations for every local government area in the State each year. This means that local governments may have different levels of value. Many of the new local government areas will be made up of pre-reform local government areas that currently have different levels of value.

NRW is committed to ensuring all new local governments have consistent levels of value within their areas by 31 August 2009.

With this in mind, NRW has identified those areas and prioritised them to be included in the next two annual valuation programs. This will provide consistent levels of value for the new local governments—assisting with their transition processes.

To achieve this NRW will continue to operate on pre-reform local government boundaries until after the annual valuations become effective. This also allows for the significant system changes required to reconfigure the valuations database, to be completed.

NRW will provide valuation roll information to the new local governments but will not complete the amalgamation process until after the new area's annual valuation becomes effective.

New section 75K provides definitions specific to the local government reform process and, therefore, to the provisions contained in this division.

New section 75L provides continuity of rating for new and adjusted local governments by authorising the continued use of existing valuations for land within their areas. These valuations will continue until they are replaced by another valuation or altered by objection or appeal.

New section 75M provides for NRW to continue to operate on the pre-local government reform areas. As mentioned previously, this allows NRW to prioritise local government areas that have different levels of value and include them in annual valuations effective by 30 June 2009.

This allows NRW to complete annual valuations for those areas where the levels of valuation are different.

New section 75N ensures that even though, administratively, NRW will continue to operate on pre-reform areas, valuation roll information will be provided to the appropriate new area.

Part 15 Amendment of Water Act 2000

Clause 143 Act amended in pt 15

Clause 143 provides that this part amends the *Water Act 2000*.

On the changeover day, a new or an adjusted local government which is a successor of any existing local government, or any other entity registered as a service provider under the *Water Act 2000*, is taken to be a registered service provider for the infrastructure for supplying water or sewerage services in the same way as the existing local government or other succeeded entity.

**Clause 144 Amendment of s 25A (Meaning of
water supply emergency)**

Clause 144 amends section 25A to update reference to a name of a council as a consequence of local government reform.

**Clause 145 Amendment of s 341 (What is the *SEQ
region*)**

Clause 145 amends section 341 to update references to the local governments which constitute the South-East Queensland region due to local government reform.

**Clause 146 Amendment of s 599 (Composition of
board for Gladstone Area Water
Board)**

Clause 146 amends section 599 to update the reference to Gladstone Regional Council, formed by the amalgamation of Gladstone City Council, Calliope Shire Council and Miriam Vale Shire Council. The number of persons nominated for the water board by the new Gladstone Regional Council Water Board maintains the same level of representation for the former areas of Gladstone City and Calliope Shire Councils.

**Clause 147 Amendment of s 1037A (Other
continuing authorities)**

Clause 147 amends section 1037A to update a reference to a name of a council as a consequence of local government reform.

**Clause 148 Amendment of s 1041 (Completed
water allocation and management
plans)**

Clause 148 amends section 1041 to update reference to a name of a council as a consequence of local government reform.

Clause 149 Insertion of new ch 9, pt 5, div 10

Clause 149 inserts transitional provisions for the *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Bill 2007* as a result of the Reform Act and the new local government structure.

Inserted section 1156 sets out definitions used within the division.

Inserted section 1157 provides that if a local government was a service provider for supplying water or sewerage services to a particular area before the changeover day, and that area becomes part of a new local government, on and after the changeover day the new local government is taken to be the service provider to the same extent as is practical.

Inserted section 1158 sets a time limit of one year after the changeover day within which the local government for new or adjusted local government areas must supply the required documents to the regulator.

Inserted section 1159 provides that the regulator must amend its register to reflect any changes that occurred as a result of the Reform Act and that the new local government must give the regulator any information the regulator requires to comply with this section.

Inserted section 1160 provides for the transfer of service areas and service providers from existing local governments to new local governments from the changeover day.

Part 16 Repeals

Clause 150 Repeal of Community Services (Torres Strait) Act 1984

Clause 150 provides that the *Community Services (Torres Strait) Act 1984* No. 52 is repealed. The Torres Strait Island councils that were provided for under that Act now come under the LGA as divisions of the new indigenous regional councils – TSIRC or NPARC. The remaining provisions regarding policing, community justice groups, access to land and alcohol management are moved to be under the renamed Aboriginal and Torres Strait Act.

Clause 151 Repeal of Nambour Library Act 1973

Clause 151 provides that the *Nambour Library Act 1973* No. 27 is repealed. The Act provided for the maintenance of a public library service by the Council of the Shire of Maroochy and for the ratification of certain dealings with land held by the council for that purpose. The shire of Maroochy has been subsumed within the new Sunshine Coast Regional Shire. However, because the Act's purposes have been achieved, the Act can be repealed rather than amended.

Part 17 Consequential and minor amendments

Clause 152 Acts amended

Clause 152 provides that the schedule amends the Acts mentioned in it.

Schedule - Consequential and minor amendments -

The schedule includes 50 minor and consequential amendments to -

- remove references to *Torres Strait Island government, Island Councils* and *Island Coordinating Council* in certain Acts;
 - replace definitions *local government area* as TSIRC and NPARC are to be established under the LGA as with other local governments;
 - insert definitions for *indigenous regional council* for TSIRC and NPARC established under the Reform Act;
 - update references across the Statute Book to the renamed Aboriginal and Torres Strait Act;
 - provide that the *Judicial Review Act 1991* does not affect a decision made by the commissioner regarding the division boundaries for new, adjusted or continued local government areas;
 - clarify community police officers powers and roles under the *Police Powers and Responsibilities Act 2000*;
 - update references and add definition for ‘Aboriginal or Island police officers’ to ‘community police officers’ as amended under this Bill;
 - add a transitional provision in the *Prostitution Act 1999* to ensure that any development applications made by smaller local governments that have been refused, or should have been refused, continue to be refused after the implementation of the reform process until the new local government or Minister decides the application no longer needs to be refused;
 - conform with current drafting practice; and
 - omit redundant provisions.

The schedule also repeals sections 4, 5 and 6, and the schedule of the *School of Arts (Winding Up and Transfer) Act 1960*. The sections referenced the Shire of Jondaryan, the Shire of Clifton and the Shire of Esk, which have been subsumed within the new Toowoomba Regional Council and Somerset Regional Shire respectively. However, it is not necessary to reflect these changes in the relevant sections because their purposes have been achieved and therefore can be repealed.