



Torres Strait Regional Authority

Review of the Governance *Structure*

4 August 2011

Prepared by: Effective Governance

Level 3, 16 McDougall Street
PO Box 2140
Milton Qld 4064

Phone: (07) 3510 8111
Fax: (07) 3510 8181
Email: advisors@effectivegovernance.com.au
Website: www.effectivegovernance.com.au

Table of Contents

Table of Contents	1
1. Executive Summary	2
1.1 Alternative TSRA Governance Models	3
1.2 Recommended Model	6
1.3 Recommendations in Summary.....	6
1.3.1 Governance Structure	6
1.3.2 Legislative Changes	8
2. Methodology	9
2.1 Community Consultation	10
2.1.1 Review and Visit Preparation Phase	10
2.1.2 Consultation Phase	10
2.1.3 Evaluation and Recommendation Phase	11
3. Findings	12
3.1 Introduction	12
3.2 Terms of Reference 1: Review of current legislation.....	14
3.2.1 Aboriginal and Torres Strait Islander Act 2005 (Cwlth).....	14
3.2.2 Local Government Act 2009 (Qld).....	15
3.2.3 Commonwealth Authorities and Companies Act 1997 (Cwlth)	16
3.2.4 Torres Strait Regional Authority Section 142S Declaration 2008, 1 February 2008.....	16
3.3 Terms of Reference 2: Analysis of current TSRA governance arrangements and TSRA Board business model.....	17
3.3.1 Overview.....	17
3.3.2 Issues and Risks with the Existing Governance Arrangements.....	19
3.4 Terms of Reference 3: Consult widely and openly with the Torres Strait community to determine community attitudes and preferences for representation on the TSRA	21
3.5 Terms of Reference 4: Provide between three and five options for changing the business model and governance structure	30
3.5.1 Criteria for a Successful Model	30
3.5.2 Governance Model Options.....	30
Option 1 – No Change.....	31
Option 2 – Community Elected Members	32
Option 3 – Cluster Elected Members	33
Option 4 – Cluster Elected Members and Appointed Technical Members	35
Option 5 – Appointed Technical Members	37
3.5.3 Comparison of Options and Recommended Option	39
3.5.4 Legislative Amendments	41

1. Executive Summary

Effective Governance was engaged by the Torres Strait Regional Authority (TSRA)¹ to undertake a review of the TSRA governance structures and Board² business model to identify future model options and provide a recommended option for consideration by the Board. The terms of reference for the review are provided at Appendix 2 to this report.

The TSRA is a unique organisation with respect to its governance. As a statutory authority under the *Aboriginal and Torres Strait Islander (ATSI) Act 2005* (Cwlth), accountability is through the Minister to the Federal Parliament and, ultimately, to the people of Australia. Yet, currently, the members of the TSRA Board are largely, indirectly, democratically elected by the community, creating an expectation that there is direct accountability back to the people. Further, the TSRA Board has no direct regulatory or taxation powers, features which are often associated with democratically elected bodies in the public sector. As discussed in Appendix 3 to this report, these features of the TSRA's governance lead to a natural tension between the governance framework and Torres Strait community expectations. This, in turn, creates distinct challenges in designing an effective governance model. As a result, it is not possible to adopt a strict corporate governance approach, as used in the private sector, to design an optimum governance model for the TSRA. The final governance structure must take into account the unique nuances of the TSRA's purpose, legal structure, history and community expectations. This approach underlies the recommendations of this report.

In the report, each of the terms of reference is addressed in sequential order. Terms of Reference 1 identifies a number of constraints around governance in the existing legislation, but also identifies a number of opportunities to enhance the practical operation of the governance framework for the TSRA. Terms of Reference 2 sets out the current governance structures and the issues and risks with the existing arrangements. Terms of Reference 3 consolidates the data gathered through community consultation and highlights the weaknesses, as perceived by the community, with the current model. Finally, Terms of Reference 4 sets out five options for consideration, including the current model. In this section, we evaluate each of the models with respect to their strengths and weaknesses.

As was required for the review, extensive community consultation was undertaken. A summary of community views is discussed below:

- The majority of communities:
 - Were dissatisfied with the current method of selecting Board members. Communities were generally of the view that members should not be automatically appointed to the Board by virtue of their election to a local government division, but rather they should be directly elected.
 - Favoured a separate election process with TSRA specific wards.
 - Preferred to elect at least one individual from each of the 20³ communities to represent their interests on the Board.
 - Supported maintaining the status quo of only having Aboriginal and Torres Strait Islander peoples as Board members. The main concern seen with introducing other persons to the Board was the threat that may be posed to cultural values and the right of the Torres Strait people to govern their own affairs.

¹ Appendix 1 in the separate document titled 'Supporting Documents' contains a list of acronyms used in this report.

² The *Aboriginal and Torres Strait Islander Act 2005* (Cwlth) (ATSI Act) makes no reference to the body of members elected or appointed to the TSRA being called the "Board". However, the latest published TSRA *Annual Report* describes the governance structure of the TSRA as consisting of the Board and the Administration. In addition, the term "TSRA Board" is used in common parlance by the Torres Strait communities to refer to the TSRA elected and appointed members. Accordingly, the term "the Board" is used throughout this report to refer to the existing elected and appointed TSRA members as well as any proposed arrangements.

³ These 20 communities include Horn and Prince of Wales Islands as one community.

- Communities felt very strongly that each was entitled to equal representation on the Board regardless of community size, with only a very small number stating that larger communities should have a greater number of representatives. Additionally, the Prince of Wales community⁴ believes it is entitled to its own representative, not one sitting in combination with Horn Island.
- Four communities agreed that a cluster-based election model had some merit provided safeguards were built into the model that ensured each community's interests were represented equally at Board meetings. The greatest concern was expressed by the smaller communities, which believed that their small population size would make it unlikely they would ever have a representative from their community elected to the Board.
- There was considerable confusion among the communities as to exactly how well their views were heard by the TSRA. In the main, communities felt that there was a lack of consultation and feedback from the TSRA (Board members and Administration).
- Communities considered the qualities of strong leadership and knowledge of governance, superior communication skills and integrity coupled with the sound knowledge of Ailan Kastom⁵ and local community issues as necessary to be an effective TSRA Board member. While education level and various specific qualifications and abilities were considered desirable they were not considered essential.
- A number of communities felt that the assistance they received from the TSRA was either poor or very poor. This feedback is reflective of general confusion within communities about the TSRA and its role as it applies to the individual communities, as well as a perceived lack of communication and consultation from the TSRA at an appropriate level. Feedback during community consultations clearly indicates a perception of insufficient engagement by the TSRA with the community. This appears to result partly because the majority of Board members occupy two roles⁶ (and the resulting conflicts that arise) and partly because of a lack of engagement by communities with respect to TSRA activities.

1.1 Alternative TSRA Governance Models

Five alternative TSRA governance models are developed in this report.

The criteria for a successful model have been developed with three considerations in mind:

1. Torres Strait Island communities' expectations
2. Political appropriateness
3. Australian Government principles of public sector governance

With respect to the first consideration, communities advised that the following criteria needed to be met:

- Knowledge of Ailan Kastom by Board members
- One representative for each community
- Direct selection of representatives by communities
- Role clarity for Board members

⁴ Population size 20; see Appendix 4.

⁵ Ailan Kastom means the body of customs, traditions, observances and beliefs of some or all of the Torres Strait Islanders living in the Torres Strait area, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships. This definition is provided in the ATSI Act.

⁶ i.e. as a TSRA Board member and as a Queensland local government councillor.

- Consultation and feedback by Board members to their communities

The terms of reference for this report require any proposed model to be 'politically appropriate'. In the context of this report, politically appropriate is taken to be synonymous with the TSRA Vision of: '*Empowering our people, in our decision, in our culture, for our future*'.⁷

In addition, the following criteria are taken into consideration in terms of the six Australian Government principles of public sector governance:⁸

- Accountability
- Transparency
- Integrity
- Stewardship
- Efficiency
- Leadership

The governance models that have been considered, together with a brief overview of each model are:

Option 1 – No change

- There would be no change to the existing TSRA Board governance structure.
- The Board would continue to consist of three members elected under Part 3A Division 5 of the ATSI Act and 17 members elected under the *Queensland Local Government Act 2009* and appointed to the Board.

Option 2 – Community elected members

- All communities would each be represented by a member elected under Part 3A Division 5 of the ATSI Act.
- To align with the democratic environment in which the TSRA operates, individuals should be allowed to stand for both local government elections and for TSRA Board elections.

Option 3 – Cluster elected members

- Each community would elect a 'community representative' to represent its interests at the 'cluster' level.⁹
- The community representatives in each cluster would then choose one of their number from their cluster to be their TSRA Board member.
- Therefore, each island cluster and the Northern Peninsula (six cluster groups in total) would each be represented by one Board member.

⁷ Australian Government, Torres Strait Regional Authority, 2010, *Annual Report 2009-2010*, p. 1.

⁸ Australian Government, Australian National Audit Office and Department of the Prime Minister and Cabinet, 2006, *Implementation of Programme and Policy Initiatives: Making Implementation Matter, Better Practice Guide*, p.13.

⁹ The five traditional island clusters are: Top Western Islands (Boigu, Dauan and Saibai); Western Islands (Badu, Mabuig and Moa (Kubin and St Pauls communities)); Central Islands (Iama, Masig, Poruma and Warraber); Eastern Islands (Mer, Ugar and Erub); and the Inner Islands (Hammond Island, Horn and Prince of Wales Islands and Thursday Island (TRAWQ and Port Kennedy). The sixth cluster is represented by the two communities of Bamaga and Seisia on the Northern Peninsula.

- To align with the democratic environment in which TSRA operates, individuals should be allowed to stand for both local government elections and for TSRA Board elections.

Option 4 – Cluster elected members and appointed technical members

- Option 4 is an enhanced version of Option 3.
- The Board would consist of members chosen by cluster (as in Option 3).
- In addition, one or more appointed technical members would provide additional skills and experience that may be required by the Board. These skills may include areas such as finance and accounting, economic development, environmental sustainability or indeed any area where the elected representatives do not possess the requisite skills and experience.
- In order to keep the Board to a manageable size and to ensure that the communities' interests are and are seen to be paramount, the maximum number of appointed technical representatives should not exceed five.

Option 5 – Appointed technical members

- The Board would consist of between six and eight members (considered an ideal size for a board¹⁰) appointed by the Minister.
- The members would be selected on the basis of their skill sets including their knowledge of the challenges facing the Torres Strait region.
- A position description would be raised for each Board position and individuals would be invited to fill Board vacancies.
- Anyone could apply for the positions not just Torres Strait Islanders or Aboriginals residing in the Torres Strait region.
- The Minister, on advice, would determine the best candidate to fill each vacancy.

For each Option, the current arrangements for choosing the Chairperson, Deputy Chairperson and Alternate Deputy Chairperson, would remain unchanged.

¹⁰ Kiel GC & Nicholson GJ, 2003, *Boards that work: a new guide for directors*, McGraw-Hill, Sydney, p. 111.

1.2 Recommended Model

An assessment of the various models is provided in the following table.

Options Criteria	Option 1	Option 2	Option 3	Option 4	Option 5
	<i>No Change</i>	<i>Community Elected Members</i>	<i>Cluster Elected Members</i>	<i>Cluster Elected Members and Appointed Technical Members</i>	<i>Appointed Technical Members</i>
Community expectations	Red	Green	Amber	Amber	Red
Political acceptability	Red	Green	Amber	Amber	Red
Australian Government principles of public sector governance	Amber	Amber	Amber	Amber	Amber

Table 1: Overall assessment of models¹¹

Option 2 is the best model in terms of meeting community expectations (including being culturally appropriate) and being politically acceptable. It is also sound in terms of fulfilling the Australian Government principles of public sector governance.

In addition, given the widespread dissatisfaction with the existing model, the forthcoming Queensland local government elections in March 2012 present a good opportunity to move to a new governance model.

1.3 Recommendations in Summary

In this section of the Executive Summary, we outline the recommendations found in the report. We have organised the recommendations by logical order and sequentially.

1.3.1 Governance Structure

The following recommendations are provided to implement a TSRA governance structure that provides for fair representation for Torres Strait Islanders and Aboriginals resident in the Torres Strait region.

