

House of Assembly—No 187

As laid on the table and read a first time, 13 October 2021

South Australia

Aboriginal Representative Body Bill 2021

A BILL FOR

An Act to give Aboriginal people a voice that will be heard by the Parliament of South Australia, the Cabinet, State authorities and other persons and bodies, to establish the Commissioner for Aboriginal Engagement, to establish the Aboriginal Representative Body, to repeal the *Aboriginal Lands Parliamentary Standing Committee Act 2003*, to make a related amendment to the *Parliamentary Committees Act 1991*, and for other purposes.

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Preamble

- 1 Aboriginal tribes were the first sovereign nations of what is now the State of South Australia, and possessed it under their own laws and customs.
- 2 The Parliament of the United Kingdom in 1834 passed a Bill called *An Act to empower His Majesty to erect South Australia into a British Province or Provinces and to provide for the Colonisation and Government thereof* and by doing so established the Province of South Australia.
- 3 The sovereignty of Aboriginal tribes is a spiritual notion: the ancestral tie between the land, or "mother nature", and Aboriginal people. This link is the basis of the ownership of the soil and Aboriginal sovereignty. That sovereignty has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.
- 4 Aboriginal tribes in South Australia were progressively dispossessed of their lands. That dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal tribes concerning the use of their lands.
- 5 In addition to being dispossessed of their lands, Aboriginal people in South Australia have experienced many other injustices: their spiritual, social, cultural and economic practices have been threatened or outlawed, their children have been stolen and their voice has been silenced or ignored. As a consequence, Aboriginal people have become, as a group, the most disadvantaged in South Australian society.
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- 6 Aboriginal leaders gathered at the 2017 National Constitutional Convention, coming from all points of the southern sky, and made the Uluru Statement from the Heart. It captures the aspirations of Aboriginal people for a fair and truthful relationship with the people of Australia and a better future for their children based on justice and self-determination.
- 7 Aboriginal people have long called for their voice to be heard in Parliamentary and Government decision-making processes. Too often, Aboriginal representation, advocacy and influence is absent and decisions are made for Aboriginal people by others.
- 8 The Parliament of South Australia wants to ensure that the voice of Aboriginal people is heard by the Parliament and the Government of South Australia. When their voice is heard, Aboriginal self-determination becomes a step closer.
- 9 This Act sees South Australia accept the invitation of Aboriginal people to join them and walk together towards a better future.
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Aboriginal Representative Body Act 2021*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

10 *Aboriginal Affairs and Representation Committee* means the standing committee of that name under the *Parliamentary Committees Act 1991*;

Aboriginal elder—see section 5;

Aboriginal person—see section 4;

Aboriginal Representative Body means the Aboriginal Representative Body established under Part 4;

15 *Chief Executives Committee* means the Chief Executives Committee established under section 49;

Commissioner for Aboriginal Engagement or *Commissioner* means the person for the time being holding or acting in the office of the Commissioner for Aboriginal Engagement under Part 3;

20 *elected member*, of the Aboriginal Representative Body, means a person from time to time elected as a member of the Aboriginal Representative Body in accordance with this Act;

Ministerial Committee means the Ministerial Committee established under section 45;

State authority means—

- (a) an administrative unit of the Public Service; or
- (b) an agency or instrumentality of the Crown; or
- (c) a person who holds an office established by an Act; or
- 5 (d) South Australia Police; or
- (e) a local council constituted under the *Local Government Act 1999*; or
- (f) a public sector agency; or
- (g) any incorporated or unincorporated body—
 - (i) established for a public purpose by an Act; or
 - 10 (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
 - (iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown
 - 15 or a local council (whether or not established by or under an Act or an enactment); or
- (h) any other person or body declared by the regulations to be a State authority,

but does not include a person or body declared by the regulations to be excluded from the ambit of this definition;

20 *ward*, in respect of an election under this Act, means a ward constituted under Schedule 1 clause 1.

4—Aboriginal persons

- (1) For the purposes of this Act, a person will be taken to be an Aboriginal person or be
25 Aboriginal if the person is of Aboriginal descent (and a reference to an Aboriginal person will be taken to include a reference to a Torres Strait Islander).
- (2) For the purposes of this Act, a person will be taken to be of Aboriginal descent if the person is biologically descended from the persons who inhabited Australia before European settlement.

5—Aboriginal elders

30 For the purposes of this Act, a reference to an *Aboriginal elder* will be taken to be a reference to—

- (a) an Aboriginal person who is 60 years of age or older; or
- (b) an Aboriginal person who, in accordance with the traditions of a particular
35 Aboriginal community, is recognised as an Aboriginal elder by that community.

6—Interaction with other Acts and laws

- (1) Nothing in this Act limits the *Public Finance and Audit Act 1987* (and, for the purposes of that Act, the Aboriginal Representative Body will be taken to be a public authority within the meaning of that Act).

- (2) The *Equal Opportunity Act 1984* will be taken not to apply to a decision under this Act to appoint or employ, or otherwise give preference to, an Aboriginal person.

Part 2—Purposes and principles of Act

7—Purposes of Act

- 5 (1) The main purpose of this Act is to provide Aboriginal persons with a voice that will be heard by the Parliament of South Australia, the Cabinet, State authorities and other persons and bodies.
- (2) This Act also has the following additional purposes:
- 10 (a) to provide Aboriginal persons with an ongoing right to a seat at the table in respect of decision making by the State where the decision affects Aboriginal persons;
- (b) to improve the social, economic and cultural lives of all Aboriginal persons by providing formal means for the advocacy and direct representation of their interests to the Parliament, Cabinet and government;
- 15 (c) to encourage Aboriginal cultural values to be included at the forefront of the way in which the business of Parliament and government is conducted in South Australia;
- (d) to support Aboriginal persons to realise their aspirations to determine their own destiny.

8—Principles to be observed in operation of Act

Subject to this Act, the following principles apply in relation to the operation and administration of this Act:

- (a) each person to whom a function or power is delegated under this Act must be an Aboriginal person;
- 25 (b) each person appointed by the Aboriginal Representative Body to a committee, or chosen as part of a selection panel convened by the Aboriginal Representative Body, must be an Aboriginal person;
- (c) the Aboriginal Representative Body and other bodies established under this Act must be able to determine their own procedures so that those procedures are culturally appropriate;
- 30 (d) membership of the Aboriginal Representative Body and other bodies established under this Act must be balanced and as inclusive of diversity as is reasonably practicable (including, without limiting this principle, in relation to matters of culture, regionality, gender, age and disability);
- 35 (e) the Aboriginal Representative Body and other bodies established under this Act must strive to provide cultural legitimacy and representation through direct connections with local and regional Aboriginal communities throughout South Australia;
- 40 (f) each person and body engaged in the operation and administration of this Act must work together in good faith and with mutual respect, acknowledging any mutual responsibilities;

- (g) the Aboriginal Representative Body must act in a timely, high-quality, independent and evidence-based manner.

9—Aboriginal Representative Body to represent views of all Aboriginal persons in South Australia

- 5 (1) It is the intention of the Parliament of South Australia that the Aboriginal Representative Body will, as far as is reasonably practicable, in performing functions under this Act, seek to ascertain and represent the views of all Aboriginal persons in South Australia.
- 10 (2) To the extent that the performance of a function or exercise of a power by the Aboriginal Representative Body affects a particular Aboriginal person, or a particular group of Aboriginal persons, the Aboriginal Representative Body must take reasonable steps to consult with, and express the views of, that person or group.
- (3) However, a failure to comply with this section does not, of itself, invalidate a decision of the Aboriginal Representative Body.

