



# **Corporations (Aboriginal and Torres Strait Islander) Act 2006**

**No. 124, 2006**

**An Act to provide for Aboriginal and Torres Strait Islander corporations, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Corporations (Aboriginal and Torres Strait Islander) Act 2006**

**No. 124, 2006**

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## **An Act to provide for Aboriginal and Torres Strait Islander corporations, and for related purposes**

*[Assented to 4 November 2006]*

### **Preamble**

The Parliament of Australia intends that the following law will take effect according to its terms and be a special law for the descendants of the original inhabitants of Australia.

The law is intended, for the purposes of paragraph 4 of Article 1 of the International Convention on the Elimination of All Forms of

Racial Discrimination and the *Racial Discrimination Act 1975*, to be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders.

The Parliament of Australia enacts:

## **Chapter 1—Introduction**

### **Part 1-1—Preliminary**

#### **Division 1—Preliminary**

##### **1-1 Short title**

This Act may be cited as the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

##### **1-5 Commencement**

This Act commences on 1 July 2007.

##### **1-10 Act binds Crown**

- (1) This Act (except Part 5.8 of the Corporations Act as applied by subsections 516-1(3), 521-1(3), 526-35(3) and 526-40(3)) binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) To avoid doubt, a reference in this section to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.
- (3) However, this Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

##### **1-15 Geographical application of Act**

- (1) This Act extends to the external Territories.

- (2) Each provision of this Act applies, according to its tenor, in relation to acts and omissions outside this jurisdiction.

**1-20 Act applies regardless of residence, place of formation etc.**

Each provision of this Act applies according to its tenor to:

- (a) natural persons whether:
  - (i) resident in Australia or an external Territory or not; and
  - (ii) Australian citizens or not; and
- (b) all bodies corporate and unincorporated bodies whether formed or carrying on business in Australia or an external Territory or not.

Note: Many of the provisions in this Act apply only in relation to Aboriginal and Torres Strait Islander corporations.

**1-25 Objects of this Act**

The objects of this Act are to:

- (a) provide for the Registrar of Aboriginal and Torres Strait Islander Corporations; and
- (b) provide for the Registrar's functions and powers; and
- (c) provide for the incorporation, operation and regulation of those bodies that it is appropriate for this Act to cover; and
- (d) without limiting paragraph (c)—provide for the incorporation, operation and regulation of bodies that are incorporated for the purpose of becoming a registered native title body corporate; and
- (e) provide for the duties of officers of Aboriginal and Torres Strait Islander corporations and regulate those officers in the performance of those duties.

**1-30 Office of the Registrar of Aboriginal and Torres Strait Islander Corporations**

There is to be, within the Department, the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations.

**Chapter 1** Introduction

**Part 1-1** Preliminary

**Division 1** Preliminary

Section 1-35

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### **1-35 Interpretative provisions**

Chapter 17 contains the Dictionary, which sets out a list of all the terms that are defined in this Act. It also sets out the meanings of some important concepts and rules on how to interpret this Act.



## **Part 1-2—Overview of Act**

### **Division 6—Overview of Act**

#### **6-1 Overview of Act**

- (1) This Act primarily provides for the incorporation and regulation of Aboriginal and Torres Strait Islander corporations.
- (2) It also provides for the Registrar and the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations.

#### **6-5 Aboriginal and Torres Strait Islander corporations**

- (1) Chapter 2 provides for an application to be made to the Registrar for registration of an Aboriginal and Torres Strait Islander corporation.
- (2) There are a number of registration requirements that must be met before the Registrar may register an Aboriginal and Torres Strait Islander corporation.
- (3) Chapter 2 also deals with the effects of registration of an Aboriginal and Torres Strait Islander corporation on the corporation's members, officers, contact persons and registered office.

#### **6-10 Basic features of an Aboriginal and Torres Strait Islander corporation**

- (1) Chapter 3 deals with the basic features of an Aboriginal and Torres Strait Islander corporation. It covers matters such as the corporation's name, constitution and other rules applying to the corporation and the corporation's registered office or address for document access.
- (2) Chapter 3 also provides for the assumptions that people who deal with an Aboriginal and Torres Strait Islander corporation can make in those dealings.

### **6-15 Members and observers**

- (1) Chapter 4 sets out some rules for membership of an Aboriginal and Torres Strait Islander corporation and some rules about cancelling the membership of members of the corporation. Aboriginal and Torres Strait Islander corporations have members (as opposed to shareholders) and they may also have persons who observe the operation of the corporation's meetings (observers).
- (2) Chapter 4 also deals with the register of members that the corporation is required to keep, and with protection of the rights and interests of members of the corporation.