¹¹ The following colour code is used for rating the criteria:

Green	Good	Satisfies the criteria completely
Amber	Fair	Satisfies the criteria, but with some shortcomings
Red	Poor	Does not satisfy the criteria

Recommendation 1: Direct election of TSRA Board members

Change the current method where the majority of Board members are appointed to the Board by virtue of their position as a councillor under the Local Government Act (Qld) to allow for the direct election of all members to the Board under Part 3A Division 5 of the ATSI Act.

Recommendation 2: Representation on the TSRA Board

The TSRA comprises 20 members who are elected by and represent each of the following communities: Boigu, Dauan, Saibai, Badu, Mabuiag, Kubin, St Pauls, Iama, Masig, Poruma, Warraber, Mer, Ugar, Erub, Hammond Island, Horn and Prince of Wales Islands, TRAWQ, Port Kennedy, Bamaga and Seisia.

Recommendation 3: Election frequency

Amend Section 142Y of the ATSI Act to change the timing of TSRA elections from three to four years.

Recommendation 4: Board member eligibility requirement

Continue the current arrangement where Board members must be Torres Strait Islanders or Aboriginals and resident in the region covered by the TSRA.

Recommendation 5: Local government councillor/TSRA Board member

Allow community members to be elected as both a Queensland local government councillor and a TSRA Board member.

Recommendation 6: Eligibility to vote

Continue the current arrangement where only Torres Strait Islanders or Aboriginals who are resident in the TSRA region are eligible to vote in TSRA elections.

Recommendation 7: Non compulsory voting

Voting in TSRA elections should be non compulsory.

Recommendation 8: Holding of elections

Conduct discussions with the Australian Electoral Commission (AEC) to determine the most practical and efficient means of holding these elections.

Recommendation 9: Election of Chairperson, Deputy Chairperson and Alternate Deputy Chairperson

Retain the existing Westminster model where the Chairperson, Deputy Chairperson and Alternate Deputy Chairperson are chosen by their fellow Board members.

1.3.2 Legislative Changes

The following legislative changes are proposed to enable the recommended model to be implemented. The changes have been separated into two categories: essential (Recommendation 10) and non-essential but designed to enhance the TSRA governance structures (Recommendation 11). The essential legislative changes will solely comprise of issuing a new Gazette Notice in accordance with Section 142S of the *ATSI Act*.

Recommendation 10: Essential legislative changes

A new Gazette Notice be issued to amend the 1 February 2008 Declaration under s142S of the ATSI Act to address the following matters:

- 1. provision required for 20 specific wards for election purposes; and*
- 2. update to reflect the current state local government legislation being the Local Government Act 2009.*

Recommendation 11: Non-essential legislative changes

1. *Amend Section 142Y of the ATSI Act to change the timing of TSRA elections from three to four years (to align with existing 2008 Declaration). The TSRA members are collectively referred to as the 'Board'. However, there is no definition of 'Board' or what the role of the Board ought to be. In addition to the essential changes recommended above, a new Gazette Notice could incorporate this issue (if the ATSI Act were not to be amended under Section 142) to include words to the following effect:*

'There shall be a Board of Directors of TSRA consisting of the following members:

- (a) a Chairperson;*
- (b) a Deputy Chairperson;*
- (c) other members.'*

2. *The TSRA members are considered to be directors in accordance with the Commonwealth Authorities and Companies Act 1997) (CAC Act) (Cwlth). To provide role clarity, the role of the Board member requires definition description in the enabling legislation.*
3. *Misbehaviour leading to suspension or removal of a TSRA member (director) or Chairperson or Deputy Chairperson be more clearly defined than currently exists in Section 4A of the ATSI Act. A code of conduct for a member (director), Chairperson or Deputy Chairperson be included in the Gazette similar to what currently exists in the Local Government Act (Chapter 6, Division 5).*
4. *There also is a requirement for a right of review for any TSRA Board member, Chairperson or Deputy Chairperson who is suspended or removed by the Minister.*
5. *Provisions be provided for handling of complaints against TSRA Board members as currently exists under the Local Government Act (Chapter 6, Division 6).*
6. *Advisory committees established under 142M be required to have detailed terms of reference, including, but not limited to, a selection process for determining committee composition and a review period.*

2. Methodology

This section sets out the approach used in the project. A mixed-method approach was used to meet the terms of reference. This mixed-method approach involved the following process:

1. Reviewing current legislation which applies to the TSRA and Queensland local government, to identify legal constraints that must be considered when formulating recommendations.
2. Analysing the current TSRA governance arrangements and TSRA Board business model to identify issues and risks associated with the existing governance structure.
3. Conducting community consultations using a qualitative research framework with the communities in the Torres Strait region to determine community attitudes and preferences for representation on the TSRA Board. Each community consultation involved an open forum discussion, completion of a survey and, where requested, one-on-one interviews with community members.

4. Conducting interviews with various other stakeholders including the Chairperson and the General Manager of the TSRA and the external member of the Audit Committee.
5. Reviewing documents supplied by the TSRA including the TSRA annual reports, the *Torres Strait & Northern Peninsula Area Regional Plan 2009 - 2029*, the *Torres Strait Development Plan 2009 - 2013* and TSRA Board meeting papers.
6. Synthesising data gathered during the consultation and interview process into a report providing five options for changing the business model and governance structure of the TSRA Board.

Further details of the community consultations and subsequent analysis are provided in the following section. These have been divided into the three major phases of the study: the review and visit preparation phase, the community consultation phase and the evaluation and recommendation phase.

2.1 Community Consultation

2.1.1 Review and Visit Preparation Phase

During the review and visit preparation phase, Effective Governance conducted a documentation review of the TSRA including its history, reports on previous reviews of governance in the Torres Strait,¹² existing legislation applicable to the TSRA and the existing governance structures including the Board size, its composition and meeting arrangements. On the basis of this review, Effective Governance developed a survey form for the community consultation phase. Several draft governance models were also developed to sound community reaction to these models.

Separately, TSRA administrative staff advised communities of the consultation process and its importance and developed a visit schedule for the consultation phase.

2.1.2 Consultation Phase

The purpose of the consultation phase was to ascertain each community's views on the existing TSRA governance structure and to determine their preferences for change.

Two Effective Governance teams – each consisting of one male and one female member – conducted the community consultations. One team¹³ met with the following communities: Ugar, St Pauls, TRAWQ¹⁴, Hammond, Boigu, Prince of Wales, Erub, Mabuig and Badu. Concurrently, the second team¹⁵ met with the following communities: Kubin, Port Kennedy,¹⁶ Iama, Masig, Poruma, Warraber, Horn, Saibai, Dauan and Mer.

On a number of occasions, the original schedule had to be changed at short notice as it conflicted with community events. As far as possible, both the TSRA and Effective Governance accommodated these changes. However, this was not possible on four occasions due to the tight time frame for conducting the consultations and the follow-on impact on other communities. As a result, community consultations did not take place with Port Kennedy (funeral), Horn (conflicted with another community event), and Bamaga and Seisia (unable to arrange a suitable date within time constraints). Each of these communities was provided with the survey form to complete and the opportunity to submit the form independently, if they chose to do so.

¹² Appendix 9 contains an overview of The New Deal and Bamaga Accord Reports.

¹³ Denise Morton, Senior Advisor, and Cameron Beck, Advisor

¹⁴ The northern half of Thursday Island consisting of the suburbs of Tamwoy, Rosehill, Aplin, Waiben and Quarantine.

¹⁵ Mark Watson, Senior Advisor, and Helen Shorrocks, Advisor

¹⁶ The southern half of Thursday Island.

The level of attendance by community members varied widely (see Appendix 4). In some communities, only three community members attended, whereas in other communities attendance levels were as high as 22. This said, the communities vary considerably in size and some smaller communities (e.g. Kubin, Iama and Warraber) had a large turnout of attendees relative to their population size.

Each community consultation was conducted in three steps:

1. The first step consisted of an open discussion where the community was advised of the purpose of the consultation and its importance, and invited to comment on the purpose of the TSRA, what it does well and what it does not do well. Where possible, the Effective Governance teams interviewed the TSRA Board member for each community before or after the community discussion.
2. The second step consisted of completing a survey form (see Appendix 5) where communities were invited to submit their suggestions and ideas for change. Communities adopted different approaches to how they wished to complete the survey. Some communities wished to complete one survey form based on the whole community's input (e.g. Kubin and Poruma). Other communities preferred to complete a community survey and then for community members to submit a separate survey form if they wished (e.g. Mer). Finally, in some communities, only individuals submitted survey forms (e.g. Badu).
3. The third step consisted of inviting community members to have one-on-one discussions with the Effective Governance team, if they wished to elaborate on matters which were raised during Steps 1 and 2. The aim was to provide an environment for individuals to express their views privately and confidentially if they did not feel confident in doing so during the public forum. Some individuals took advantage of this opportunity.

During the consultation phase, Effective Governance also held one-one-one or small group interviews with Mr John T Kris (Chairperson, TSRA), Mr Wayne See Kee (General Manager, TSRA), Mr Phillip Mills (CEO, Torres Shire Council and former TSRA Board member), and Mr Adrian Kelly (external member of the Audit Committee). The review team was advised the Torres Shire Council intended to submit a paper direct to the Minister with a copy being provided to the review team; no copy has been received to date.

2.1.3 Evaluation and Recommendation Phase

Following the completion of the fieldwork, the research teams completed the documentation of their field notes. The information gathered, including field notes from one-on-one interviews, community forums and completed survey forms, were then reviewed and summarised to produce a summary for each community which was held to represent community views on the major governance issues put to the community. Following this community-by-community level of analysis, the results were then reviewed to summarise the key points of view arising from the total fieldwork process. This analysis is contained at Appendix 6.

This analysis was then circulated to the entire Effective Governance research team which comprised the researchers involved in the fieldwork plus other team members. A series of meetings were held where the full project team reviewed the findings, refined alternative governance models and discussed the strengths and weaknesses of each model. In addition, the research team developed a governance framework that is both relevant to governance for Australian organisations in general and for the TSRA in particular. This framework was used to assess the possible governance models. Full details of the framework are contained in Appendix 3. Resulting from these meetings, final consensus was achieved as to the recommended approach for governance of the TSRA which was then expanded into a series of detailed recommendations.

Finally, the draft report was circulated to the TSRA for comment and advice. The comments from this review were considered by the research team and the report modified accordingly.

3. Findings

3.1 Introduction

The Torres Strait Regional Authority (TSRA) is the peak representative body for Torres Strait Islander and Aboriginal communities living in the Torres Strait region. The Authority's objective is to achieve a better quality of life and to develop an economic base for these communities.¹⁷ The functions and powers of the TSRA are contained in Section 142A of the ATSI Act.¹⁸ For Financial Year 2009-2010, the TSRA received in excess of \$67.4 million in funding from the Federal Government for this purpose and provided the Torres Strait Regional Council (TSIRC) with grants totalling \$38.9million and the Northern Peninsula Area Regional Council (NPARC) with \$4.3million.¹⁹

The TSRA serves 20 Torres Strait communities: 18 island and two Northern Peninsula Area communities. The 18 island communities are grouped in five traditional island 'clusters' as follows:

Top Western Islands	3 communities	Boigu, Dauan and Saibai
Western Islands	4 communities	Badu, Mabuiag and Moa which has two communities: Kubin and St Pauls
Central Islands	4 communities	Iama, Masig (Yorke Island), Poruma and Warraber
Eastern Islands	3 communities	Mer (Murray Island), Ugar and Erub (Darnley Island)
Inner Islands	4 communities	Horn and Prince of Wales Islands, Hammond Island, TRAWQ and Port Kennedy

The two Torres Strait communities on the North Peninsula Area are Bamaga and Seisia.

The total population²⁰ of the region is estimated by the Australian Bureau of Statistics (2006) at 8,576 of whom 7,105 are Torres Strait Islander and Aboriginal people.²¹

A map of the communities served by the TSRA is provided at Figure 1.

¹⁷ Australian Government, Torres Strait Regional Authority, 2010, *Annual Report 2009-2010*, p.139.

¹⁸ Importantly, Section 142 makes clear that the TSRA is not to disregard Aboriginal tradition and custom.

¹⁹ Australian Government, Torres Strait Regional Authority, 2010, *Annual Report 2009-2010*, p.159.

²⁰ The population of individual communities is provided in Appendix 4.

²¹ Australian Government, Torres Strait Regional Authority, 2010, *Annual Report 2009-2010*, p.40.