10—Aboriginal Representative Body and committees to work together to ensure Aboriginal voice is heard

- 15 (1) It is the intention of the Parliament of South Australia that the Aboriginal Representative Body will work cooperatively with the Aboriginal Affairs and Representation Committee, as well as the Ministerial Committee and the Chief Executives Committee established under this Act, to ensure that the views of Aboriginal persons are heard and considered by the Parliament and government of South Australia and other relevant persons and bodies.
- 20 (2) However, a failure to comply with this section does not, of itself, invalidate a decision of the Aboriginal Representative Body or a committee.

Part 3—Commissioner for Aboriginal Engagement

11—Commissioner for Aboriginal Engagement

There is to be a Commissioner for Aboriginal Engagement.

12—Appointment of Commissioner

- 30 (1) The Commissioner will be appointed by the Governor on conditions, and for a term (not exceeding 5 years), determined by the Governor and specified in the instrument of appointment.
- (2) The Commissioner is not a member of the Public Service.
- (3) A person appointed to be the Commissioner is, at the end of a term of appointment, eligible for reappointment but cannot hold office for terms (including any term as Acting Commissioner) that exceed 10 years in total.
- 35 (4) Despite a provision of the *Equal Opportunity Act 1984* or any other Act or law, a person appointed to be the Commissioner must be an Aboriginal person.
- (5) The appointment of the Commissioner may be terminated by the Governor on the ground that the Commissioner—
- 40 (a) has been guilty of misconduct; or

- (b) has been convicted of an offence punishable by imprisonment; or
- (c) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
- (d) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
- (e) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
- (f) is incompetent or has neglected the duties of the position.

(6) The appointment of the Commissioner is terminated if the Commissioner—

- (a) becomes a member, or a candidate for election as a member, of the Parliament of a State or the Commonwealth or a Legislative Assembly of a Territory of the Commonwealth; or
- (b) is sentenced to imprisonment for an offence.

(7) The Commissioner may resign by notice in writing to the Governor of not less than 3 months (or such shorter period as is accepted by the Governor).

13—Functions of Commissioner

The functions of the Commissioner are—

- (a) to contribute to the development of policy in respect of matters relevant to Aboriginal people, obtaining the views and aspirations of Aboriginal people in the State; and
- (b) to publicly advocate for engagement between the broader community and Aboriginal people; and
- (c) to investigate and advise on systemic barriers to Aboriginal people's access and full participation in government, non-government and other services; and
- (d) any other functions conferred on the Commissioner by or under this or any other Act.

14—Appointment of acting Commissioner

(1) The Governor may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which—

- (a) no person is for the time being appointed as the Commissioner; or
- (b) the Commissioner is absent from, or unable to discharge, official duties.

(2) Despite a provision of the *Equal Opportunity Act 1984* or any other Act or law, a person appointed to act as the Commissioner must be an Aboriginal person.

(3) The terms and conditions of appointment of the person appointed to act as the Commissioner will be determined by the Governor.

15—Interaction with Public Sector (Honesty and Accountability) Act

- (1) For the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, the Commissioner, and any person acting as the Commissioner, will be taken to be senior officials (within the meaning of that Act).

5 **Note—**

See Part 2 Division 3 of the *Public Sector (Honesty and Accountability) Act 1995* for the duties of senior officials.

- (2) For the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, the Commissioner, and any person acting as the Commissioner, will not be taken to have a direct or indirect interest in a matter by reason only of the fact that the Commissioner or acting Commissioner has an interest in a matter that is shared in common with Aboriginal persons generally, or in common with a substantial group of Aboriginal persons.

16—Delegation

- (1) The Commissioner may delegate a function or power under this Act (other than a prescribed function or power) to any person or body that is, in the Commissioner's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section—
- (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not derogate from the ability of the Commissioner to act in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

17—Staff and resources

The Minister must provide the Commissioner with the staff and other resources that the Commissioner reasonably needs for carrying out the Commissioner's functions under this Act.

18—Annual report

- (1) The Commissioner must, on or before 31 October in each year, report to the Minister on the performance of the Commissioner's functions during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.

35 **Part 4—Aboriginal Representative Body**

Division 1—Aboriginal Representative Body

19—Establishment of Aboriginal Representative Body

- (1) The Aboriginal Representative Body is established.

- (2) The Aboriginal Representative Body—
- (a) is a body corporate with perpetual succession and a common seal; and
 - (b) is capable of suing and being sued; and
 - (c) is, for the purpose of carrying out its functions, capable of—
 - (i) holding, acquiring, dealing with and disposing of real and personal property; and
 - (ii) acquiring or incurring any other rights or liabilities; and
 - (d) holds its property on behalf of the Crown.
- (3) If an apparently genuine document purports to bear the common seal of the Aboriginal Representative Body, it is to be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Aboriginal Representative Body has been duly affixed to that document.

20—Independence of Aboriginal Representative Body

- (1) The Aboriginal Representative Body is independent of direction or control by the Crown or any Minister or officer of the Crown.
- (2) The Aboriginal Representative Body is not an agency or instrumentality of the Crown (and is not, to avoid doubt, a public sector agency under the *Public Sector Act 2009*).

21—Composition of Aboriginal Representative Body

- (1) The Aboriginal Representative Body consists of 13 members, of whom—
- (a) 1 is to be the Commissioner for Aboriginal Engagement (ex officio); and
 - (b) 5 must be Aboriginal persons elected in accordance with this Act; and
 - (c) 7 must be Aboriginal persons appointed by the Governor, of whom—
 - (i) 1 is to be a member of the Executive Board of Anangu Pitjantjatjara Yankunytjatjara nominated by Anangu Pitjantjatjara Yankunytjatjara; and
 - (ii) 1 is to be a member of the Council of Maralinga Tjarutja nominated by Maralinga Tjarutja; and
 - (iii) the remainder must be Aboriginal persons nominated by the Minister on the recommendation of a selection panel convened by the Aboriginal Representative Body.
- (2) At least 1 of the members of the Aboriginal Representative Body (other than the presiding member) must, at the time of election or appointment, be under 25 years of age.
- (3) At least 1 of the members of the Aboriginal Representative Body (other than the presiding member) must, at the time of election or appointment, be an Aboriginal elder.
- (4) Before making a nomination for the purposes of subsection (1)(c)(iii), the Minister must call for expressions of interest in accordance with a scheme determined by the Minister in consultation with the Commissioner for Aboriginal Engagement.

- (5) In making a nomination for the purposes of subsection (1)(c)(iii), the Minister must have regard to the desirability of achieving a gender balance amongst members of the Aboriginal Representative Body.

22—Presiding member and deputy presiding member

- 5 (1) The Commissioner for Aboriginal Engagement is the presiding member of the Aboriginal Representative Body.
- (2) The Aboriginal Representative Body must elect 1 of its number to be the deputy presiding member of the Aboriginal Representative Body.

23—Remuneration, allowances and expenses

- 10 A member of the Aboriginal Representative Body is entitled to such remuneration, allowances and expenses as may be determined by the Minister.

24—Term of office

- (1) A member of the Aboriginal Representative Body elected under this Act holds office until the next election of members and is, subject to this Act, eligible for re-election.
- 15 (2) A member of the Aboriginal Representative Body appointed under section 21(1)(c) holds office for the period (not exceeding 3 years) specified in the instrument of appointment and is, subject to this Act, eligible for reappointment.
- (3) An elected or appointed member of the Aboriginal Representative Body cannot hold office for terms that exceed 7 years in total.