### **6-20 Meetings**

- (1) Chapter 5 sets out some rules for the calling and holding of general meetings and annual general meetings of an Aboriginal and Torres Strait Islander corporation.
- (2) Chapter 5 also deals with rules concerning directors' meetings.

### **6-25 Officers**

- (1) Chapter 6 deals with officers and contact persons of an Aboriginal and Torres Strait Islander corporation.
- (2) Importantly, Chapter 6 also deals with the duties of officers and their disqualification for breaches of those duties.

### **6-30 Record keeping, reporting requirements and books**

- (1) Chapter 7 deals with the reporting requirements that are imposed on an Aboriginal and Torres Strait Islander corporation. An Aboriginal and Torres Strait Islander corporation may have to lodge a general report and may also have to lodge financial reports (depending on the corporation's size etc.).
- (2) Chapter 7 also deals with the books of an Aboriginal and Torres Strait Islander corporation.

### **6-35 Civil consequences of contravening civil penalty provisions**

Chapter 8 deals with the civil consequences of an officer breaching a duty imposed by this Act.

Note: The criminal consequences are dealt with in Chapter 6.

### **6-40 Lodgments and registers**

- (1) Chapter 9 deals with the requirement to lodge certain documents with the Registrar.
- (2) Chapter 9 also deals with the registers that the Registrar may, or is required to, keep. Information on these registers is available to the public.

### **6-45 Regulation and enforcement**

- (1) Chapter 10 deals with a number of regulatory powers that the Registrar may use in the regulation of Aboriginal and Torres Strait Islander corporations.
- (2) Chapter 10 also deals with the Registrar's powers of enforcement and the protection of whistleblowers.

### **6-50 External administration**

- (1) Chapter 11 deals with the administration of an Aboriginal and Torres Strait Islander corporation by persons outside the corporation (for example, in a winding up).
- (2) Importantly, the Registrar may appoint a special administrator for an Aboriginal and Torres Strait Islander corporation in circumstances that are vital to the continued viability of the corporation. The special administrator differs from an ordinary administrator.

### **6-55 Transfer of registration, deregistration and unclaimed property**

Chapter 12 deals with:

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- (a) the transfer of an Aboriginal and Torres Strait Islander corporation's registration to another Commonwealth, State or Territory system; and
- (b) the deregistration of an Aboriginal and Torres Strait Islander corporation; and
- (c) unclaimed property of an Aboriginal and Torres Strait Islander corporation that has been deregistered.

**6-60 Offences**

Chapter 13 deals with general offences against this Act.

**6-65 Courts and proceedings**

Chapter 14 deals with the jurisdiction of courts to hear matters under this Act, injunctions and court proceedings.

**6-70 Administration**

Chapter 15 deals with a number of matters concerning the general administration of this Act (for example, the protection of information and review of decisions).

**6-75 Registrar and Deputy Registrars of Aboriginal and Torres Strait Islander Corporations**

- (1) Chapter 16 deals with the appointment of the Registrar and Deputy Registrars. The Registrar is charged with the administration of this Act.
- (2) Chapter 16 also deals with the powers and functions of the Registrar.

**6-80 Interpreting this Act**

Chapter 17 contains the interpretation provisions of this Act and the definitions.

## **Chapter 2—Aboriginal and Torres Strait Islander corporations**

### **Part 2-1—Introduction**

#### **Division 16—Introduction**

##### **16-1 What this Chapter is about**

This Chapter provides for Aboriginal and Torres Strait Islander corporations and their registration.

In particular, it deals with:

- what an Aboriginal and Torres Strait Islander corporation is (see section 16-5); and
- the application for registration (see Part 2-2); and
- decisions on applications (see Part 2-3); and
- registration of small, medium and large corporations (see Part 2-4); and
- the effects of registration (see Part 2-5).

##### **16-5 Meaning of *Aboriginal and Torres Strait Islander corporation***

An *Aboriginal and Torres Strait Islander corporation* is a corporation registered under this Act.