Figure 1: Map of the communities served by the TSRA²²

The TSRA is a Commonwealth statutory authority governed by its enabling legislation, the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act), and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The latter imposes a set of core reporting and auditing requirements on the directors of the Authority. The TSRA is also a statutory agency as the staff of the administrative arm are employed under the *Public Service Act 1999* (PS Act). In addition, the Queensland *Local Government Act 2009* (LGA) applies to Regional Councils and to the Councillors who are elected and in turn who are members of the TSRA. The portfolio minister is the Federal Minister for Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

The authority came into being on 1 July 1994 following a review²³ of the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act).²⁴ At that time, the Torres Strait was one of 60 regions under the umbrella of the Act and the review recognised the separate

²² This is an amended version of the map contained in Australian Government, Torres Strait Regional Authority, 2010, *Annual Report 2009-2010*, p.41.

²³ Aboriginal and Torres Strait Islander Commission, 1994, *The Regional Planning Framework. A guide to regional council planning in the context of other planning activities in the region*. Canberra.

²⁴ See Appendix 9 concerning two other major reviews of the TSRA: the *New Deal* and the *Bamaga Accord*.

and distinctive nature of Torres Strait Islanders. The review observed the time was right for the Torres Strait area to assume greater autonomy in managing the affairs of Torres Strait Islanders and Aboriginal people living in the area. It proposed the creation of the TSRA with the same powers as the Commission itself. The authority would have its own appropriation from the Australian Government, to be negotiated directly between the authority and the Government.

The TSRA consisted of an elected arm and an administrative arm. The elected arm comprised 20 elected representatives who were Torres Strait Islanders and Aboriginals living in the Torres Strait. The majority of its membership was derived from Island Council Chairpersons elected under the Queensland *Community Services (Torres Strait) Act 1984*. The remaining three members of the elected arm comprised one representative for Horn and Prince of Wales Islands, one representative for the Port Kennedy community on Thursday Island and one representative representing (collectively) TRAWQ (Tamwoy, Rosehill, Aplin, Waiben and Quarantine) communities on Thursday Island.

In 2005, the ATSI Act replaced the ATSIC Act as the legislative instrument constituting the TSRA. In November 2007, the Queensland *Community Services (Torres Strait) Act* was replaced by amendments to the *Queensland Local Government Act 1993* (as amended).²⁵ Consequently, 17 of TSRA Board members obtained their position by virtue of their election as a councillor under the LGA. The remaining three Board members were elected under Part 3A Division 5 of the ATSI Act. This resulted in a governance structure with a democratically 'elected' arm of TSRA subject to popular vote and an 'administrative' arm comprising Australian Public Service (APS) staff accountable to the Minister.

As discussed in Appendix 3, these features of the TSRA's governance lead to a natural tension between the governance framework and Torres Strait community expectations, which create distinct challenges in designing an effective governance model.

3.2 Terms of Reference 1: Review of current legislation

In formulating recommendations for the governance structure of the TSRA, a review of relevant legislation has been undertaken to identify:

1. Existing legal constraints
2. Opportunities to modify existing legislation to enhance the governance of the TSRA

3.2.1 Aboriginal and Torres Strait Islander Act 2005 (Cwlth)

The constraints identified are as follows:

- In developing recommendations for the governance structures, both Objects:
 - (a) *'to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them.'*; and
 - (b) *'to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders'*

²⁵ The Queensland *Local Government Act 2009* (LGA) provides for the mayor and councillors of the Torres Strait Islands Regional Council (TSIRC) to be either Torres Strait Islanders or Aboriginals. It also respects Aboriginal tradition and Island custom, particularly by allowing all local governments to consider Aboriginal tradition and Island custom when exercising their powers under the Act. The latter sets out responsibilities of councillors and the mayor and recognises that the primary accountability of the local government is to its community, and that the decisions of the local government must be made with regard to the benefit of the entire local government area and the current and future interests of the residents. In addition, the LGA provides for community forums and stipulates that a person is qualified to be a councillor for the TSIRC if the person is a Torres Strait Islander or an Aboriginal and has lived in the local government area for two years immediately before nomination day.

provide the foundations in which the recommendations will be considered.

- Ailan Kastom is fundamental to all recommendations.
- The TSRA is a body corporate subject to the provisions of the CAC Act.
- The functions of the TSRA are quite broad and include: formulate, implement and monitor the effectiveness of programs for Torres Strait Islanders and Aboriginal persons living in the Torres Strait.²⁶
- The TSRA is subject to direction by the Minister.²⁷
- The TSRA may establish advisory committees which may include members of the TSRA.²⁸
- The eligible number of current members must be between 20 and 23.²⁹
- The Minister may determine the manner of representation on the TSRA.³⁰
- The AEC is to conduct TSRA elections.³¹
- The TSRA election rules can provide for the establishment of wards, setting the number and boundaries for each ward.³²
- Only Torres Strait Islander or Aboriginal persons, registered on the Commonwealth Electoral Roll and resident in the ward concerned, are entitled to vote in TSRA elections.³³
- Only certain people are qualified to be elected to the TSRA with the main requirement being eligibility to vote in the TSRA election.³⁴
- TSRA elections must be held every four years.³⁵
- Voting is not compulsory in TSRA elections.³⁶
- All members of the TSRA hold office on a part-time basis, except for the Chairperson.³⁷
- The Chairperson and the Deputy Chairperson are elected by the members at the first meeting of members.³⁸
- There must be at least four meetings of the TSRA annually.³⁹
- The TSRA General Manager on advice from the TSRA Board, is appointed and terminated by the Minister.⁴⁰
- The General Manager and staff are employed under the *Public Service Act 1999* (Cwlth) and constitute a Statutory Agency with the General Manager being the head of the agency.⁴¹

3.2.2 Local Government Act 2009 (Qld)

The constraints identified are as follows:

- A local government has the power to do anything that is necessary or convenient for the good rule and local government of its local government area.⁴²

²⁶ ATSI Act Section 142A

²⁷ ATSI Act Section 142E

²⁸ ATSI Act Section 142M

²⁹ ATSI Act Section 142R

³⁰ ATSI Act Section 142S

³¹ ATSI Act Section 142T

³² ATSI Act Section 142TA

³³ ATSI Act Section 142U

³⁴ ATSI Act Section 142V

³⁵ Minister's Declaration of 1 February 2008, paragraph 7(6)

³⁶ ATSI Act Section 143B

³⁷ ATSI Act Section 143J

³⁸ ATSI Act Section 143L

³⁹ ATSI Act Section 144E

⁴⁰ ATSI Act Section 144G and 144P

⁴¹ ATSI Act Section 144R

⁴² LGA Section 9(1)

- When exercising a power, a local government may take account of Aboriginal tradition and Island custom.⁴³
- Responsibilities of councillors are broadly set out and include ‘*must represent the current and future interests of the residents of the local government area*’.⁴⁴
- The Torres Strait Island Regional Council (TSIRC) and the Northern Peninsular Area Regional Council (NPARC) are identified as Indigenous Regional Councils.⁴⁵
- The relevant Queensland Government Minister can establish community forums in Indigenous Regional Councils as a body responsible for meeting with the local community to discuss issues relating to a number of items including the delivery of services.⁴⁶
- There must be elections for members of community forums and these elections must be held as close as practical to the quadrennial elections for the Indigenous Regional Council.⁴⁷
- Members of community forums are not entitled to any remuneration.⁴⁸
- To be a councillor or mayor of the Torres Strait Island Regional Council, a person must be an Australian citizen and a Torres Strait Islander or Aboriginal and have lived in the local government area for two years immediately before the nomination day.

3.2.3 Commonwealth Authorities and Companies Act 1997 (Cwlth)

The constraints identified are as follows:

- Under the CAC Act, TSRA members have a duty of care and diligence⁴⁹ and must exercise their powers and discharge their duties in good faith in the best interests of the Commonwealth authority⁵⁰. In addition, there is a requirement not to misuse their position⁵¹ or information⁵² obtained in the course of their duties. The business judgement rule also applies⁵³.
- An audit committee must be established.⁵⁴

3.2.4 Torres Strait Regional Authority Section 142S Declaration 2008, 1 February 2008

The constraint is:

- This declaration provides for the TSRA to be represented by Torres Strait Islanders and Aboriginal persons living in the Torres Strait area elected to represent communities in that area under the Queensland *Local Government Act 1993* as amended and in force from time to time.

⁴³ LGA Section 9(3)

⁴⁴ LGA Section 12(1)

⁴⁵ LGA Section 81

⁴⁶ LGA Section 87

⁴⁷ LGA Section 88

⁴⁸ LGA Section 89

⁴⁹ CAC Act Section 22

⁵⁰ CAC Act Section 23

⁵¹ CAC Act Section 24

⁵² CAC Act Section 25

⁵³ CAC Act Section 22 (2)

⁵⁴ CAC Act Section 44

3.3 Terms of Reference 2: Analysis of current TSRA governance arrangements and TSRA Board business model

3.3.1 Overview

In 2005, the ATSI Act replaced the ATSI Act as the legislative instrument constituting the TSRA. In November 2007, the Queensland *Community Services (Torres Strait) Act* was replaced by amendments to the *Queensland Local Government Act 1993*. As a result, the Federal Minister for Families, Housing, Community Services and Indigenous Affairs made a Declaration⁵⁵ under subsection 142S(1) of the ATSI Act revoking the former notice made under that subsection concerning the manner of representation on the TSRA. As a result, the 20⁵⁶ TSRA members are now chosen as follows:

- 15 councillors are elected to the Torres Strait Islands Regional Council (TSIRC)⁵⁷ representing each of the 15 island regions under the *Local Government Act 1993* (Qld). They are automatically appointed as members of the TSRA.
- Two councillors are elected to the North Peninsula Area Regional Council (NPARC) representing the wards of Bamaga and Seisia under the *Local Government Act 1993* (Qld). They are also automatically appointed to the TSRA⁵⁸.
 - Anyone can stand for election to the NPARC and there is no requirement for candidates to have lived in the area for a minimum period. All eligible citizens can vote regardless of race and voting is compulsory⁵⁹. However, only the communities of Bamaga and Seisia which have links to the Torres Strait are eligible to be represented on the TSRA Board. The two candidates who are elected to represent the communities of Bamaga and Seisia in the NPARC are automatically appointed to the TSRA Board⁶⁰.
- Three persons are elected as members of the TSRA under Part 3A Division 5 of the ATSI Act and represent the wards of: Horn and Prince of Wales Islands, Port Kennedy and TRAWQ.
 - Elections are held as soon as practicable after the quadrennial Queensland local government elections held under the LGA⁶¹. A candidate must be a Torres Strait Islander or Aboriginal. There is no requirement for candidates to have resided in the ward for a minimum period of time. Voting is not compulsory and only Torres Strait Islanders or Aboriginals whose name is on the Commonwealth electoral roll and whose place of living is shown on the roll in the ward concerned are eligible to vote in this election.

Elections occur every four years, either at the same time or as soon as practicable after the Queensland local government elections.

The existing governance structure of the TSRA Board is shown below in Figure 2.

⁵⁵ Declaration dated 1 February 2008

⁵⁶ Under Section 142R of the ATSI Act, the number of Board members is fixed by the Minister and must be at least 20 and not more than 23. If the number of members is fewer than seven then the Minister may appoint a TSRA Administrator.

⁵⁷ In 2008, the TSIRC replaced the Island Coordinating Council (ICC) which was a Queensland statutory authority.

⁵⁸ There are five wards in NPARC but only the two councillors elected to the wards of Bamaga and Seisia qualify for appointment as members of the TSRA.

⁵⁹ The last NPARC election was held in March 2008.

⁶⁰ If the person elected to represent either Bamaga and/or Seisia under the Queensland Act is not an Aboriginal or Torres Strait Islander then an election held in accordance with Part 3A, Division 5 of the ATSI Act will be conducted to elect the member for the wards of Bamaga and/or Seisia.

⁶¹ The last election was held in May 2008.