25—Vacancies

- 20 (1) The office of a member of the Aboriginal Representative Body becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not re-elected or reappointed; or
 - 25 (c) resigns by written notice to the Minister; or
 - (d) is convicted of—
 - (i) an indictable offence against the law of this State; or
 - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
 - 30 (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
 - (e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
 - 35 (f) is removed from office by the Governor under subsection (2).
- (2) The Governor may, at the written request of the Aboriginal Representative Body, remove a member from office—
- (a) for misconduct or conduct that may bring the Aboriginal Representative Body into disrepute; or

- (b) for breach of, or non-compliance with, a condition of appointment; or
- (c) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
- (d) if the member has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
- (e) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily.

(3) The Aboriginal Representative Body may only make a written request under subsection (2) in accordance with a resolution of the Aboriginal Representative Body passed by an absolute majority of members of the Aboriginal Representative Body.

(4) The following rules apply to the appointment of a person to fill a casual vacancy that occurs in the office of a member elected in accordance with this Act:

(a) if the vacancy occurs within 12 months after the member's election, and there was more than 1 candidate at the election for the ward from which the member was elected, the Aboriginal Representative Body must appoint the person who received the next highest number of votes at that election;

(b) if—

(i) there was only 1 candidate at that election; or

(ii) the person with the next highest number of votes is no longer suitable for appointment or is unavailable or unwilling to be appointed; or

(iii) the vacancy occurs later than 12 months after that election,

the Aboriginal Representative Body may appoint a suitable Aboriginal person from the ward from which the member was elected to fill the vacant office.

(5) A member appointed under subsection (4) holds office for the balance of the term of the member's predecessor.

(6) An act or proceeding of the Aboriginal Representative Body is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

26—Interaction with Public Sector (Honesty and Accountability) Act

(1) For the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, members of the Aboriginal Representative Body will be taken to be senior officials (within the meaning of that Act).

Note—

See Part 2 Division 3 of the *Public Sector (Honesty and Accountability) Act 1995* for the duties of senior officials.

(2) For the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, a member of the Aboriginal Representative Body will not be taken to have a direct or indirect interest in a matter by reason only of the fact that the member has an interest in a matter that is shared in common with Aboriginal persons generally, or in common with a substantial group of Aboriginal persons.

27—Functions and powers of Aboriginal Representative Body

- (1) The Aboriginal Representative Body has the following functions:
- (a) to ascertain the views of Aboriginal persons in relation to matters of interest to Aboriginal persons, and to present those views to the Parliament of South Australia, the South Australian government and other relevant persons and bodies;
 - (b) to engage with and provide advice to the Parliament of South Australia on matters that are of state-wide, regional or local significance to the social, spiritual and economic wellbeing of Aboriginal persons, or that have or are likely to have a significant or particular impact on Aboriginal persons;
 - (c) to engage with and provide advice to the South Australian government on government processes, policies and programs affecting Aboriginal persons and on future initiatives of particular relevance to Aboriginal persons;
 - (d) to represent the diversity of Aboriginal persons and their interests to the Parliament of South Australia, the South Australian government and other relevant persons and bodies;
 - (e) such other functions as may be assigned to the Aboriginal Representative Body by or under this Act, by resolution of either House of Parliament or by the Minister.
- (2) The Aboriginal Representative Body must, in carrying out its functions, endeavour to represent the views of all Aboriginal persons in the State.
- (3) Subject to this Act, the Aboriginal Representative Body has such powers as may be necessary or expedient for the performance of the Aboriginal Representative Body's functions.

28—Procedures of Aboriginal Representative Body

- (1) Subject to this Act, a quorum of the Aboriginal Representative Body consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (2) Without limiting subsection (1), a quorum of the Aboriginal Representative Body must include at least 3 of the elected members of the Aboriginal Representative Body.
- (3) The Aboriginal Representative Body must meet at least 6 times in each year.
- (4) The presiding member will preside at a meeting of the Aboriginal Representative Body and, in the absence of that person, the deputy presiding member will preside and, in the absence of both the presiding and deputy presiding members, a member chosen by the members present at the meeting will preside.
- (5) A question arising for decision at a meeting of the Aboriginal Representative Body will be decided by a majority of the votes cast by the members present at the meeting.
- (6) Each member present at a meeting of the Aboriginal Representative Body will be entitled to 1 vote on any question arising for decision at the meeting and, if the votes are equal, the person presiding will have a casting vote.

(7) A meeting of the Aboriginal Representative Body may be conducted remotely using 1 or both of the following means of communication:

- (a) audio visual;
- (b) audio,

5 and a member who participates in a meeting in accordance with this subsection is taken to be present at the meeting, and to form part of any quorum for the meeting, even if the member is not physically present at the same place as another member participating in the meeting.

10 (8) Subject to subsection (9), a member appointed under section 21(1)(c) who is under 25 years of age, or who is an Aboriginal elder, may, by written instrument, appoint 1 or more Aboriginal persons (whether or not they are members of the Aboriginal Representative Body) to act as the member's proxy at a meeting specified in the instrument of appointment.

15 (9) An Aboriginal person appointed to act as a proxy for a member at a specified meeting may only so act if the Aboriginal person—

- (a) is present at the specified meeting; and
- (b) exercises the proxy vote at the meeting in accordance with any instructions of the appointing member in the instrument of appointment.

20 (10) A member of the Aboriginal Representative Body is not entitled to additional remuneration for acting as a proxy (however a proxy who is not a member of the Aboriginal Representative Body is entitled to receive such remuneration, allowances and expenses as the appointing member would have received had they attended the meeting).

25 (11) To avoid doubt, a proxy vote that is exercised other than in accordance with this section is void and of no effect.

(12) The Aboriginal Representative Body must have accurate minutes kept of its meetings.

(13) Subject to this Act, the Aboriginal Representative Body may determine its own procedures.

29—Committees

30 (1) The Aboriginal Representative Body may establish committees—

- (a) to advise the Aboriginal Representative Body; or
- (b) to carry out functions on behalf of the Aboriginal Representative Body.

35 (2) The membership of a committee will be determined by the Aboriginal Representative Body and may, but need not, consist of, or include, members of the Aboriginal Representative Body.

(3) Each member of a committee must (unless the Aboriginal Representative Body determines otherwise in relation to a particular committee) be an Aboriginal person.

(4) The Aboriginal Representative Body will determine who will be the presiding member of a committee.

- (5) The procedures to be observed in relation to the conduct of the business of a committee will be—
- (a) as determined by the Aboriginal Representative Body; and
 - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

30—Delegation

- (1) The Aboriginal Representative Body may delegate a function or power under this Act to—
- (a) a member of the Aboriginal Representative Body; or
 - (b) a committee of the Aboriginal Representative Body.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the Aboriginal Representative Body to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

31—Resources

The Minister must provide the Aboriginal Representative Body with the resources that the Aboriginal Representative Body reasonably needs for carrying out its functions under this Act.

32—Use of staff etc of Public Service

The Aboriginal Representative Body may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

33—Accounts and audit

- (1) The Aboriginal Representative Body must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Aboriginal Representative Body.

Division 2—Elections of members of Aboriginal Representative Body

34—First elections of members of Aboriginal Representative Body to be held by prescribed date

The first election of members of the Aboriginal Representative Body under this Act must occur on or before—

- (a) if a day is prescribed by the regulations for the purposes of this paragraph—that day; or
- (b) if no such day is prescribed—31 December 2022.

