

How the TSRA Operates

Legislative Framework

Formation

The TSRA is a Commonwealth Statutory Authority which was established on July 1, 1994 under the *Aboriginal and Torres Strait Islander Commission Act 1989 (Cth)*, now known as the *Aboriginal and Torres Strait Islander Act 2005 (Cth)*. The TSRA is the leading Commonwealth representative body for Torres Strait Islander and Aboriginal people living in the Torres Strait, including two communities (Bamaga and Seisia) in the Northern Area Peninsula.

The TSRA is composed of twenty elected representatives and the administrative staff. The twenty elected representatives are Torres Strait Islander and Aboriginal people who live and work in the region. The TSRA Board elects a Chairperson, a Deputy Chairperson and an Alternate Deputy Chairperson. A General Manager is responsible for the TSRA's administration and staffing.

The TSRA performs separate functions under the *Native Title Act 1993 (Cth)* as the Native Title Representative Body (NTRB) for the Torres Strait Region. The TSRA holds this NTRB responsibility until 30 June 2013.

Under Section 142D of the *Aboriginal and Torres Strait Islander Act 2005 (Cth)* the TSRA is required to formulate and implement a plan to guide the progress of the Torres Strait region. This document, known as the *Torres Strait Development Plan*, is updated every four years, a period consistent with the term of the TSRA Board.

In 2008 - 2009 the TSRA finalised the *Torres Strait Development Plan 2009 - 2013*, the fourth development plan since the establishment of the organisation. The plan outlines seven new or revised TSRA program components: Culture, Art and Heritage; Economic Development; Environmental Management; Governance and Leadership; Healthy Communities; Native Title and Safe Communities. In

recognition of the importance of fisheries to the economic development of the region, in 2010 the TSRA separated responsibility for fisheries management from the Environmental Management Program, establishing a stand-alone Fisheries Program. This change will be reflected in the next edition of the *Torres Strait Development Plan*. For consistency of reporting against the Portfolio Budget Statements and the current *Torres Strait Development Plan*, the outcomes from the Fisheries Program are reported under the Environmental Management Program.

Enabling Legislation

The enabling legislation for the TSRA is contained in Section 142, Part 3A Division 1 of the *Aboriginal and Torres Strait Islander Act 2005 (Cth)*, which states:

- (1) A Torres Strait Regional Authority is established.
- (2) The TSRA:
 - (a) is a body corporate, with perpetual succession; and
 - (b) is to have a common seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.

The *Commonwealth Authorities and Companies Act 1997 (Cth)* also applies to the TSRA. The Act deals with matters relating to Commonwealth Authorities, including reporting and accountability, banking and investment and conduct of officers. The Act states:

- (1) The common seal of the TSRA is to be kept in such custody as the TSRA directs and must not be used except as authorised by the TSRA.
- (2) All courts, judges and persons acting judicially must:



- (3) take judicial notice of the imprint of the common seal of the TSRA appearing on a document; and
- (4) presume that the imprint was duly affixed.

The *Commonwealth Authorities and Companies Act 1997 (Cth)* also applies to the TSRA. The Act deals with matters relating to Commonwealth Authorities, including reporting and accountability, banking and investment and conduct of officers.

Functions

The functions of the TSRA, as outlined in Section 142A of the *Aboriginal and Torres Strait Islander Act 2005 (Cth)*, are:

- (a) to recognise and maintain the special and unique Ailan Kastom of Torres Strait Islanders living in the Torres Strait area;
- (b) to formulate and implement programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
- (c) to monitor the effectiveness of programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area, including programs conducted by other bodies;
- (d) to develop policy proposals to meet national, State and regional needs and priorities of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
- (e) to assist, advise and co-operate with Torres Strait Islander and Aboriginal communities, organisations and individuals at national, State, Territory and regional levels;
- (f) to advise the Minister on:
 - (i) matters relating to Torres Strait Islander affairs, and Aboriginal affairs in the Torres Strait area, including the administration of legislation;

- (ii) the co-ordination of the activities of other Commonwealth bodies that affect Torres Strait Islanders or Aboriginal persons, living in the Torres Strait area;

- (g) when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister;
- (h) to take such reasonable action as it considers necessary to protect Torres Strait Islander and Aboriginal cultural material and information relating to the Torres Strait area if the material or information is considered sacred or otherwise significant by Torres Strait Islanders or Aboriginal persons;
- (i) at the request of, or with the agreement of, the Australian Bureau of Statistics but not otherwise, to collect and publish statistical information relating to Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area;
- (j) such other functions as are conferred on the TSRA by this Act or any other Act;
- (k) such other functions as are expressly conferred on the TSRA by a law of a State or of an internal Territory and in respect of which there is in force written approval by the Minister under Section 142B;
- (l) to undertake such research as is necessary to enable the TSRA to perform any of its other functions; and
- (m) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