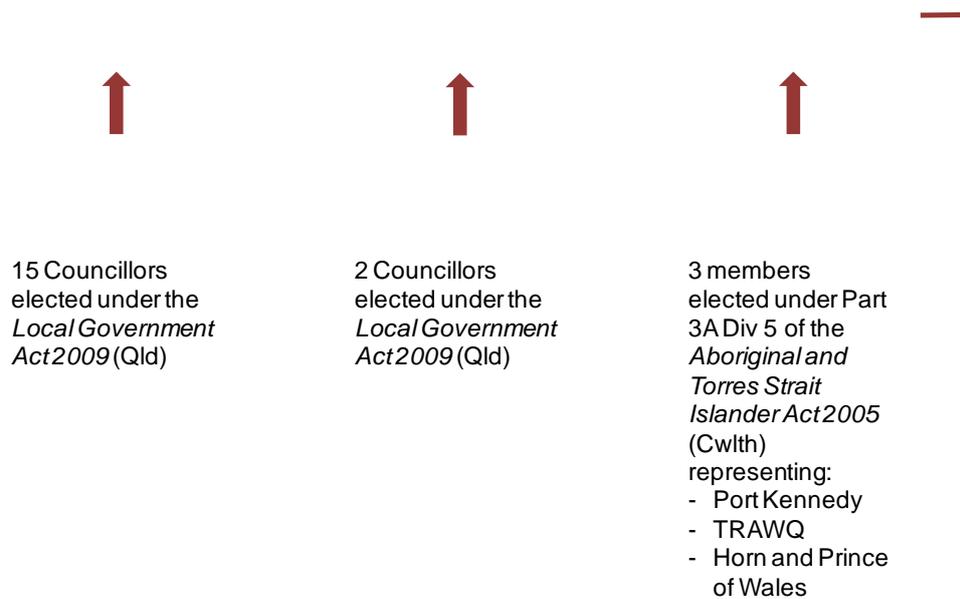


Figure 2: TSRA Board Governance Structure 2011

The TSRA organisation structure is shown below in Figure 3.

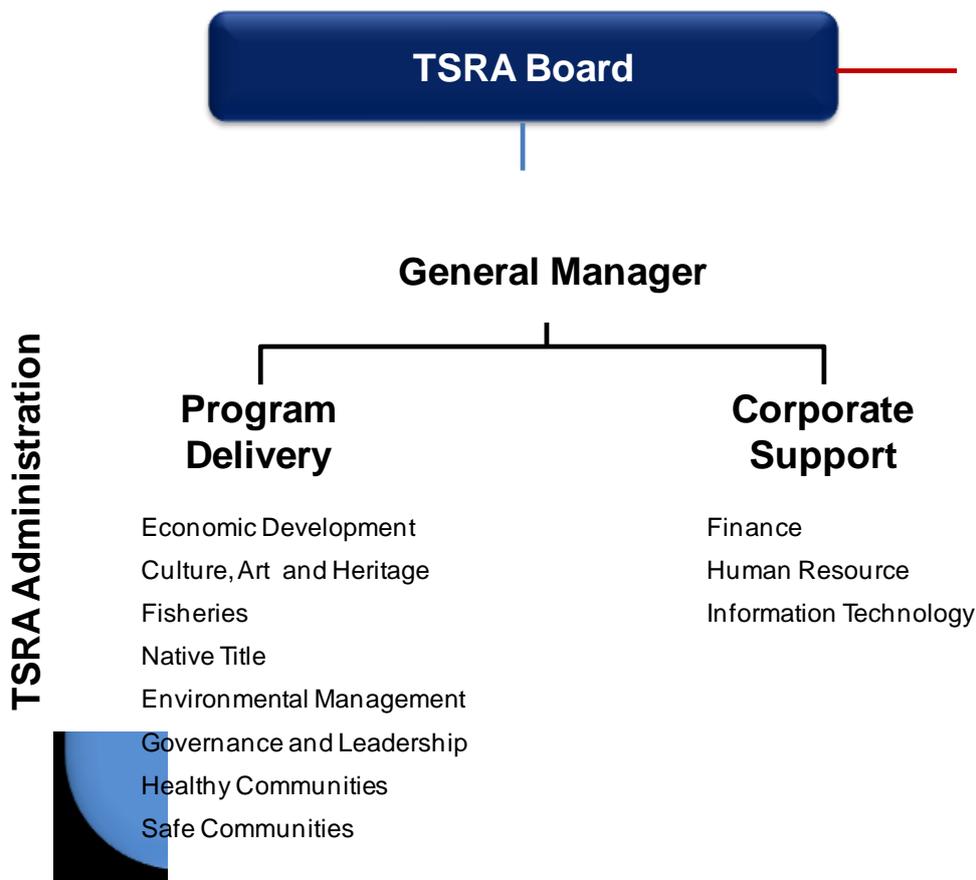


Figure 3: TSRA Organisation Structure 2011

The TSRA consists of the elected arm and an administrative arm (the 'Administration') comprising the General Manager appointed by the Minister (on advice from the Board) and

some 80 APS staff employed under the PS Act. The primary function of the elected arm (Board) is to set TSRA's vision for the Torres Strait and overall strategic direction, scope and broad organisational objectives and to approve Program mandates.⁶² There are no specific qualifications required to be a member of the TSRA Board, apart from the electoral qualifications set out in the ATSI Act.⁶³ This said, the TSRA is required to detail in its Annual Report each Board member's qualifications and experience.⁶⁴

All TSRA Board members are Directors under the CAC Act and are classified as non-executive Directors. As such, they have duties relating to care and diligence, acting in good faith, use of their position and information and compliance with statutory and other duties.⁶⁵

With the exception of the Chairperson, all members hold office on a part-time basis and members are entitled to remuneration and allowances. The TSRA Board is required to elect from amongst its members a Chairperson and a Deputy Chairperson.⁶⁶ In addition, the Board also chooses from amongst themselves who will hold the position of Alternate Deputy Chairperson.⁶⁷

3.3.2 Issues and Risks with the Existing Governance Arrangements

The following observations are made taking into consideration our knowledge on leading governance practices.

Issue	Risk
1. A Board size of 20 -23.	<p>1.1 There are few boards of this size in other forms of organisation, including most statutory authorities. One example of a government owned organisation which typically still has a governing body of this size is a university.</p> <p>1.2 Facilitating a meeting of 20 persons to allow every person to have their say results in inefficiencies and significant time cost.</p> <p>1.3 An uneven distribution of workload can occur.</p> <p>1.4 Board members can undertake 'social loafing'. Because of the size of the Board, directors can believe that they need not fully prepare for Board meetings given the size of the Board. This can result in not everyone having a full understanding of the issues which has a negative impact on decision making and communication back to the communities.</p> <p>1.5 The cost of getting a Board of 20 people together four to five times a year impacts adversely on budget.</p> <p>1.6 Board members should be provided with ongoing professional development to ensure they are performing their role to a high standard. A Board of 20 individuals makes professional development a very expensive exercise and will necessitate innovation as to how professional development can be best delivered.</p>

⁶² Australian Government, Torres Strait Regional Authority, 2010, *Annual Report 2009-2010*, p.51.

⁶³ ATSI Act Section 142V

⁶⁴ In accordance with Schedule 1, Part 2, Division 3, Clause 14 of the *Commonwealth Authorities and Companies (Report of Operations Orders) Act 2007*.

⁶⁵ In accordance with Division 4 of the CAC Act.

⁶⁶ In accordance with Section 143M of the ATSI Act.

⁶⁷ In accordance with Section 144D of the ATSI Act.

<p>2. Board members elected by communities</p>	<p>2.1 Democratic election of representatives to a legislature is the basis of modern Western democracy. Such a process is not geared to having representatives with specified skill sets outside a basic requirement for 'citizenship'. (For example a person must be an Australian citizen to be elected to the Federal Parliament. (For the TSRA, the requirement is that the person must be either a Torres Strait Islander or Aboriginal and live in the region.) Election of members via popular vote may not result in the skills, knowledge and experience on the Board necessary to achieve the strategic direction.</p> <p>2.2 A key distinction is that normally elected representatives do not have a direct requirement to exercise a fiduciary duty (to act in the best interests of the organisation). Their 'fiduciary duty' is viewed as a requirement to act in the best interests of the people who elect them. As there are often major philosophical and political differences as to what is the best interests of the people, any test of fiduciary duty in terms of the 'best interests of the organisation' is very difficult to implement. The argument is that elected representatives enact their role in a very public manner and that voters can comment on their performance each electoral cycle at the ballot box. Elected representatives do have an obligation to avoid conflicts of interest and not personally benefit from their position. The ATSI Act does not currently place these requirements on members. Yet, the members of the TSRA have these responsibilities under the CAC Act. This has the potential to create a significant tension for the members and the organisation.</p> <p>2.3 Under elected democratic regimes, the elected members normally have considerable discretion to make the major decisions for the people they represent. They approve budgets, major spending and taxation regimes and can make laws and regulations. They also hold the administration to account. How they vote on these decisions will influence their re-election and is the ultimate reflection of accountability. The members of the TSRA appear to have few of these powers, but are subject to the discipline of the ballot box.</p> <p>2.3 Large family groups have the potential for a greater voting power to ensure their preferred candidate gets appointed to the Board.</p>
<p>3. Appointment to TSRA linked to the <i>Local Government Act</i></p>	<p>3.1 TSRA members wear two hats resulting in conflicts of interest as TSRA provides a considerable amount of funding to TSIRC and the NPARC.</p> <p>3.2 Wearing of two hats has the potential to result in an inability of the member/councillor to focus on either position well to the detriment of the community.</p> <p>3.3 Confusion in the community as to which organisation is responsible for what can lead to community frustration and dissatisfaction.</p>

3.4 Terms of Reference 3: Consult widely and openly with the Torres Strait community to determine community attitudes and preferences for representation on the TSRA

During the consultation phase of this review, both Board members and Torres Strait community members were asked for their views on the current TSRA governance arrangements and were invited to suggest any improvements.

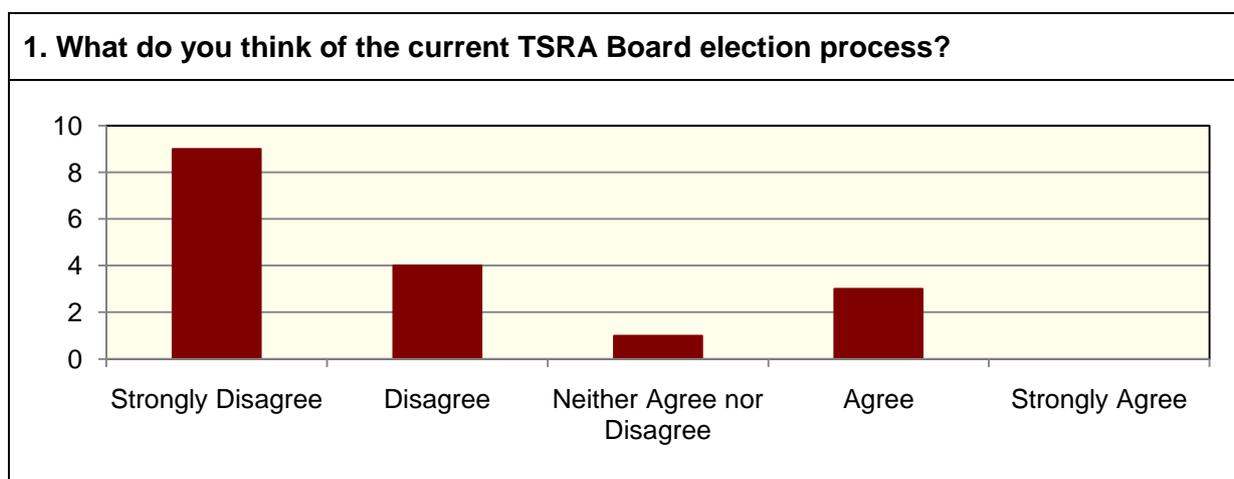
The survey form (see Appendix 5) was provided to participants at the community consultations to provide structure to the discussions. The survey form sought responses to the following questions:

- What do you think of the current TSRA Board election process?
- How would you prefer TSRA Board members to be chosen?
- What do you think about the current number of members of the TSRA Board?
- How do you feel about a TSRA Board which may consist of Aboriginal and Torres Strait Islanders *and* other persons?
- Currently each community has one elected member even though communities vary in population size. Do you agree that this is a fair representation model?
- How would you feel about geographic member representation, i.e. a member/s represents a group of island clusters – Top Western, Western, Central, Eastern, Inner, Northern Peninsula?
- How well do you think your community's views are heard at the TSRA?
- What qualities and knowledge do you expect TSRA Board members to have?
- Overall, how well do you think the TSRA assists your community?
- Are there any other comments you wish to make?