35—Conduct of elections of members of Aboriginal Representative Body

- (1) Subject to this Act, an election of members of the Aboriginal Representative Body must be conducted in accordance with Schedule 2.
- (2) An election of members of the Aboriginal Representative Body—
 - (a) must (unless the Minister determines otherwise) be conducted during the period commencing on 1 May and ending on 31 August in the third year following the previous election; and
 - (b) must be conducted by the Electoral Commissioner—
 - (i) in accordance with the rules set out in Schedule 2; and
 - (ii) to the extent that the rules set out in Schedule 2 fail to deal with a matter that, in the opinion of the Electoral Commissioner, is necessary for the proper conduct of the election—in accordance with rules determined by the Electoral Commissioner in relation to that matter.
- (3) The validity of any election or return may only be disputed in accordance with Schedule 2.

Division 3—Secretariat

36—Secretariat

There will be a secretariat for the Aboriginal Representative Body consisting of such Public Service employees as may be assigned or appointed to the secretariat.

Division 4—Annual report and other reporting

37—Annual report

- (1) The Aboriginal Representative Body must, on or before 31 October in each year, prepare a report on the operations of the Aboriginal Representative Body during the preceding financial year.
- (2) The Aboriginal Representative Body must deliver a copy of the annual report to the President of the Legislative Council, the Speaker of the House of Assembly and the Minister.

- (3) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving an annual report, lay it before their respective Houses.

38—Special reporting obligations

- (1) The Aboriginal Representative Body must, at the written request of the Minister, provide a report to the Minister on any matter relevant to its functions specified by the Minister in the written request.
- (2) A report under subsection (1) must be provided in a manner and form, and within the period, specified by the Minister.

Part 5—Interaction with Parliament of South Australia

39—Purpose and application of Part

- (1) The purpose of this Part is to provide a mechanism for the Aboriginal Representative Body to make its views, submissions and recommendations heard by the Parliament.
- (2) Nothing in this Part affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.
- (3) Nothing in this Part creates legally enforceable rights or entitlements on the part of the Aboriginal Representative Body or any other person or body.

40—Aboriginal Representative Body and Aboriginal Affairs and Representation Committee to meet regularly

- (1) The Aboriginal Representative Body and the Aboriginal Affairs and Representation Committee must meet at least 4 times in each calendar year.
- (2) Despite subsection (1), the Aboriginal Representative Body and the Aboriginal Affairs and Representation Committee may meet less than 4 times in a calendar year if—
- (a) the presiding members of the Aboriginal Representative Body and the Aboriginal Affairs and Representation Committee agree that it is not reasonably practicable for a particular meeting to take place; and
 - (b) it is not reasonably practicable to reschedule the meeting to take place in the relevant year.
- (3) The procedures for meetings between the Aboriginal Representative Body and the Aboriginal Affairs and Representation Committee will be as determined by the Aboriginal Representative Body and presiding member of the Aboriginal Affairs and Representation Committee.

41—Aboriginal Representative Body may refer matter to Aboriginal Affairs and Representation Committee

- (1) Without limiting section 16 of the *Parliamentary Committees Act 1991*, the Aboriginal Representative Body may, by notice in the Gazette, refer a matter that is relevant to the functions of the Aboriginal Affairs and Representation Committee to that Committee.

- (2) To avoid doubt, section 17 of the *Parliamentary Committees Act 1991* applies in relation to a matter referred to the Aboriginal Affairs and Representation Committee under this section.

Note—

5 Section 17 of that Act requires the Aboriginal Affairs and Representation Committee inquire into and report to Parliament on matters referred to the Committee.

42—Aboriginal Representative Body may present report to Parliament through Aboriginal Affairs and Representation Committee

- 10 (1) The Aboriginal Representative Body may, in accordance with any requirements in the regulations, prepare and provide to the Aboriginal Affairs and Representation Committee for presentation to Parliament reports on any matter relating to the functions of the Aboriginal Representative Body under this or any other Act.
- 15 (2) The presiding member of the Aboriginal Affairs and Representation Committee must, within 6 sitting days after the Committee receives a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.

43—Aboriginal Affairs and Representation Committee to report annually to Parliament

- 20 (1) Without limiting a provision of the *Parliamentary Committees Act 1991*, the Aboriginal Affairs and Representation Committee must, on or before 31 December in each year, report on the operation of this Act to its appointing Houses during the preceding 12 months.
- 25 (2) Without limiting the matters that may be the subject of a report under this section, the report must include—
- (a) information setting out the extent to which, in the opinion of the Committee, the purposes of this Act have been achieved or furthered during the relevant period; and
- (b) information setting out any initiatives affecting Aboriginal persons implemented during the relevant period that should, in the opinion of the Committee, be promoted or celebrated; and
- 30 (c) any recommendations the Committee wishes to make in relation to how the Act could be improved to achieve better outcomes for Aboriginal persons; and
- (d) any other information required by the regulations.

Part 6—Interaction with South Australian Government

35 **Division 1—Preliminary**

44—Purpose and application of Part

- (1) The purpose of this Part is to provide mechanisms for the Aboriginal Representative Body to make its views, submissions and recommendations heard by Cabinet, Ministers and State authorities.

- (2) Nothing in this Part creates legally enforceable rights or entitlements on the part of the Aboriginal Representative Body or any other person or body.

Division 2—Meeting with Cabinet and Ministerial Committee etc

45—Premier to establish Ministerial Committee

- 5 (1) The Premier must establish a committee of Ministers (the *Ministerial Committee*) for the purposes of this Act.
- (2) Before establishing the Ministerial Committee, the Premier must consult with the Aboriginal Representative Body with a view to determining which Ministers should constitute the committee.
- 10 (3) Without limiting the Ministers who may constitute the Ministerial Committee, the committee must include the Premier, the Attorney-General and the Minister.

46—Both Cabinet and Ministerial Committee to meet regularly with Aboriginal Representative Body

- 15 (1) The Aboriginal Representative Body and the Cabinet must, in accordance with any procedures determined by the Aboriginal Representative Body and the Premier, meet at least twice in each calendar year.
- (2) Despite subsection (1), the Aboriginal Representative Body and the Cabinet may meet less than twice in a calendar year if—
- 20 (a) the presiding member of the Aboriginal Representative Body and the Premier agree that it is not reasonably practicable for a particular meeting to take place; and
- (b) it is not reasonably practicable to reschedule the meeting to take place in the relevant year.
- 25 (3) The procedures for meetings between the Aboriginal Representative Body and the Cabinet will be as determined by the Aboriginal Representative Body and the Premier.
- (4) The Aboriginal Representative Body and the Ministerial Committee must, in accordance with any procedures determined by the Aboriginal Representative Body and the presiding member of the Ministerial Committee, meet at least 4 times in each calendar year.
- 30 (5) Despite subsection (4), the Aboriginal Representative Body and the Ministerial Committee may meet less than 4 times in a calendar year if—
- (a) the presiding members of the Aboriginal Representative Body and the Ministerial Committee agree that it is not reasonably practicable for a particular meeting to take place; and
- 35 (b) it is not reasonably practicable to reschedule the meeting to take place in the relevant year.
- (6) The procedures for meetings between the Aboriginal Representative Body and the Ministerial Committee will be as determined by the Aboriginal Representative Body and presiding member of the Ministerial Committee.

47—Aboriginal Representative Body may submit report to Cabinet through Ministerial Committee

- 5
- (1) The Aboriginal Representative Body may, in accordance with any requirements in the regulations, prepare and provide to the Ministerial Committee for submission to Cabinet reports on any matter relating to the functions of the Aboriginal Representative Body under this or any other Act.
 - (2) The presiding member of the Ministerial Committee must, within 3 months after the Ministerial Committee receives a report under subsection (1), cause a copy of the report to be submitted to Cabinet.