## **Part 2-2—Applications for registration of an Aboriginal and Torres Strait Islander corporation**

### **Division 21—Application for new registration of an Aboriginal and Torres Strait Islander corporation**

#### **21-1 Application for registration**

- (1) An application by a person (the *applicant*) for registration of an Aboriginal and Torres Strait Islander corporation must contain the following information:
  - (a) the applicant's name and address;
  - (b) the corporation's proposed name;
  - (c) if the applicant is requesting an exemption from having to have at least 5 members—a request for the exemption specifying the proposed minimum number of members;
  - (d) an indication of whether, for the corporation's first financial year, the corporation is expected to be a small, medium or large corporation;
  - (e) if the corporation is expected to be a large corporation for the corporation's first financial year—the address of the proposed registered office;
  - (f) if the corporation is expected to be a small or medium corporation for the corporation's first financial year—the address of the proposed document access address;
  - (g) the names and addresses of each person who consents in writing to become a member of the corporation;
  - (h) the director details of each person who consents in writing to become a director of the corporation;
  - (i) if the corporation is expected to be a small or medium corporation in respect of the corporation's first financial year—the name and address of the person who consents in writing to be the contact person;

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- (j) if the corporation is expected to be a large corporation in respect of the corporation's first financial year—the name and address of the person who consents in writing to be the corporation's secretary;
- (k) whether the people who are, or have been, members of the corporation are to be liable to contribute towards the payment of the debts and liabilities of the corporation and if so, the extent of the persons' liabilities;
- (l) such other information that the Registrar specifies in writing in respect of the registration of the corporation;
- (m) such other information that is prescribed by the regulations as information that must be included in the application.

Note: The address of the director, secretary or contact person that must be stated is usually the residential address. However, an alternative address may be stated in certain circumstances (see section 304-15).

- (2) The application must also:
  - (a) identify the directors who are to hold office for only one year; and
  - (b) if the application seeks registration of an Aboriginal and Torres Strait Islander corporation for the purpose of becoming a registered native title body corporate—indicate that purpose.

*Director details*

- (3) The **director details** of a person who consents to become a director are the following:
  - (a) the person's given and family name;
  - (b) all former given and family names of the person;
  - (d) the person's address;
  - (e) the person's date and place of birth (if known);
  - (f) a declaration in writing from the person stating that the person is eligible to be a director of an Aboriginal and Torres Strait Islander corporation.
- (4) A specification by the Registrar under paragraph (1)(l) is not a legislative instrument.

**Chapter 2** Aboriginal and Torres Strait Islander corporations

**Part 2-2** Applications for registration of an Aboriginal and Torres Strait Islander corporation

**Division 21** Application for new registration of an Aboriginal and Torres Strait Islander corporation

Section 21-5

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**21-5 Matters to accompany application**

The following must accompany an application under section 21-1:

- (a) evidence of the decisions referred to in section 29-15 (if applicable);
- (b) copies of the consents referred to in subsection 21-1(1).

Note: Under the internal governance rules requirement (see section 29-20), a copy of the proposed constitution of a proposed corporation must also be provided to the Registrar before the time the Registrar makes a decision under section 26-1 in respect of the application.

**21-10 Registrar may seek further information**

- (1) For the purposes of determining an application, the Registrar may request an applicant to provide such further information as the Registrar requests within the period specified by the Registrar in the request.
- (2) The Registrar may extend a period specified under subsection (1).
- (3) If the applicant does not comply with the request, the Registrar may treat the application as being withdrawn and notify the applicant in writing accordingly. The notice must be given within 28 days after the Registrar makes the decision to treat the application as being withdrawn.
- (4) A request under this section must state the effect of subsection (3).



## **Division 22—Application to register existing body corporate under Part 2-3**

### **22-1 Application for registration**

- (1) A person (the *applicant*) may apply to the Registrar for registration of an existing body corporate as an Aboriginal and Torres Strait Islander corporation under Part 2-3.
- (2) The application must contain the following information:
  - (a) the applicant's name and address;
  - (b) the body's current name;
  - (c) the body's ACN (if any);
  - (d) if the body is a registered body (within the meaning of the Corporations Act)—its ARBN;
  - (e) the law under which the body is currently incorporated;
  - (f) the name proposed to be adopted by the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
  - (g) if the applicant is requesting an exemption from having to have at least 5 members—a request for the exemption specifying the proposed minimum number of members;
  - (h) an indication of whether, for its first financial year, the body is expected to be a small, medium or large corporation;
  - (i) if the body is expected to be a large corporation for its first financial year—the address of the proposed registered office;
  - (j) if the body is expected to be a small or medium corporation for its first financial year—the address of the proposed document access address;
  - (k) the director details of each person who consents in writing to become a director of the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
  - (l) if the body is expected to be a small or medium corporation for its first financial year—the name and address of the person who consents in writing to be the contact person;

**Chapter 2** Aboriginal and Torres Strait Islander corporations

**Part 2-2** Applications for registration of an Aboriginal and Torres Strait Islander corporation

**Division 22** Application to register existing body corporate under Part 2-3

Section 22-1

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- (m) if the body is expected to be a large corporation for its first financial year—the name and address of the person who consents in writing to be the secretary when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
- (n) whether, once the body becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3, the people who are, or have been, its members are to be liable to contribute towards the payment of its debts and liabilities and, if so, the extent of their liabilities;
- (o) such other information that the Registrar specifies in writing in respect of the registration of the body as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
- (p) such other information that is prescribed by the regulations as information that must be included in the application.