The following paragraphs provide a summary of Effective Governance's interpretation of information gathered through the community forums, survey and documentation review. More detailed information on the communities' responses are provided at Appendix 6.

What do you think of the current TSRA Board election process?

The purpose of this question was to gauge overall community views concerning the current method for selecting members to the TSRA Board.



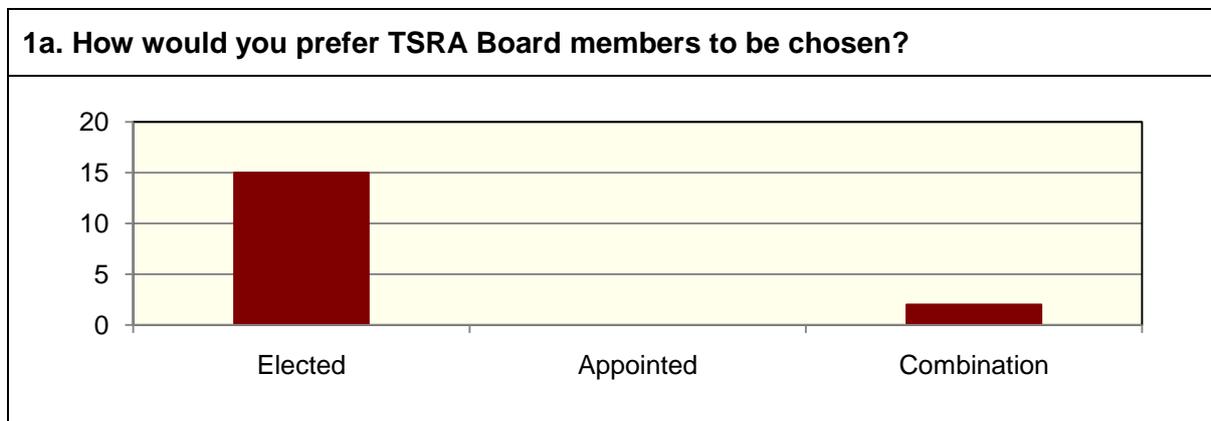
Graph 1

There was widespread dissatisfaction with the current method of selecting Board members with twelve communities either strongly disagreeing or disagreeing with the process, three agreeing with it, and one being ambivalent.

Communities were generally of the view that members should not be automatically appointed to the Board by virtue of their election as councillor rather they should be elected. There was concern that the current model of TSRA members ‘wearing two hats’ reduces both the effectiveness of the TSRA and the Councils. Specifically, communities felt that the two roles were conflicted, as there are difficulties in reconciling the tension between a Board member’s responsibilities to the region and a local government councillor’s responsibilities to their own community.

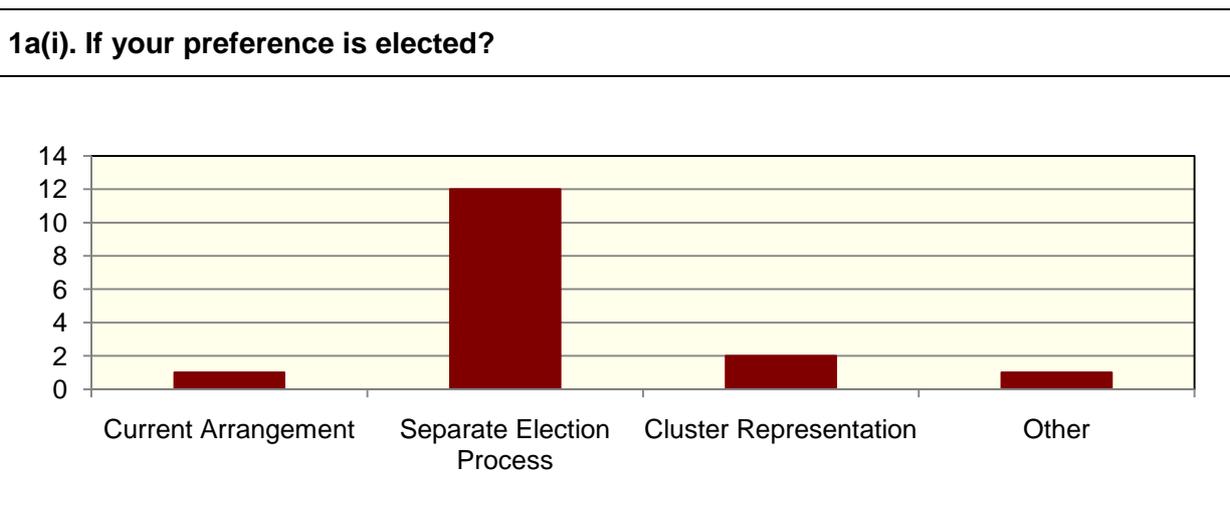
How would you prefer TSRA Board members to be chosen?

The purpose of this question was to determine whether communities preferred members to be elected to the Board, appointed to the Board, or a combination of both.



Graph 2

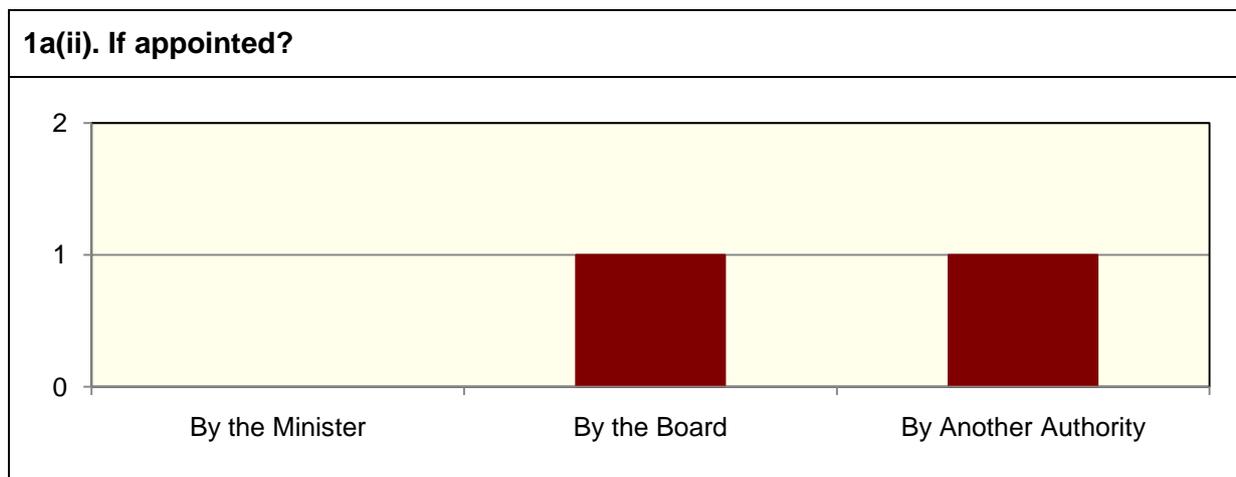
Some 15 communities preferred to elect their members to the Board while two communities favoured a combination of elected and appointed members.



Graph 3

If members were to be elected to the Board, 12 communities preferred to elect their member under a separate process with TSRA specific wards, two communities supported

representation on a regional cluster basis and one community believed that there should be a portfolio based general election.



Graph 4

If members were to be appointed to the Board, the two communities which opted for appointed members preferred that the Board decide who should be taken on as a member rather than the Minister or some other authority.

In considering Questions 1(a), 1(a)(i) and 1(a)(ii), communities were overwhelmingly in favour of decoupling local government elections from TSRA Board membership. It is noted that Section 12 of the LGA requires councillors to act in the best interest of their community. The functions of the TSRA, as outlined in Section 142A of the ATSI Act, however, require Board members to take a regional perspective. Communities felt that the dual roles performed by TSRA Board members create inherent conflicts of interest between the responsibilities of a councillor and those of a Board member. Moreover, having dual roles also creates confusion and misunderstanding of the separate roles not only for the councillors/Board members but also for the community. As a result, most communities felt that a separate election process should be held to elect members to the Board. There was some support for holding a TSRA election at the same time as the Federal election to provide a clear distinction between the role of a councillor and that of a TSRA Board member. In addition, there was a suggestion for the maximum term of a Board member to be 12 years.

The majority of communities believed that the same person should not be permitted to run in both the Queensland local government and TSRA elections. However, several smaller communities were concerned they may not have two suitable community members available and the strength of their representation would suffer as a consequence.

In terms of reducing role conflict, the positions of local government councillor and TSRA Board member should ideally be held by a separate individual. However, this needs to be reconciled with the situation found in smaller Torres Strait communities which understandably wish to elect their best representative to both positions. On balance, therefore, the principle of representative democracy should be the overriding factor and community members should continue to be allowed to be a Queensland local government councillor and a TSRA Board member. Ultimately, the voters will then decide whether a person who undertakes the two roles is performing both roles effectively.

Recommendation 5: Local government councillor/TSRA Board member

Allow community members to be elected as both a Queensland local government councillor and a TSRA Board member.

Some support was received for a mix of elected/cluster appointed Board members, with a view to improving the skills on the Board while still retaining some local representation. However, communities considered that this approach was flawed insofar as it did not allow for each community to have a representative present on the Board.

The appointment of Board members by either the Minister or another body or authority was not viewed by most communities as conducive to the Torres Strait people having a say in their own affairs.

Recommendation 1: Direct election of TSRA Board members

Change the current method where the majority of Board members are appointed to the Board by virtue of their position as a councillor under the Local Government Act (Qld) to allow for the direct election of all members to the Board under Part 3A Division 5 of the ATSI Act.

Recommendation 8: Holding of elections

Conduct discussions with the Australian Electoral Commission (AEC) to determine the most practical and efficient means of holding these elections.

What do you think about the current number of members of the TSRA Board?

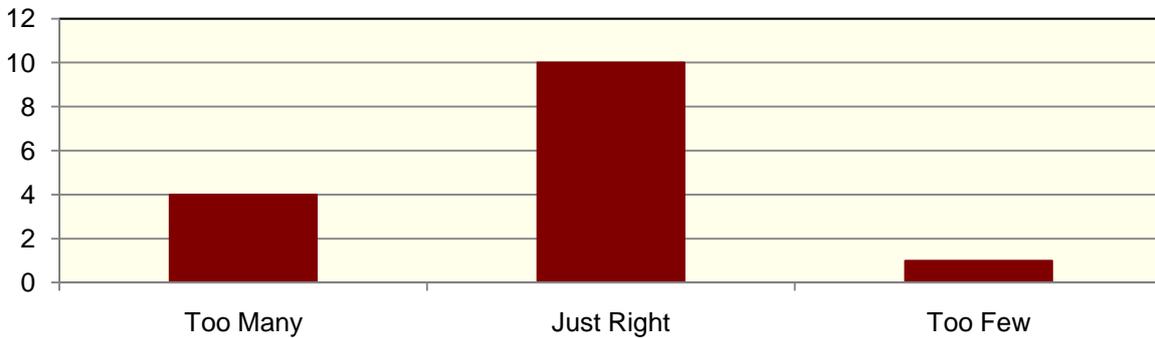
The purpose of this question was to determine what communities thought should be the optimum Board size.

The consultants put the view to each community that a Board size of 20 members is very large by comparison to other Boards both in the public and private sectors. Indeed, there is currently a trend towards smaller Boards on the basis that the commitment level is higher among a smaller group, consensus amongst Board members is more easily reached and it is thus easier to run a business-like and focused meeting with a smaller Board. The view was also put that the legitimacy of any proposed framework will rest upon the quality of the decisions made by the governing body and the leadership that body demonstrates, rather than by its size. The consultants suggested a Board size of between six to eight members would achieve this commitment and focus and could be better aligned with the TSRA's existing portfolio/program structure.⁶⁸

Notwithstanding, the majority of communities favoured electing at least one individual from each community to represent their interests on the Board. While there was some agreement that 20 was a large number, and this could contribute to the scheduling of too many meetings, the associated expense and poor decision making, the majority of communities felt that it was preferable for each to have their particular interests represented in a fair and equitable manner.

⁶⁸ Kiel GC & Nicholson GJ, 2003, *Boards that work: a new guide for directors*, McGraw-Hill, Sydney, p. 111.

2a. What do you think about the current number of members of the TSRA Board?