10 **48—Protection of communications etc with Ministerial Committee**

For the purposes of the *Freedom of Information Act 1991* and any other Act or law, information and documents prepared for, or provided to, the Ministerial Committee by the Aboriginal Representative Body will be taken to have been specifically prepared for submission to Cabinet.

15 **Division 3—Meeting with State authorities**

49—Premier to establish Chief Executives Committee

- 20
- (1) The Premier must establish a committee (the *Chief Executives Committee*) for the purposes of this Act.
 - (2) The Chief Executives Committee is to consist of the Chief Executive of each administrative unit of the Public Service.

50—Aboriginal Representative Body and Chief Executives Committee to meet regularly

- 25
- (1) The Aboriginal Representative Body and the Chief Executives Committee must, in accordance with any procedures determined by the Aboriginal Representative Body and the presiding member of the Chief Executives Committee, meet at least 4 times in each calendar year.
 - (2) Despite subsection (1), the Aboriginal Representative Body and the Chief Executives Committee may meet less than 4 times in a calendar year if—
 - 30 (a) the presiding members of the Aboriginal Representative Body and the Chief Executives Committee agree that it is not reasonably practicable for a particular meeting to take place; and
 - (b) it is not reasonably practicable to reschedule the meeting to take place in the relevant year.
 - (3) The procedures for meetings between the Aboriginal Representative Body and the
- 35

51—Aboriginal Representative Body may present report to State authority through Chief Executives Committee

- 5 (1) The Aboriginal Representative Body may, in accordance with any requirements in the regulations, prepare and provide to the Chief Executives Committee for presentation to the relevant State authority or State authorities reports on any matter relating to the functions of the Aboriginal Representative Body under this or any other Act.
- 10 (2) The presiding member of the Chief Executives Committee must, as soon as is reasonably practicable after the Chief Executives Committee receives a report under subsection (1), cause a copy of the report to be submitted to the relevant State authority or State authorities.

Part 7—Information gathering

52—Aboriginal Representative Body may require State authority to provide report

- 15 (1) The Aboriginal Representative Body may, by notice in writing, if the Aboriginal Representative Body is of the opinion that it is necessary or would otherwise assist the Aboriginal Representative Body in the performance of functions under this Act, require a State authority to prepare and provide a report to the Aboriginal Representative Body in relation to the matters, and in accordance with any requirements, specified in the notice.
- 20 (2) If a State authority has not complied with a requirement under subsection (1), the Aboriginal Representative Body may require the State authority to provide to the Aboriginal Representative Body within a specified period a report setting out the reasons for non-compliance.
- 25 (3) The Aboriginal Representative Body may, on receiving a report under subsection (2), submit a copy of the report to the Minister setting out the views of the Aboriginal Representative Body in respect of the State authority's non-compliance.
- (4) The Minister must, on receiving a report under subsection (3), prepare a report to Parliament setting out—
- 30 (a) the Minister's response to the Aboriginal Representative Body's report; and
- (b) any other information required by the regulations.
- (5) The Minister must, within 6 sitting days after completing a report under subsection (4), cause a copy of both the report and the Aboriginal Representative Body's report under subsection (3) to be laid before both Houses of Parliament.

Part 8—Miscellaneous

53—Obstruction etc

35 A person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, the Aboriginal Representative Body, a member of the Aboriginal Representative Body, a member of the secretariat or any other person in the performance or exercise of a function or

40 power under this Act.

Maximum penalty: \$10 000.

54—False or misleading statements

A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Act.

5 Maximum penalty: \$10 000.

55—Confidentiality

(1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

- 10 (a) as required or authorised by or under this Act or any other Act or law; or
- (b) with the consent of the person to whom the information relates; or
- (c) in connection with the administration or enforcement of this or any other Act; or
- (d) for the purposes of referring the matter to a law enforcement agency; or
- 15 (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

20 Maximum penalty: \$10 000.

(2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

(3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—

- 25 (a) the person to whom the information was disclosed; or
- (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

(4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

56—Victimisation

(1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.

35 (2) Causing detriment on the ground that a person—

- (a) has made a false allegation; or
- (b) has not acted in good faith,

does not constitute an act of victimisation.

- (3) An act of victimisation under this Act may be dealt with—
- (a) as a tort; or
 - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,
but, if the victim commences proceedings in a court seeking a remedy in tort, the
victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984*
and, conversely, if the victim lodges a complaint under that Act, the victim cannot
subsequently commence proceedings in a court seeking a remedy in tort.
- (4) If a complaint alleging an act of victimisation under this Act has been lodged with the
Commissioner for Equal Opportunity and the Commissioner is of the opinion that the
subject matter of the complaint has already been adequately dealt with by a competent
authority, the Commissioner may decline to act on the complaint or to proceed further
with action on the complaint.
- (5) In proceedings against a person seeking a remedy in tort for an act of victimisation
committed by an employee or agent of the person, it is a defence to prove that the
person exercised all reasonable diligence to ensure that the employee or agent would
not commit an act of victimisation.
- (6) A person who personally commits an act of victimisation under this Act is guilty of an
offence.
Maximum penalty: \$10 000.
- (7) Proceedings for an offence against subsection (6) may only be commenced by a police
officer or a person approved by either the Commissioner of Police or the Director of
Public Prosecutions.
- (8) In this section—
detriment includes—
- (a) injury, damage or loss; or
 - (b) intimidation or harassment; or
 - (c) discrimination, disadvantage or adverse treatment in relation to a person's
employment; or
 - (d) threats of reprisal.

57—Protections, privileges and immunities

- (1) No liability attaches to the Aboriginal Representative Body, a member of the
Aboriginal Representative Body or any other person for any act or omission in good
faith in the exercise or purported exercise of functions or powers under this or any
other Act.
- (2) Nothing in this Act affects the privileges, immunities or powers of the Legislative
Council or House of Assembly or their committees or members.
- (3) Nothing in this Act affects any rule or principle of law relating to—
- (a) legal professional privilege; or
 - (b) "without prejudice" privilege; or
 - (c) public interest immunity.

(4) A person who provides information or a document to the Aboriginal Representative Body under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.

5 (5) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

58—Service

10 (1) Subject to this Act, a notice or document required or authorised to be given to a person for the purposes of this Act may—

(a) be given to the person personally; or

(b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or

15 (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or

(d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

20 (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

59—Review of Act

25 (1) The Minister must cause a review of the operation of this Act to be undertaken, and a report on the review to be prepared and submitted to the Minister.

(2) The review—

30 (a) must be conducted by an Aboriginal person or body, appointed by the Minister on the recommendation of the Aboriginal Representative Body; and

(b) must include consultation with Aboriginal South Australians in accordance with a scheme determined by the Aboriginal Representative Body; and

(c) must include consultation with such administrative units of the Public Service as may be specified by the Minister; and

35 (d) may include such other consultation as the reviewer thinks fit; and

(e) must comply with any other requirements set out in the regulations.

(3) The review must be completed after the second, but before the third, anniversary of the commencement of this section.