Note: The address of the director, secretary or contact person that must be stated is usually the residential address. However, an alternative address may be stated in certain circumstances (see section 304-15).

- (3) The application must also:
  - (a) identify the directors who are to hold office for only one year; and
  - (b) if the application seeks registration of the body as an Aboriginal and Torres Strait Islander corporation for the purpose of becoming a registered native title body corporate—indicate that purpose.

*Director details*

- (4) The **director details** of a person who consents to become a director are the following:
  - (a) the person's given and family name;
  - (b) all former given and family names of the person;
  - (c) the person's address;
  - (d) the person's date and place of birth (if known);
  - (e) a declaration in writing from the person stating that the person is eligible to be a director of an Aboriginal and Torres Strait Islander corporation.

(5) A specification by the Registrar under paragraph (2)(o) is not a legislative instrument.

(6) In this section:

*ACN* has the same meaning as in the Corporations Act.

*ARBN* has the same meaning as in the Corporations Act.

### **22-5 Matters to accompany application**

(1) The following must accompany an application under section 22-1:

- (a) evidence of the resolution referred to in section 29-17;
- (b) copies of the consents referred to in subsection 22-1(2);
- (c) a certified copy of a current certificate of the body's incorporation in its place of origin, or of a document that has a similar effect;
- (d) a certified printed copy of the body's constitution (if any);
- (e) evidence that the body is not an externally-administered body corporate;
- (f) evidence that no application to wind up the body has been made to a court (in Australia or elsewhere) that has not been dealt with;
- (g) evidence that no application to approve a compromise or arrangement between the body and another person has been made to a court (in Australia or elsewhere) that has not been dealt with;
- (h) evidence that under the law of the body's place of origin:
  - (i) the transfer of the body's incorporation is authorised; and
  - (ii) the body has complied with the requirements (if any) of that law for the transfer of its incorporation;
- (i) any other documents that are prescribed.

Note: Under the internal governance rules requirement (see section 29-20), a copy of the proposed constitution of a proposed corporation must also be provided to the Registrar before the time the Registrar makes a decision under section 26-1 in respect of the application.

**Chapter 2** Aboriginal and Torres Strait Islander corporations

**Part 2-2** Applications for registration of an Aboriginal and Torres Strait Islander corporation

**Division 22** Application to register existing body corporate under Part 2-3

**Section 22-10**

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- (2) The evidence lodged in accordance with subsections (1) must be satisfactory proof to the Registrar of the matters referred to in that subsection.

Note: Section 376-5 requires documents that are not in English to be translated into English.

**22-10 Registrar may seek further information**

- (1) For the purposes of determining an application made under section 22-1, the Registrar may request an applicant to provide such further information as the Registrar requests within the period specified by the Registrar in the request.
- (2) The Registrar may extend a period specified under subsection (1).
- (3) If the applicant does not comply with the request, the Registrar may treat the application as being withdrawn and notify the applicant in writing accordingly. The notice must be given within 28 days after the Registrar makes the decision to treat the application as being withdrawn.
- (4) A request under this section must state the effect of subsection (3).

## **Division 23—Application to register amalgamated corporation under Part 2-3**

### **23-1 Application for registration**

- (1) A person (the *applicant*) may apply to the Registrar for registration of an Aboriginal and Torres Strait Islander corporation (the *amalgamated corporation*) under Part 2-3 to replace 2 or more existing Aboriginal and Torres Strait Islander corporations (the *amalgamating corporations*).
- (2) The application must contain the following information:
  - (a) the applicant's name and address;
  - (b) the names, and ICNs, of the amalgamating corporations;
  - (c) the name proposed to be adopted by the amalgamated corporation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
  - (d) if the applicant is requesting an exemption for the amalgamated corporation from having to have at least 5 members—a request for the exemption specifying the proposed minimum number of members;
  - (e) an indication of whether, for its first financial year, the amalgamated corporation is expected to be a small, medium or large corporation;
  - (f) if the amalgamated corporation is expected to be a large corporation for its first financial year—the address of the proposed registered office;
  - (g) if the amalgamated corporation is expected to be a small or medium corporation for its first financial year—the address of the proposed document access address;
  - (h) the director details of each person who consents in writing to become a director of the amalgamated corporation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
  - (i) if the amalgamated corporation is expected to be a small or medium corporation for its first financial year—the name and