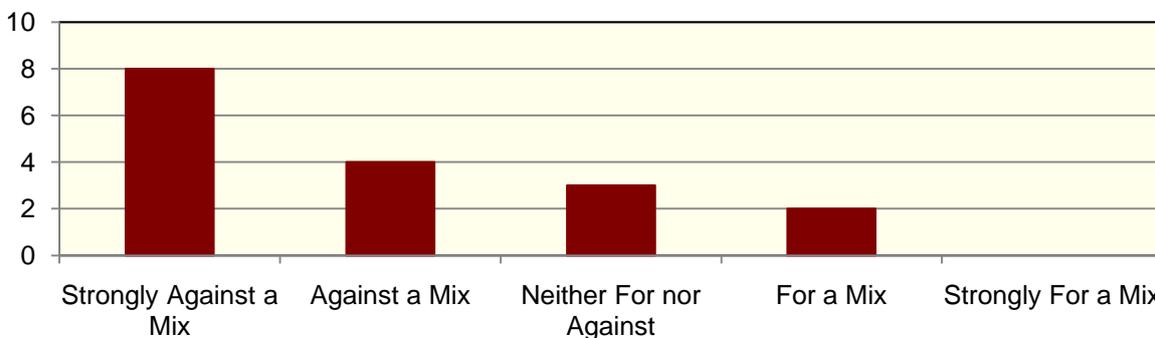


Graph 5

How do you feel about a TSRA Board which may consist of Aboriginal and Torres Strait Islanders *and* other persons?

The purpose of this question was to determine whether communities believed it was appropriate that persons who not are Aboriginal and Torres Strait Islanders could be Board members.

2b. How do you feel about the TSRA Board which may consist of Aboriginal and Torres Strait Islander and other persons?



Graph 6

The majority of communities supported maintaining the status quo of only having Aboriginal and Torres Strait Islander people as Board members. The main concern with introducing other persons to the Board was the threat it may pose to cultural values and the right of the Torres Strait people to govern their own affairs.

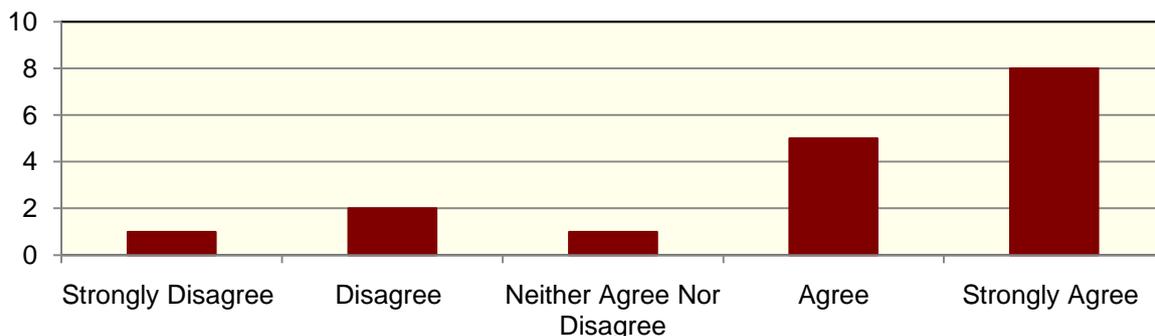
Recommendation 4: Board member eligibility requirement

Continue the current arrangement where Board members must be Torres Strait Islanders or Aboriginals and resident in the region covered by the TSRA.

Currently each community has one elected member even though communities vary in population size. Do you agree that this is a fair representation model?

The purpose of this question was to determine whether communities considered that it was necessary to have one member to represent each community.

2c. Currently each community has one elected member even though communities vary in population size. Do you agree this is a fair representation model?



Graph 7

On the whole, communities believed very strongly that each was entitled to equal representation on the Board regardless of the community size, with only a very small number agreeing that it would be acceptable for the larger communities to have a greater number of representatives should it be considered appropriate.

Additionally, the Prince of Wales community believes it is entitled to its own representative, not one sitting in combination with Horn Island. However, we do not believe this is feasible given that the community consists of some 20 people.

How would you feel about geographic member representation, i.e. a member/s represents a group of island clusters – Top Western, Western, Central, Eastern, Inner, Northern Peninsula?

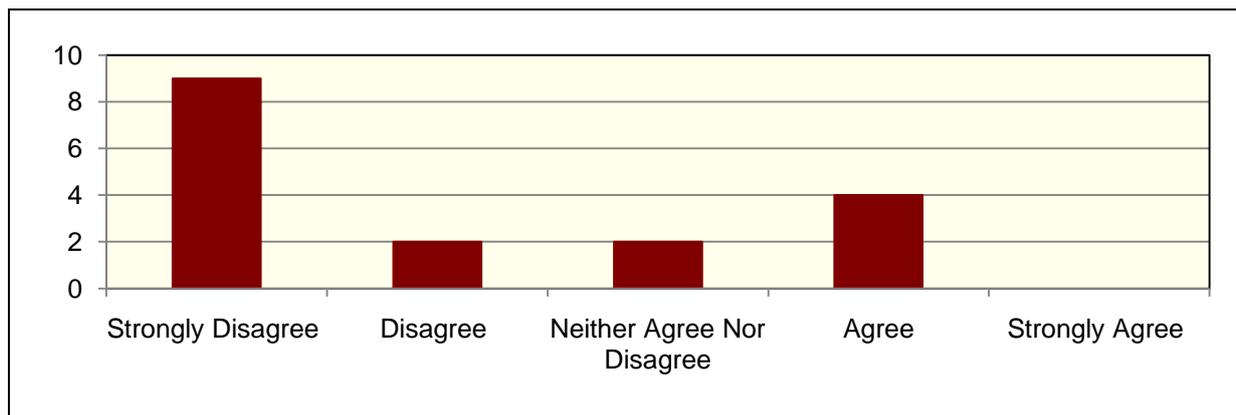
The purpose of this question was to determine whether communities would agree to having one or more members represent each group of island and Peninsula clusters.

The consultants further suggested that a smaller sized Board could be achieved by electing one or two representatives from each of the five Torres Strait island 'clusters'⁶⁹ and the two Torres Strait communities on the Northern Peninsula Area⁷⁰ to the TSRA Board.

2d. How would you feel about geographic member representation?

⁶⁹ The five traditional island clusters are: Top Western Islands (Boigu, Dauan and Saibai); Western Islands (Badu, Mabuiag and Moa (Kubin and St Pauls communities); Central Islands (Iama, Masig, Poruma and Warraber); Eastern Islands (Mer, Ugar and Erub); and the Inner Islands (Hammond Island, Horn and Prince of Wales Islands and Thursday Island (TRAWQ and Port Kennedy).

⁷⁰ The two communities are Bamaga and Seisia.



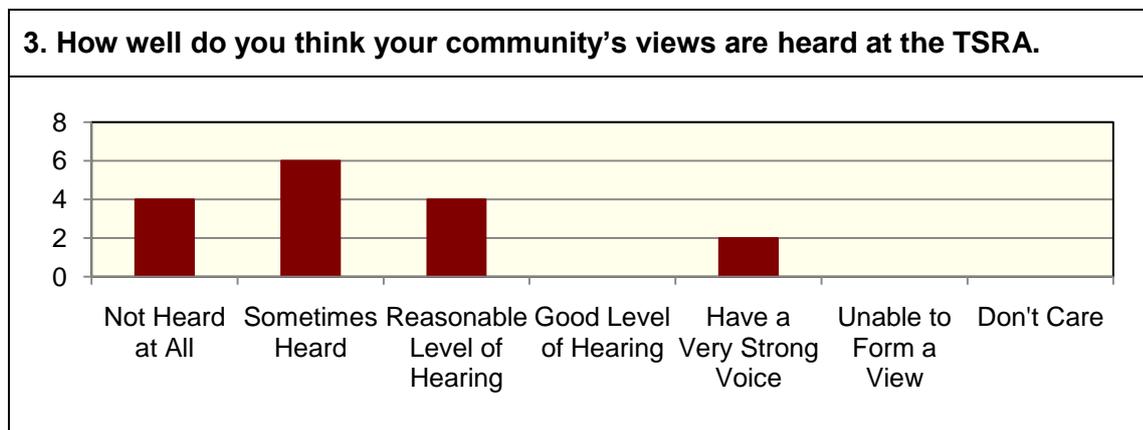
Graph 8

Four communities agreed that a cluster-based election model had some merit provided safeguards were built into the model that ensured each community’s interests were represented equally at Board meetings. The greatest concern was expressed by the smaller communities, which believed that their small population size would make it unlikely that they would ever have a representative from their community elected to the Board.

Some communities observed that historically some members appear to have been focused on representing their individual community at the expense of broader considerations. Therefore, to see a change for cluster-based representation to be a successful model going forward there would need to be a commitment from TSRA Board members to fairly represent the interests of all communities.

How well do you think your community’s views are heard at the TSRA?

The purpose of this question was to determine how well each community’s voice was represented at the TSRA.



Graph 9

There was considerable confusion amongst the communities as to exactly how well their views were heard by the TSRA. The lack of understanding of the different roles and functions of the TSRA and the TSIRC is reflected in this wide variety of opinions. Role conflict between an individual’s duties as a councillor and a TSRA Board member may also be colouring the communities' perception as to how well their views are being heard.⁷¹

⁷¹ *Role conflict* exists when an individual is torn by conflicting job demands. See Arnold, J with Silvester J, Patterson F, Robertson I, Cooper C & Burnes B, 2005, *Work Psychology: Understanding Human Behaviour in*

Communities also strongly voiced the opinion that there was a lack of consultation and feedback on TSRA activities affecting their particular communities from the TSRA Administration at a suitably senior level. Also, in order for communities to remain appropriately informed, it was necessary for the Chairperson and the Portfolio Members to attend more community forums.

What qualities and knowledge do you expect TSRA Board members to have?

The purpose of this question was to determine the qualities and knowledge that members elected to the TSRA Board should possess in order to carry out their role as a Board member and to represent their community's interests.

All communities believed that Board members should possess the following qualities:

- Leadership
- Governance/management
- Negotiation and listening skills
- Honesty and integrity
- Clear communication

Some communities also suggested the following qualities:

- Education/qualified
- Committed
- Conflict resolution
- Be more informative
- Confidence
- 'People' person
- The chair of the PBC

All communities believed that members should possess the following knowledge:

- Ailan Kastom and cultural protocols
- Local community issues

Some communities also suggested the following knowledge:

- Political processes at three tiers of government
- Workings of the TSRA
- Women's issues
- Religion
- Portfolio expertise
- Media communication
- Financial/accounting
- IT literacy
- Report writing
- Time management
- Economic development
- Marketing
- Infrastructure
- Engineering/transport
- Environmental sustainability
- Employment

As evidenced by the responses, communities considered the qualities of strong leadership and knowledge of governance, superior communication skills and integrity coupled with a sound knowledge of Ailan Kastom and local community issues were necessary to be an effective TSRA Board member. While education level and various specific qualifications and abilities were considered desirable, they were not considered essential.

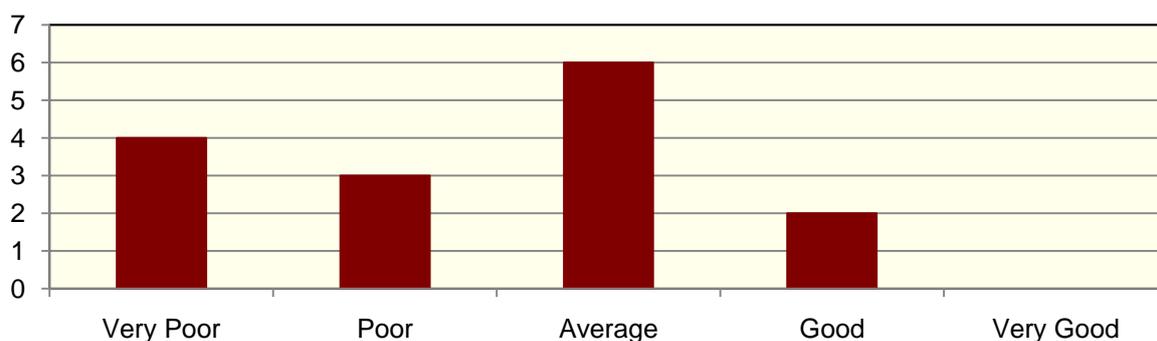
the Workplace, 4th edn, Prentice Hall, London, pp. 400-401. See also: Australian Government, Australian National Audit Office, 2003, Guidance Paper No. 2: *Potential Conflicts in the Governance of CAC Bodies in Public Sector Governance, Better Practice Guide*, vol 2, p.2 which refers to conflicts of role that '... arise when an officer is required to fulfil multiple roles that may be in conflict with each other to some degree. Unless properly handled, such conflicts can impair the quality of working relationships across government organisations and lead to loss of credibility and effectiveness'.