-
- (4) Without limiting the matters that may be the subject of the review, the review must consider and report on—
- (a) whether the secretariat of the Aboriginal Representative Body should be staffed by persons directly employed by the Aboriginal Representative Body or by public servants assigned to the secretariat; and
 - (b) the extent to which the performance of the functions of the Aboriginal Representative Body would be improved by increasing the number or proportion (or both) of elected members on the Aboriginal Representative Body (including a recommendation as to the appropriate proportion of elected members); and
 - (c) if the review finds that operations of the Aboriginal Representative Body would be so improved by increasing the number or proportion (or both) of elected members on the Aboriginal Representative Body, the steps that should be taken by the Minister to facilitate that increase; and
 - (d) whether additional functions and powers should be conferred on the Aboriginal Representative Body by or under this Act; and
 - (e) any other matter specified by the regulations.
- (5) A report may contain such recommendations as the reviewer considers appropriate.
- (6) The Minister must cause a copy of the report provided under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

60—Regulations and fee notices

- (1) The Governor may, on the recommendation of the Aboriginal Representative Body, make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for—
- (a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
 - (b) fees in respect of any matter under this Act and their payment, recovery or waiver; and
 - (c) fines, not exceeding \$10 000, for offences against the regulations; and
 - (d) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature; and
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified person or body; and

- (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- 5 (4) The Minister or the Aboriginal Representative Body may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- (5) If a code, standard or other document is referred to or incorporated in the regulations—
- 10 (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
- (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

15 **Schedule 1—Wards**

1—Constitution of wards for elections

- (1) South Australia is to be divided into 5 wards for the purposes of elections under this Act.
- Note—**
- 20 The map of the 5 wards at the foot of this Schedule is provided for ease of reference only.
- (2) Each of the areas delineated as a ward in plan number GP34/2021 lodged in the General Registry Office from time to time will be taken to be a ward for the purposes of elections under this Act.
- (3) The Aboriginal Representative Body may from time to time assign a name to each ward.
- 25 (4) The Governor may, by regulation made on the recommendation of the Minister, vary this Schedule.
- (5) However, the Minister may only make a recommendation for the purposes of this clause—
- 30 (a) on the recommendation of the Aboriginal Representative Body; and
- (b) after consultation with the returning officer.
- (6)

GP 34/2021

Aboriginal Representative Body Act

Electoral Wards



Schedule 2—Rules of election

Part 1—Returning officer

1—Returning officer

- 5 (1) The Electoral Commissioner will be the returning officer for the purposes of an election under this Act.
- (2) The returning officer may appoint 1 or more electoral officials to assist in the conduct of an election.
- (3) Without limiting the generality of subclause (2), an electoral official—
- 10 (a) may hand out nomination forms; and
- (b) may receive nomination forms up to the close of nominations; and
- (c) may take a photograph of each candidate and write the name of the candidate on the back.

2—Distribution of information

- 15 (1) The returning officer will be responsible for publicity of an election in each ward.
- (2) Publicity of an election under these rules must include—
- (a) the description of the election process; and
- (b) the period during which voting may take place; and
- (c) the location or locations where—
- 20 (i) nominations will be called; and
- (ii) voting will take place,
- in each ward; and
- (d) the eligibility of voters to vote in the election during the period in which voting may take place; and
- 25 (e) an explanation that each eligible voter can vote for 1 candidate at an election in their ward,
- and may include any other information the returning officer thinks fit in relation to the election.

Part 2—Voters roll

3—Voters roll

- 30 (1) A voters roll is to established, prepared and maintained by the Aboriginal Representative Body for the purposes of each election under this Act.
- (2) A voters roll must differentiate the persons enrolled on the voters roll according to the wards in relation to which they are entitled to vote.
- 35 (3) A person is entitled (without application) to be enrolled on a voters roll in relation to a particular ward if—
- (a) they are Aboriginal; and

- (b) they are 18 or more years of age; and
- (c) they have resided at a place within the ward for at least 3 continuous months immediately before the closing date in relation to the election.
- (4) The voters roll must, in relation to each enrolled person, contain—
- 5 (a) the person's full name; and
- (b) the person's residential address; and
- (c) an identifier that indicates the ward in relation to which they are entitled to vote.
- (5) The Aboriginal Representative Body may appoint such number of electoral registrars as the Aboriginal Representative Body thinks appropriate.
- 10 (6) The electoral registrars must assist in the preparation of a voters roll in accordance with any requirement of the Aboriginal Representative Body.
- (7) The Aboriginal Representative Body may make such other rules or determinations in relation to a voters roll as the Aboriginal Representative Body thinks fit.
- 15 (8) In this clause—
- closing date*, in relation to an election, means the day fixed by the returning officer for the close of the voters roll for that election (being a day falling not less than 3 months prior to the polling day for the election).

Part 3—Eligibility and nomination for election to Aboriginal Representative Body

4—Nominations for office of member of Aboriginal Representative Body

- (1) A person is eligible to nominate for an office of member of the Aboriginal Representative Body to be elected from a particular ward if—
- 25 (a) they are Aboriginal; and
- (b) they are 18 or more years of age; and
- (c) they have resided at a place within the ward for at least 3 continuous months immediately before the closing date in relation to the election.
- (2) A person is not eligible to nominate for an office of member of the Aboriginal Representative Body in an election, or to hold office as a member of the Aboriginal Representative Body, if they have been found guilty of a serious offence within the preceding 10 years.
- 30 (3) Nominations will be called in relation to each ward at a time and location or locations determined by the returning officer, and will close 7 days after the nominations are called.
- 35 (4) A person nominates for an office of member of the Aboriginal Representative Body by lodging with the returning officer—
- (a) a written nomination in a form determined by the returning officer; and
- (b) either—

(i) a criminal history report (such as a National Police Certificate) relating to the person and provided by South Australia Police or a CrimTrac accredited agency or broker within the 6 months immediately preceding the nomination; or

5 (ii) an application for, and written consent to the returning officer obtaining, a criminal history report of a kind referred to in subparagraph (i).

(5) At the close of nominations, the returning officer must forward any applications and consents received under subclause (4)(b)(ii) to South Australia Police.

10 (6) The returning officer must bear the cost of obtaining a criminal history report referred to in subclause (4)(b)(ii) (whether or not the person to whom the criminal history report relates is, in fact, elected to an office of member of the Aboriginal Representative Body).

15 (7) The returning officer must, within 8 weeks after the close of nominations, make a declaration in respect of each person who is eligible to stand for election to an office of member of the Aboriginal Representative Body.

(8) If, at the close of nominations, it appears that the same person has nominated for election to 2 or more offices, both or all of the nominations are void.

20 (9) If more than 1 person nominates in an election for a particular ward, a photograph of each candidate may be taken and used to assist voters.

(10) In this clause—

closing date, in relation to an election, means the day fixed by the returning officer for the close of the voters roll for that election (being a day falling not less than 3 months prior to the polling day for the election);

25 ***serious offence*** means—

(a) an offence against the following provisions of the *Criminal Law Consolidation Act 1935*:

(i) Part 3;

(ii) Part 3A;

30 (iii) Part 3B;

(iv) Part 3D;

(v) Part 4;

(vi) Part 5;

(vii) Part 6A;

35 (viii) Part 6B;

(ix) Part 7A;

(x) Part 7B (being an offence consisting of aiding, abetting, counselling or procuring the commission of an offence referred to in a preceding subparagraph);

40 (xi) section 270A (being an offence consisting of attempting to commit an offence referred to in a preceding subparagraph);

- (xii) section 270AB;
- (xiii) section 270B;
- (xiv) section 270C;
- (xv) section 270D; or

- 5 (b) an offence against a law of the Commonwealth, or of another State or Territory, corresponding to an offence referred to in paragraph (a); or
- (c) any other offence prescribed by the regulations (being an indictable offence, or a summary offence with a maximum penalty of 12 months imprisonment or more).

10 **5—Eligibility to vote in elections**

An Aboriginal person who is enrolled on a voters roll under clause 3 in relation to a particular ward is eligible to vote in an election held in relation to the ward.