Powers

The powers of the TSRA, are outlined in Section 142C of the *Aboriginal and Torres Strait Islander Act 2005 (Cth)*, which states:

- (1) The TSRA has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the TSRA include, but are not limited to, the following powers:
 - (a) to accept gifts, grants, bequests and devises made to it;
 - (b) to act as trustee of money and other property vested in it on trust;
 - (c) to negotiate and co-operate with other Commonwealth bodies and with State, Territory and local government bodies;
 - (d) to enter into an agreement for making a grant or loan under Section 142GA to the State of Queensland or an authority of that State (including a local government body); and
 - (e) to enter into an agreement (other than an agreement referred to in paragraph (d) with a State or a Territory.
- (3) Despite anything in this Act, any money or other property held by the TSRA on trust must be dealt with in accordance with the powers and duties of the TSRA as trustee.
- (4) The powers of the TSRA may be exercised in or out of Australia.

Minister for Families, Housing, Community Services and Indigenous Affairs - Responsible Minister

The TSRA is an Agency within the Department of Families, Housing, Community Services and Indigenous Affairs portfolio. During the reporting year the responsible Minister for the TSRA was The Hon. Jenny Macklin MP.

Powers of Direction by the Minister

Under section 142E of the *Aboriginal and Torres Strait Islander Act 2005*, the Minister has powers

of direction in relation to the TSRA. Section 142E of the Act states:

- (1) The TSRA must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.
- (2) The Minister must not give directions about the content of any advice, information or recommendation that may be given by the TSRA to a Minister, Department of State or authority of the Commonwealth.
- (3) The Minister must not give directions about the content of any advice, information or recommendation that may be given by the TSRA to:
 - (a) a Minister of a State or Territory; or
 - (b) a Department of State of a State or Territory; or
 - (c) an authority of a State or Territory;

except for the purpose of protecting the confidentiality of information given to the TSRA by the Commonwealth or an authority of the Commonwealth.
- (4) Subject to subsection (5), the Minister must cause a copy of a direction to be laid before each House of the Parliament within 15 sitting days of that House after that direction was given.
- (5) The rule in subsection (4) does not apply if the laying of a copy of a direction before each House of the Parliament would result in the disclosure of a matter in a manner that would be inconsistent with the views or sensitivities of Torres Strait Islanders or Aboriginal persons.

The TSRA did not receive any formal Directions by the Minister during the reporting period.



The TSRA's primary focus is to improve the lifestyle and wellbeing of Torres Strait Islander and Aboriginal people living in the region by implementing programs that address their socio-economic and health status.

TSRA Statement of Intent to the Minister

In 2010 - 2011, the Minister for Families, Housing, Community Services and Indigenous Affairs, provided a Statement of Expectations to the TSRA concerning the operation and performance of the TSRA up to the period June 2012. In response, the TSRA provided a Statement of Intent to the Minister.

The Statement identifies the TSRA's focus, outcomes and priorities:

- ▶ *The TSRA's primary focus is to improve the lifestyle and wellbeing of Torres Strait Islander and Aboriginal people living in the region by implementing programs that address their socio-economic and health status.*
- ▶ *As an Australian Government agency, the TSRA will respond to the Council of Australian Governments (COAG) reform agenda by making a contribution to achieving Closing the Gap targets, and in particular through the Indigenous Economic Development Strategy and the National Partnership Agreements.*

The TSRA will formulate and implement programs in regards to the principles detailed in the COAG National Partnership Agreement on Remote Service Delivery and will continue to: maximise employment, education and training benefits to Indigenous communities, assist and maintain close liaison with national, state, territory and regional agencies, brief the Minister for Families, Housing, Community Services and Indigenous Affairs on important issues and implement the Torres Strait Development Plan 2009 - 2013 and other planning instruments as necessary.

The TSRA will consider and act on opportunities that will increase the level of female representation on its Board.

Ministerial Appointments

In 2010 - 2011, three appointments were made for the position of Torres Strait Regional Authority Acting General Manager.

The appointments were made by the Minister for Families, Housing, Community Services and Indigenous Affairs in accordance to Section 144L(1)(a) of the *Aboriginal and Torres Strait Islander Act 2005* to Damian Miley for the period 20 to 31 December 2010 and to John Ramsay for the period 1 to 15 January 2011. The appointment of Christopher de Mamiel for the period 13 to 30 May 2011 was delegated by the Minister and made by the Acting Deputy Secretary, Department of Families, Housing Community Services and Indigenous Affairs.

Briefings and information provided to Minister

Throughout the reporting period the TSRA provided ministerial minutes and briefings to the Minister for Families, Housing, Community Services and Indigenous Affairs.

Judicial Decisions and Reviews

One judicial decision, relating to the Torres Strait Sea Claim, was made during the 2010 - 2011 reporting year. No decisions of administrative tribunals, Parliamentary Committees or the Commonwealth Ombudsman impacted the TSRA's operations.