Several communities noted that position descriptions would assist Board members and Portfolio Members in understanding their roles and responsibilities.

Overall, how well do you think TSRA assists your community?

The purpose of this question was to determine communities' perceptions of the quality of services provided by the TSRA to their communities.

5. Overall, how well do you think TSRA assists your community?



Graph 10

Seven communities believed that the assistance they received from the TSRA was either poor or very poor. Six believed considered it to be average and two communities considered it to be good. As evidenced by Question 3, these results are reflective of general confusion within communities about the TSRA and its role as it applies to the individual communities, as well as a perceived lack of communication and consultation from the TSRA at an appropriate level.

Feedback during community consultations clearly indicates a perception of insufficient engagement with the community by the TSRA. This appears to result partly because the majority of Board members occupy two roles⁷² (and the resulting conflicts that arise) and partly because of a lack of engagement by communities with respect to TSRA activities.

Are there any other comments you wish to make?

The following comments were also made during the consultation.

Perception of power imbalance between the Board and the administration. The Board has a role in approving budget allocations for program delivery with the implementation of the funding process delegated to the General Manager.⁷³ This delegation has resulted in a perception in the communities that the Board has delegated too much of its powers to the TSRA Administration.

Direct election by all community members of the TSRA Chairperson. A number of communities and individuals believed that the Chairperson should be elected by popular vote by community members. This would bring the TSRA in line with the Torres Shire

⁷² i.e. as a TSRA Board member and as a Queensland local government councillor.

⁷³ These powers have been delegated for sound reasons, i.e. to remove the potential for conflict of interest by TSRA Board members in decision making over funding. See also: Australian Government, 2003, Torres Strait Regional Authority, *A Charter of Representation, Performance and Accountability*.

Council and the Torres Strait Island Regional Council where the mayors are elected by popular vote.⁷⁴

Recommendation 9: Election of Chairperson, Deputy Chairperson and Alternate Deputy Chairperson

Retain the existing Westminster model where the Chairperson, Deputy Chairperson and Alternate Deputy Chairperson are chosen by their fellow Board members.

3.5 Terms of Reference 4: Provide between three and five options for changing the business model and governance structure

3.5.1 Criteria for a Successful Model

The criteria for a successful model have been developed with three considerations in mind:

1. Torres Strait Island communities' expectations
2. Political appropriateness
3. Australian Government principles of public sector governance

With respect to the first consideration, communities advised that the following criteria needed to be met for any proposed model to meet community expectations:

- Knowledge of Ailan Kastom by Board members
- One representative for each community
- Direct selection of representatives by communities
- Role clarity for Board members
- Consultation and feedback by Board members to their communities

The terms of reference for this report require any proposed model to be 'politically appropriate'. In the context of this report, politically appropriate is taken to be synonymous with the TSRA vision of: '*Empowering our people, in our decision, in our culture, for our future.*'⁷⁵

In addition, any model should meet the six Australian Government principles of public sector governance⁷⁶: accountability, transparency, integrity, stewardship, efficiency and leadership.

A detailed explanation of the above criteria is provided at Appendix 7.

3.5.2 Governance Model Options

Five governance models have been considered:

- Option 1 – No change
- Option 2 – Community elected members

⁷⁴ However, as for the cluster option for the Board (Option 3), this proposal comes at a risk that smaller communities may perceive they are disadvantaged due to the stronger voice of larger communities in any multi-community election.

⁷⁵ Australian Government, Torres Strait Regional Authority, 2010, *Annual Report 2009-2010*, p.1.

⁷⁶ See Australian Government, Australian National Audit Office and Department of the Prime Minister and Cabinet, 2006, *Implementation of Programme and Policy Initiatives: Making Implementation Matter, Better Practice Guide*, p.13.

- Role clarity for Board members is poor: the dual roles performed by those Board members who are also local councillors, create inherent conflicts of interest between their respective responsibilities.
- It is difficult to run a business-like and focused meeting with a Board of 20 members.
- In terms of political appropriateness, there is widespread community dissatisfaction with this model.

The major risk in retaining this model is that the majority of communities do not believe that it best represents their interests, due mainly to the inherent conflicts of interest that arise in the case of the 17 TSRA Board members who are also Queensland local government councillors.

Option 2 – Community Elected Members



Figure 5: Option 2 – *Community elected members*

Under Option 2, all 20⁷⁷ communities would be represented by a member elected under Part 3A Division 5 of the ATSI Act.

There may only be one community member in smaller communities who has the requisite leadership and other skills as well as experience to take up the positions of local government councillor as well as TSRA Board member. Therefore, individuals should be allowed not only to stand for both local government elections but also for TSRA Board elections as well. The problem of role clarity could be mitigated in this case through the use of position descriptions⁷⁸ for all Board members.

The Chairperson would continue to be elected by the Board members under the existing Westminster model. The Deputy Chairperson and Alternate Deputy Chairperson would also be elected by their fellow Board members.

The strengths of this model are:

- As only Torres Strait Islanders and Aboriginals can be elected to the Board, all members would possess a good knowledge of Ailan Kastom from a regional perspective and as it applies to their community.
- Each community elects its own representative.
- By decoupling the election processes for local councillors and TSRA Board members, inherent conflicts of interest between their respective responsibilities should be substantially reduced, but acknowledging that some Board members may continue to hold both positions.

⁷⁷ The number 20 recognises Horn and Prince of Wales as one community.

⁷⁸ These position descriptions could be provided in a Board charter.

- Consultation and feedback by Board members to their communities would be improved provided communities are consulted and receive feedback on TSRA specific matters.
- In terms of political appropriateness, this model reflects what the communities have asked for.
- The legislative changes would solely comprise of issuing a new Gazette notice in accordance with Section 142S of the ATSI Act.
- This model is sound in terms of public sector governance.

The weaknesses of this model are:

- As the Board members are elected by popular vote, some Board members may not be able to fully contribute to Board meetings because they lack the necessary skill sets. Professional development would be necessary.
- It is difficult to run a business-like and focused meeting with a Board of 20 members.
- This model is financially and logistically inefficient because it would require a separate election process and the number of Board members required to travel to Board meetings.

The major risk in adopting this model is that some Board members may not be able to contribute fully to TSRA Board meetings because they lack the necessary technical expertise.

Option 3 – Cluster Elected Members

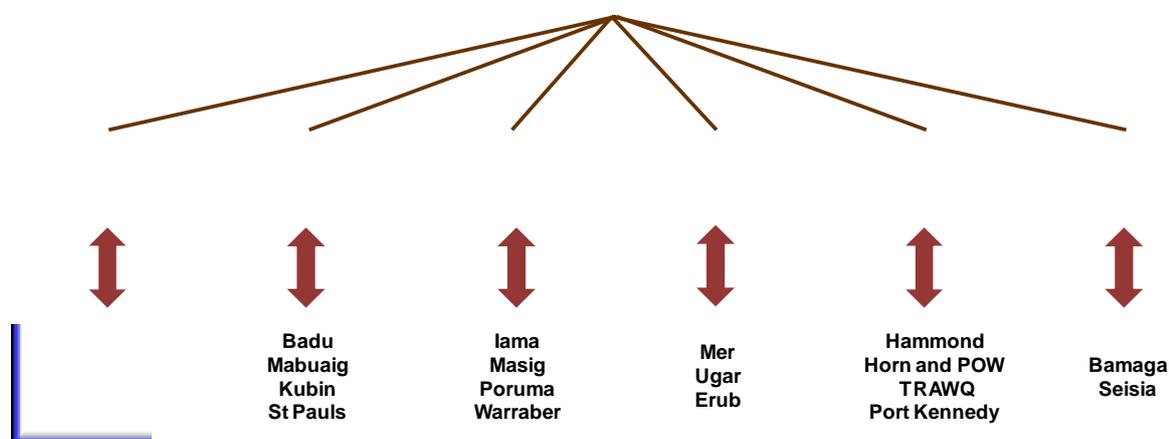


Figure 6: Option 3 – *Cluster elected members*

Under Option 3, each community would elect a community representative who in turn would then elect one of their number to be the TSRA Board member representing their cluster. This would mean that each island cluster and the Northern Peninsula (six cluster groups) would each be represented by one TSRA Board member.⁷⁹

⁷⁹ It would also be possible to nominate two members from each community to the Board. However, in this case, the Northern Peninsula would have both its communities (Bamaga and Seisia) represented on the Board and

In order to ensure that each community has an effective voice in TSRA matters, the TSRA Board member representing their cluster would be required to consult extensively with each community representative within their cluster on a periodic basis (especially before and after Board meetings). Also, an annual general meeting of all 20 community representatives would be held where the six TSRA Board members brief the remaining 14 community representatives on major TSRA initiatives. This would allow the community representatives to both express their communities' concerns on a regional level and to assist the Board in developing its strategic direction.

As in Option 2, there may only be one community member in smaller communities who has the requisite leadership and other skills as well as experience to take up the positions of local government councillor as well as TSRA Board member. Therefore, individuals should be allowed not only to stand for both local government elections but also to represent their cluster on the TSRA Board.

The strengths of this model are:

- Only Torres Strait Islanders and Aboriginals can be elected to the Board, therefore all members should possess a good knowledge of Ailan Kastom from a regional perspective.
- By decoupling the election processes for local councillors and TSRA Board members, inherent conflicts of interest between their respective responsibilities should be substantially reduced, but acknowledging that some Board members may continue to hold both positions.
- Every community will have an annual opportunity to meet with the Board to provide the Board with feedback on the previous 12 months' activities and guidance for the forthcoming 12 months.
- It should be easy to run a business-like and focused meeting with six Board members.
- This model is sound in terms of public sector governance.
- This model would be cost efficient on an ongoing basis as only six Board members would be required to travel to attend Board meetings.
- In terms of political appropriateness, communities would be represented on the Board at a cluster level.

The weaknesses of this model are:

- The cluster representative may not be as aware of Ailan Kastom as it applies to other communities within their cluster.
- There is only one member to represent all the communities' interests for each cluster.
- Only six communities will have their representative on the Board. Therefore, consultation and feedback by Board members to their communities is likely to be less than is currently the case.
- There is a risk that the six members may not have enough skills to meet the full range of their obligations as Board members.
- Significant changes to the ATSI Act would be required to implement this model.
- This model would not be cost efficient at the start of each electoral cycle due to the need to hold separate elections in all 20 communities.

The major risk in adopting this model is that it may receive a lukewarm reception from some communities because 14 communities will not be directly represented on the TSRA Board.

this could be perceived as unfair by the other communities/clusters. It would, on the other hand, be feasible to elect two members to the Board from the Northern Peninsula cluster if all five Northern Peninsula area communities were to be included as part of the Torres Strait communities at some future date.

As a result, the role of the community representatives – particularly their relationship with the TSRA Board members – would need to be clearly explained by means of a community education program.