Part 4—General rules relating to an election

6—Election timetable

- 15 (1) Subject to this Schedule, voting will be held in each ward during a period, and during the times, determined by the returning officer (which must be the same period in each ward).
- (2) A person may only vote during the period, and during the times, referred to in subclause (1).
- 20 (3) Subject to this Schedule, the period determined by the returning officer during which voting may be held must be not less than 1 day and not more than 7 days.

7—Uncontested elections

25 If only 1 nomination is received in relation to any office to be filled at an election under this Act, the returning officer will, subject to this Schedule, declare the candidate duly elected to the office.

8—Voting

- 30 (1) If more than 1 nomination is received in relation to an office to be filled at an election under this Act, an election by secret ballot in relation to the office will be held in accordance with this Schedule and any determination of the returning officer during the period, and at a location or locations, determined by the returning officer (and such period should commence approximately 21 days after the nominations are declared).
- (2) The method of voting in an election is to be first past the post.
- (3) The returning officer must determine such rules as the returning officer considers necessary as to enable the casting of absentee votes in an election.
- 35 (4) Without limiting any other rules that may be determined by the returning officer, the rules referred to in subclause (3) must provide for—
- (a) voting at polling places at the locations determined by the returning officer; and

(b) the verification of the identity of persons casting absentee votes in an election.

(5) A person may only cast 1 vote in relation to the election of members of the Aboriginal Representative Body.

5 (6) To avoid doubt, voting is not compulsory.

9—Postal voting may be used

Without limiting any other clause in this Schedule, voting at an election under this Act may be conducted wholly or partly on the basis of postal voting conducted in accordance with the rules and procedures determined by the returning officer after consultation with the Aboriginal Representative Body.

10

10—Counting of votes

(1) The following provisions relate to the counting of votes at an election:

(a) an electoral official must count the votes for each candidate;

(b) the candidate receiving the greatest number of votes will be elected;

15

(c) in the event of a tie, the returning officer will determine who is elected by placing the names of the drawn candidates into a receptacle and drawing 1 out (and the candidate drawn out will be elected).

(2) A candidate may nominate a person (not being a candidate) to represent them during the counting of votes by signing a scrutineer's form (and the scrutineer may view the counting of votes, but must not view an elector voting).

20

Part 5—Declaration of results

11—Provisional declarations

When the result of the election becomes apparent, the returning officer must make a provisional declaration of the result.

25

12—Recounts

(1) At any time within 48 hours after the returning officer has made a provisional declaration, a candidate (not being a candidate in whose favour the provisional declaration was made) may, in a manner determined by the returning officer, request a recount of the votes cast in relation to the relevant vacancy and, in the event of a request being made, the returning officer must cause a recount of votes to be made unless the returning officer considers that there is no prospect that a recount would alter the result of the election.

30

(2) The returning officer may, on the returning officer's own initiative, during the period of 48 hours referred to in subclause (1), decide to conduct a recount of any votes cast in the election.

35

(3) The following provisions apply to a recount:

(a) the returning officer should give the candidates reasonable notice of the time and place at which it is to be conducted;

(b) the returning officer may reverse a decision taken at the count;

- (c) if the votes of 2 or more candidates are equal and 1 of them was excluded by lot at the count, the same candidate must be excluded at the recount.

13—Declaration of results and certificate

- 5 (1) If the period for requesting a recount for an election expires without such a request having been made and the returning officer has not decided to initiate a recount, the returning officer must confirm the relevant provisional declarations, and immediately make out a return to the Minister certifying the election of specified candidates to specified offices.
- 10 (2) If a recount is made, the returning officer must, according to the result of the recount—
- (a) confirm the relevant provisional declaration; or
 - (b) revoke the provisional declaration and make a final declaration in accordance with the result of the recount,
- and then immediately make out a return to the Minister certifying the result of the election accordingly.
- 15 (3) The returning officer—
- (a) must notify all candidates, in writing, of the result of the election; and
 - (b) must within 1 month after the conclusion of the election cause the result of the election to be published—
- (i) in the Gazette; and
 - (ii) in a newspaper circulating throughout the State; and
 - (iii) on a website determined by the Electoral Commissioner; and
 - (iv) in any other manner determined by the Electoral Commissioner.
- 20 (4) When the returning officer certifies the result of an election under subclause (1) or (2), the election of the candidate or candidates takes effect immediately.
- 25

Part 6—Supplementary elections on failure of election

14—Supplementary elections on failure of election etc

- 30 (1) Subject to this clause, if the election of a member of the Aboriginal Representative Body from a particular ward fails because—
- (a) no person nominates for the office to which the election relates; or
 - (b) no votes are cast in the election,
- then the Minister may (but need not) require a supplementary election to be held in relation to the office.
- 35 (2) Before making a determination not to require a supplementary election, the Minister must consult with—
- (a) the Aboriginal Representative Body; and
 - (b) the returning officer,
- and may consult with any other person or body the Minister thinks fit.

- (3) A supplementary election under this Part must be conducted in accordance with this Schedule (with such modifications as the Electoral Commissioner thinks fit).

Part 7—Disputed Returns

15—Constitution of Court

- 5 (1) There will be a Court of Disputed Returns for the purposes of this Act.
- (2) The Court is constituted of a District Court Judge.
- (3) The Court, separately constituted under this clause, may sit contemporaneously to hear separate proceedings.
- (4) The Court is a court of record.
- 10 (5) Subject to this Part, the procedure and powers of the Court are the same as those of the District Court when exercising its civil jurisdiction.

16—Clerk of Court

- (1) There will be a clerk of the Court appointed by the Chief Judge of the District Court.
- (2) The office of clerk of the Court may be held in conjunction with any other office.

17—Jurisdiction of Court

- 15 (1) The Court has jurisdiction to hear and determine any petition addressed to it disputing the validity of an election under this Act.
- (2) The Court may not call into question the eligibility of a person—
- 20 (a) to nominate for the office of the member of the Aboriginal Representative Body to be elected from a particular ward; or
- (b) to vote in an election held in relation to a particular ward,
on the basis of whether or not they are Aboriginal.

18—Procedure upon petition

- (1) A petition to the Court must—
- 25 (a) set out the facts relied on to invalidate the election; and
- (b) set out the relief to which the petitioner claims to be entitled; and
- (c) be signed by a candidate at the election in dispute or by an elector for that election; and
- 30 (d) be lodged with the clerk of the Court within 28 days after the conclusion of the election; and
- (e) set out the respondents in relation to the petition (including, if appropriate, each candidate for election from the relevant ward in the disputed election, the Electoral Commission and the Aboriginal Representative Body); and
- (f) be accompanied by the prescribed amount as security for costs.
- 35 (2) A copy of the petition must be served on—
- (a) any person declared elected in the disputed election; and
- (b) the Aboriginal Representative Body; and

- (c) if it is alleged that the election is invalid on account of an act or omission of an electoral official—the returning officer.
- (3) If, having been served under subclause (2), a person proposes to contest the petition, the person must, within 14 days after service, or such further time as may be allowed by the Court (on application made either before or after the expiration of the period of 14 days), lodge with the clerk of the Court, and serve on the petitioner, a reply.
- (4) A reply must—
- (a) set out the facts on which the applicant proposes to rely; and
 - (b) ask for any relief to which the applicant claims to be entitled; and
 - (c) be executed by the applicant.