Option 4 – Cluster Elected Members and Appointed Technical Members

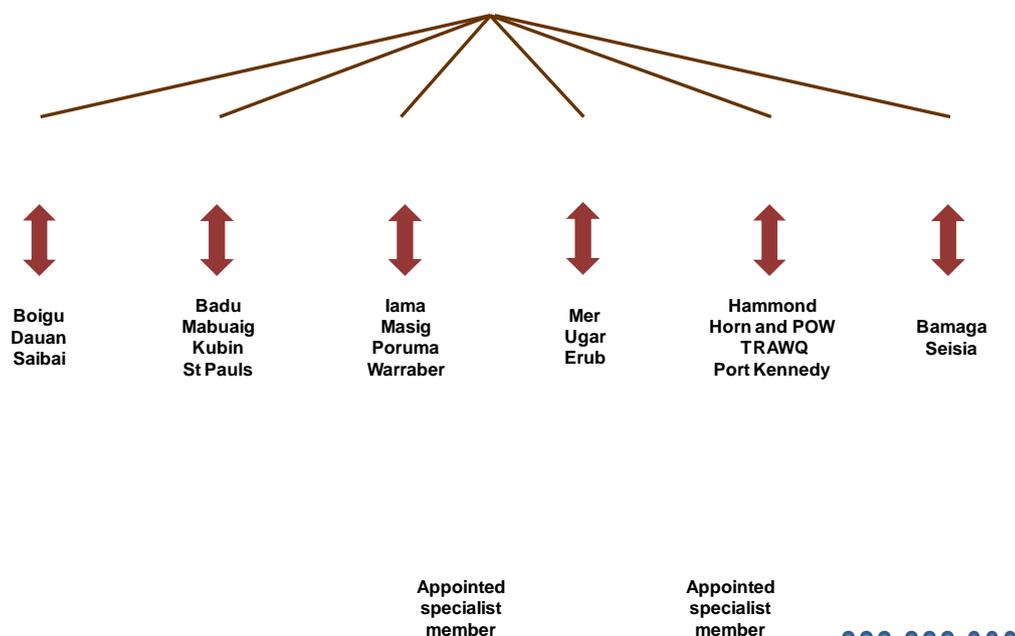


Figure 7: Option 4 – Cluster elected members and appointed technical members

Option 4 is an enhanced version of Option 3.

Under this model, the Board would consist of members chosen by cluster (as in Option 3) with the addition one or more appointed technical members to provide additional skills and experience that may be required by the Board. These skills could cover areas such as finance and accounting, economic development, environmental sustainability or indeed any area where the elected representatives do not possess the requisite skills and experience. In order to keep the Board to a manageable size and to ensure that the communities' interests are and are seen to be paramount, the maximum number of appointed representatives should not exceed five.

Candidates:

- Elected
 - Only Torres Strait Islanders or Aboriginals who are resident in the Torres Strait region would be eligible to stand for election.
 - In the smaller communities, there may only be one community member who has the requisite leadership and other skills as well as experience to take up the positions of local government councillor as well as TSRA Board member. Therefore, individuals should be allowed not only to stand for local government elections but also for TSRA Board elections. The problem of role clarity could be mitigated in this case through the use of a board charter that would contain position descriptions for all Board members.

- Appointed
 - The skills required could vary from one electoral cycle to the next and the number of appointed specialist Board members would vary to meet changing skills requirements. The specialist members could be selected by the cluster representatives. The specialist members need not necessarily be either Torres Strait Islanders or Aboriginals nor do they need to reside in the region. The specialist members can be appointed either by the Board on its own authority or by the Minister based on the Board's recommendation.

The strengths of this model are:

- At least 50% of the Board members will be Torres Strait Islanders and Aboriginals who all should possess a good knowledge of Ailan Kastom from a regional perspective.
- By decoupling the election processes for local councillors and TSRA Board members, inherent conflicts of interest between their respective responsibilities should be substantially reduced acknowledging that some Board members may continue to hold both positions.
- Any shortfall in the cluster representatives' skills will be compensated by the specialist members' skills.
- In terms of political appropriateness, communities would be represented on the Board at a cluster level.
- It should be possible to run a business-like and focused meeting with 11 Board members.
- This model is sound in terms of public sector governance.

The weaknesses of this model are:

- The cluster representative may not be as aware of Ailan Kastom as it applies to other communities within their cluster.
- There is only one Board member to represent all the communities' interests for each cluster.
- Only six communities will have their representative on the Board. Therefore, consultation and feedback by Board members to their communities is likely to be less than is currently the case.
- Significant changes to the ATSI Act would be required to implement this model.
- This model is neither financially nor logistically efficient due to the need for a separate election process. In addition, there is the potential for some Board members to reside on mainland Australia and this would add to the cost and logistics of holding Board meetings.

The major risk in adopting this model is that it may receive a lukewarm reception from some communities because 14 communities will not be directly represented on the TSRA Board. As a result, the role of the community representatives – particularly their relationship with the TSRA Board members – would need to be clearly explained by means of a community education program. Also, there is a major risk with respect to community expectations in allowing some Board members to be non-residents of the Torres Strait region.

Option 5 – Appointed Technical Members

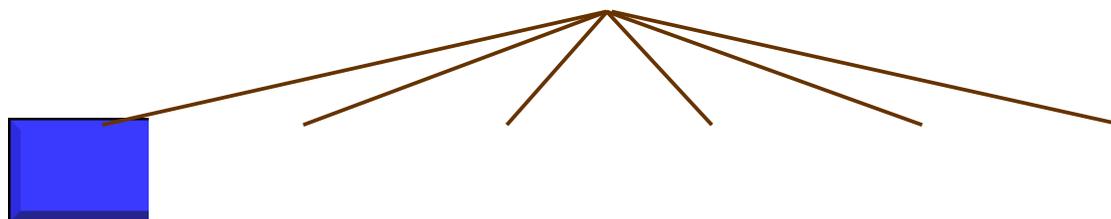


Figure 8: Option 5 – *Appointed technical members*

Under Option 5, the Board would consist of between six and eight members⁸⁰, appointed by the Minister. The members would be selected on the basis of their skill sets including their knowledge of the challenges facing Torres Strait region. A position description would be raised for each Board position and individuals would be invited to fill Board vacancies. Anyone could apply for the positions not just Aboriginals or Torres Strait Islanders residing in the Torres Strait region. The Minister, on advice, would determine the best candidate to fill each vacancy.

The Chairperson would be elected by his/her fellow Board members.

The strengths of this model are:

- Board members would be selected on the basis of best person for the job – at least in terms of their technical abilities.
- Aside from knowledge of Ailan Kastom, the Board members would possess a comprehensive range of skill sets.
- It should be easy to run a business-like and focused meeting with six Board members.
- This model is sound in terms of public sector governance.
- This model is financially and logistically cost effective.

The weaknesses of this model are:

- Unless the appointed members are Torres Strait Islanders or Aboriginals, then overall Board knowledge of Ailan Kastom much less the differences between communities is likely to be low to non-existent.
- There are no community representatives under this model.
- Communities would not have the opportunity to elect either a community or cluster representative to the Board.
- This model suffers in terms of accountability. Specifically, TSRA is unique in terms of its governance including with respect to other Commonwealth bodies. As a statutory body under the ATSI Act, accountability is through the Minister to the Federal Parliament and ultimately to the people of Australia. Currently (under Option 1), the members are largely, indirectly, democratically elected by the community, creating a very strong expectation that there is direct accountability back to the people. Under this model, however, there is a significant risk that consultation and feedback by Board members is unlikely to satisfy community expectations because the former will lack

⁸⁰ Kiel GC & Nicholson GJ, 2003, *Boards that work: a new guide for directors*, McGraw-Hill, Sydney, p. 111.

credibility in the eyes of the communities. As a result, communities are likely to feel that the Board is not accountable to them.⁸¹

- Significant changes to the ATSI Act would be required to implement this model.
- Additional travel costs may be required if all Board members are required to travel from mainland Australia.

The major risk of this model is that it will be rejected by communities because it does not allow for elected representatives to the Board.

⁸¹ However, should the Minister consider a strict corporate governance approach is required, Model 5 provides that solution.

3.5.3 Comparison of Options and Recommended Option

A comparison of each of the five models is provided in the following table:

Options Criteria	Option 1	Option 2	Option 3	Option 4	Option 5
	<i>No Change</i>	<i>Community Elected Members</i>	<i>Cluster Elected Members</i>	<i>Cluster Elected Members and Appointed Technical Members</i>	<i>Appointed Technical Members</i>
Community expectations					
Knowledge of Ailan Kastom by Board members.	Green	Green	Amber	Amber	Red
One representative for each community.	Green	Green	Amber	Amber	Red
Direct selection of representatives by communities.	Red	Green	Red	Red	Red
Role clarity for Board members.	Red	Green	Green	Green	Green
Consultation and feedback by Board members to their communities.	Red	Green	Red	Red	Red
Political appropriateness					
Likely community reaction	Red	Green	Amber	Amber	Red
Australian Government principles of public sector governance					
<ul style="list-style-type: none"> • Accountability • Transparency • Integrity • Stewardship • Efficiency • Leadership 	Amber	Amber	Amber	Amber	Amber

Table 2: Comparison of options

Having evaluated the criteria for a successful model above, the following table aggregates the assessments into an overall assessment for each of the three considerations: community expectations, political acceptability and the Australian Government principles of public sector governance.

Options	Option 1	Option 2	Option 3	Option 4	Option 5
	<i>No Change</i>	<i>Community Elected Members</i>	<i>Cluster Elected Members</i>	<i>Cluster Elected Members and Appointed Technical Members</i>	<i>Appointed Technical Members</i>
Criteria					
Community expectations	Red	Green	Amber	Amber	Red
Political acceptability	Red	Green	Amber	Amber	Red
Australian Government principles of public sector governance	Amber	Amber	Amber	Amber	Amber

Table 3: Overall assessment of options

Option 2 – Community Elected Members – is the best model in terms of meeting Criteria 1 for a successful model – community expectations (including being culturally appropriate) and being politically acceptable (Criteria 2). It is also sound in terms of fulfilling the Australian Government principles of public sector governance (Criteria 3).

In addition, given the widespread dissatisfaction with the existing model, the forthcoming Queensland local government elections in March 2012 present a good opportunity to move to a new governance model.

The following recommendations are made in order to implement Option 2:

Recommendation 2: Representation on the TSRA Board

The TSRA comprises 20 members who are elected by and represent each of the following communities: Boigu, Dauan, Saibai, Badu, Mabuiag, Kubin, St Pauls, Iama, Masig, Poruma, Warraber, Mer, Ugar, Erub, Hammond Island, Horn and Prince of Wales Islands, TRAWQ, Port Kennedy, Bamaga and Seisia.

Recommendation 3: Election frequency

Amend Section 142Y of the ATSI Act to change the timing of TSRA elections from three to four years.

Recommendation 6: Eligibility to vote

Continue the current arrangement where only Torres Strait Islanders or Aboriginals who are resident in the TSRA region are eligible to vote in TSRA elections.

Recommendation 7: Non compulsory voting

Voting in TSRA elections should be non compulsory, although currently 17 Board members hold their positions due to a compulsory voting system.

3.5.4 Legislative Amendments

Based on Option 2 being chosen as the preferred model, the following recommendations are proposed to enable this model to be implemented. The changes have been separated into two categories: essential (Recommendation 10) and non-essential but designed to enhance the TSRA governance structures (Recommendation 11). The essential legislative changes will solely comprise of issuing a new Gazette Notice in accordance with s142S of the ATSI Act.

Recommendation 10: Essential legislative changes

A new Gazette Notice be issued to amend the 1 February 2008 Declaration under s142S of the ATSI Act to address the following matters:

- 1 provision required for 20 specific wards for election purposes;*
- 2 update to reflect the current state local government legislation being the Local Government Act 2009.*

Recommendation 11: Non-essential legislative changes

7. Amend Section 142Y of the ATSI Act to change the timing of TSRA elections from three to four years (to align with existing 2008 Declaration). The TSRA members are collectively referred to as the 'Board'. However, there is no definition of 'Board' or what the role of the Board ought to be. In addition to the essential changes recommended above, a new Gazette Notice could incorporate this issue (if the ATSI Act were not to be amended under Section 142) to include words to the following effect:

'There shall be a Board of Directors of TSRA consisting of the following members:

- (d) a Chairperson;*
- (e) a Deputy Chairperson;*
- (f) other members.'*

8. The TSRA members are considered to be directors in accordance with the Commonwealth Authorities and Companies Act 1997) (CAC Act) (Cwlth). To provide role clarity, the role of the Board member requires definition description in the enabling legislation.
9. Misbehaviour leading to suspension or removal of a TSRA member (director) or Chairperson or Deputy Chairperson be more clearly defined than currently exists in Section 4A of the ATSI Act. A code of conduct for a member (director), Chairperson or Deputy Chairperson be included in the Gazette similar to what currently exists in the Local Government Act (Chapter 6, Division 5).
10. There also is a requirement for a right of review for any TSRA Board member, Chairperson or Deputy Chairperson who is suspended or removed by the Minister.
11. Provisions be provided for handling of complaints against TSRA Board members as currently exists under the Local Government Act (Chapter 6, Division 6).
12. Advisory committees established under 142M be required to have detailed terms of reference, including, but not limited to, a selection process for determining committee composition and a review period.