19—Powers of Court

- (1) The Court must sit as an open court, and its powers include the following:
- (a) to adjourn;
 - (b) to compel the attendance of witnesses and the production of documents;
 - (c) to examine witnesses on oath, affirmation or declaration;
 - (d) with the consent of the parties to the proceedings, to receive evidence on affidavit or by statutory declaration;
 - (e) subject to this Act and the rules, to determine its procedure in each case;
 - (f) to declare—
 - (i) that a person who was returned as elected was not duly elected; and
 - (ii) that a candidate who was not returned as elected was duly elected;
 - (g) to declare an election void;
 - (h) to dismiss or uphold a petition, in whole or in part;
 - (i) to amend or allow the amendment of a petition or reply;
 - (j) to punish contempt of its authority by fine or imprisonment.
- (2) The Court may exercise all or any of its powers under this clause on such grounds as the Court in its discretion thinks just and sufficient.
- (3) The Court is not bound by the rules of evidence.
- (4) The Court must act according to good conscience and the substantial merits of the case without regard to legal technicalities.
- (5) A decision of the Court is final and without appeal.

20—Effect of decision

- (1) If pursuant to this Part a person returned as elected is declared not to have been duly elected, that person ceases to be a member of the Aboriginal Representative Body and the person declared to have been duly elected will take their place accordingly.
- (2) If pursuant to this Part an election is declared void, a person returned as elected at the election ceases to be a member of the Aboriginal Representative Body.

21—Right of appearance

A party to proceedings before the Court may appear personally or be represented by counsel.

22—Case stated

5 The Court may, of its own motion or on the application of a party to proceedings, state a question of law for the opinion of the Court of Appeal.

23—Costs

- (1) The Court may make orders for costs as it thinks just.
- 10 (2) If an election is declared void, or a candidate returned as elected is declared not to have been duly elected, on account of an act or omission of an electoral official, any costs in favour of the petitioner must, to the extent to which they are attributable to that act or omission, be awarded against the Crown.
- (3) An order under this clause may be enforced as an order of the District Court.

24—Rules of Court

- 15 The Chief Judge of the District Court may make rules—
- (a) regulating the practices and procedures of the Court; and
 - (b) fixing fees to be paid in respect of proceedings before the Court; and
 - (c) making any other provision necessary or expedient for the purposes of this Schedule.

20 Schedule 3—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

25 In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Parliamentary Committees Act 1991*

2—Amendment of section 3—Interpretation

Section 3—before the definition of *appointing House* insert:

30 *Aboriginal Representative Body* means the Aboriginal Representative Body established under the *Aboriginal Representative Body Act 2021*.

3—Insertion of Part 5F

After section 15O insert:

Part 5F—Aboriginal Affairs and Representation Committee

Division 1—Establishment and membership of Committee

15P—Establishment of Committee

The *Aboriginal Affairs and Representation Committee* is established as a committee.

15Q—Membership of Committee

(1) The Committee consists of 6 members, of whom—

(a) 3 must be members appointed by the House of Assembly, of whom—

(i) 2 must be members nominated by the Minister; and

(ii) 1 must be a member nominated by the Leader of the Opposition in the House of Assembly; and

(b) 3 must be members appointed by the Legislative Council, of whom—

(i) 1 must be a member nominated by the Minister; and

(ii) 1 must be a member nominated by the Leader of the Opposition in the Legislative Council; and

(iii) 1 must be a member who is neither a member of the Government nor of the Opposition, or, if no such member exists, a member nominated by the Leader of the Opposition in the Legislative Council.

(2) A Minister of the Crown is not eligible for appointment to the Committee.

Division 2—Functions of Committee

15R—Functions of Committee

(1) The functions of the Committee are—

(a) to act as a liaison between the Parliament of South Australia and the Aboriginal Representative Body and to facilitate the voice of Aboriginal persons being heard in the Parliament; and

(b) to review the operation of the *Aboriginal Lands Trust Act 2013*, the *Maralinga Tjarutja Land Rights Act 1984* and the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*; and

- (c) to inquire into matters affecting the interests of the traditional owners of the lands; and
- (d) to inquire into the manner in which the lands are being managed, used and controlled; and
- 5 (e) to inquire into matters affecting Aboriginal persons; and
- (f) to consider any other matter referred to the Committee by the Minister; and
- 10 (g) to consider any other matter referred to the Committee by the Aboriginal Representative Body under the *Aboriginal Representative Body Act 2021*; and
- (h) to lay reports prepared by the Aboriginal Representative Body and provided to the Committee to both Houses of Parliament; and
- 15 (i) to perform any other functions imposed on the Committee under this or any other Act or by resolution of both Houses of Parliament.

(2) In this section—

the lands means—

- 20 (a) the lands vested in the Aboriginal Lands Trust under *Aboriginal Lands Trust Act 1966* or the *Aboriginal Lands Trust Act 2013*; and
- (b) the lands described in Schedule 1 of the *Maralinga Tjarutja Land Rights Act 1984*; and
- 25 (c) the lands described in Schedule 1 of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

15S—Committee to meet regularly with Aboriginal Representative Body

30 Without limiting section 15R or any other provision of this Act, the Committee must, in accordance with any requirements set out in the *Aboriginal Representative Body Act 2021*, meet periodically with the Aboriginal Representative Body.

Part 3—Repeal of *Aboriginal Lands Parliamentary Standing Committee Act 2003*

4—Repeal of *Aboriginal Lands Parliamentary Standing Committee Act 2003*

35 The *Aboriginal Lands Parliamentary Standing Committee Act 2003* is repealed.

Part 4—Transitional provisions

5—Composition of first Aboriginal Representative Body

- (1) This clause applies in relation to the first Aboriginal Representative Body following the commencement of this Act.

- (2) Despite a provision of Part 4 Division 1 of this Act, the Aboriginal Representative Body will, from the day on which this clause comes into operation, be comprised of up to 13 members, of whom—
- (a) 1 will be the Commissioner for Aboriginal Engagement (ex officio); and
 - 5 (b) the remainder must be Aboriginal persons appointed by the Governor on the recommendation of the Commissioner for Aboriginal Engagement.
- (3) Before making a recommendation for the purposes of subclause (2)(b), the Commissioner for Aboriginal Engagement must call for expressions of interest in accordance with a scheme determined by the Commissioner.
- 10 (4) In making recommendations for the purposes of subclause (2)(b), the Commissioner for Aboriginal Engagement must, as far as is reasonably practicable—
- (a) ensure that at least 1 member of the Aboriginal Representative Body is appointed from each ward; and
 - 15 (b) ensure that at least 1 member of the Aboriginal Representative Body is an Aboriginal elder; and
 - (c) ensure that at least 1 member of the Aboriginal Representative Body is, at the time of appointment, under 25 years of age; and
 - (d) try to achieve a gender balance of members of the Aboriginal Representative Body.
- 20 (5) Subject to this Act, a member of the Aboriginal Representative Body as constituted under this section holds office until the returning officer certifies the result of the first election of members of the Aboriginal Representative Body held under this Act and is, subject to this Act, eligible for re-election or reappointment.
- 25 (6) To avoid doubt, a term of office of a member of the Aboriginal Representative Body as constituted under this section will be counted in determining the total terms of office of the member for the purposes of section 24(3) of this Act.
- (7) Section 21 of this Act will be taken not to apply in relation to the Aboriginal Representative Body constituted under this clause.

30 **6—Incomplete reviews etc of Aboriginal Lands Parliamentary Standing Committee to continue**

35 A review, inquiry or other matter being undertaken, or that had been referred to, the Aboriginal Lands Parliamentary Standing Committee under the *Aboriginal Lands Parliamentary Standing Committee Act 2003* but had not been completed or reported on under that Act before the commencement of this clause will be taken to continue as a review, inquiry or other matter (as the case requires) of the Aboriginal Affairs and Representation Committee under the *Parliamentary Committees Act 1991* in accordance with its terms.