**Chapter 2** Aboriginal and Torres Strait Islander corporations

**Part 2-2** Applications for registration of an Aboriginal and Torres Strait Islander corporation

**Division 23** Application to register amalgamated corporation under Part 2-3

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address of the person who consents in writing to be the contact person;

- (j) if the amalgamated corporation is expected to be a large corporation for its first financial year—the name and address of the person who consents in writing to be the secretary when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
- (k) whether, once the amalgamated corporation becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3, the people who are, or have been, its members are to be liable to contribute towards the payment of its debts and liabilities and, if so, the extent of their liabilities;
- (l) such other information that the Registrar specifies in writing in respect of the registration of the amalgamated corporation as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
- (m) such other information that is prescribed by the regulations as information that must be included in the application.

Note: The address of the director, secretary or contact person that must be stated is usually the residential address. However, an alternative address may be stated in certain circumstances (see section 304-15).

- (3) The application must also:
  - (a) identify the directors of the amalgamated corporation who are to hold office for only one year; and
  - (b) if the application seeks registration of the amalgamated corporation for the purpose of becoming a registered native title body corporate—indicate that purpose.

*Director details*

- (4) The **director details** of a person who consents to become a director are the following:
  - (a) the person's given and family name;
  - (b) all former given and family names of the person;
  - (c) the person's address;
  - (d) the person's date and place of birth (if known);

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- (e) a declaration in writing from the person stating that the person is eligible to be a director of an Aboriginal and Torres Strait Islander corporation.
- (5) A specification by the Registrar under paragraph (1)(l) is not a legislative instrument.

**23-5 Matters to accompany application**

- (1) The following must accompany an application under section 23-1:
- (a) evidence that, on registration, the amalgamated corporation will meet the creditor notice requirements referred to in section 29-18;
  - (b) evidence of the resolutions referred to in section 29-19;
  - (c) copies of the consents referred to in subsection 23-1(2);
  - (d) evidence that none of the amalgamating corporations is an externally-administered body corporate;
  - (e) evidence that no application to wind up an amalgamating corporation has been made to a court (in Australia or elsewhere) that has not been dealt with;
  - (f) evidence that no application to approve a compromise or arrangement between an amalgamating corporation and another person has been made to a court (in Australia or elsewhere) that has not been dealt with;
  - (g) any other documents that are prescribed.

Note: Under the internal governance rules requirement (see section 29-20), a copy of the proposed constitution of a proposed corporation must also be provided to the Registrar before the time the Registrar makes a decision under section 26-1 in respect of the application.

- (2) The evidence lodged in accordance with subsections (1) must be satisfactory proof to the Registrar of the matters referred to in that subsection.

Note: Section 376-5 requires documents that are not in English to be translated into English.

**23-10 Registrar may seek further information**

- (1) For the purposes of determining an application under section 23-1, the Registrar may request an applicant to provide such further

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information as the Registrar requests within the period specified by the Registrar in the request.

- (2) The Registrar may extend a period specified under subsection (1).
- (3) If the applicant does not comply with the request, the Registrar may treat the application as being withdrawn and notify the applicant in writing accordingly. The notice must be given within 28 days after the Registrar makes the decision to treat the application as being withdrawn.
- (4) A request under this section must state the effect of subsection (3).



## **Part 2-3—Decisions on applications**

### **Division 26—Registrar to decide application**

#### **26-1 Registrar to decide application**

*Registrar to decide*

- (1) The Registrar must make a decision whether or not to grant an application under section 21-1, 22-1 or 23-1 for registration of an Aboriginal and Torres Strait Islander corporation.

*When may Registrar grant application*

- (2) The Registrar may decide to grant the application if:
  - (a) an application under section 21-1, 22-1 or 23-1 has been lodged for registration of the corporation (but see section 26-5); and
  - (b) if the application is made under section 21-1—the application is accompanied by the matters set out in section 21-5 (but see section 26-5); and
  - (ba) if the application is made under section 22-1—the application is accompanied by the matters set out in section 22-5 (but see section 26-5); and
  - (bb) if the application is made under section 23-1—the application is accompanied by the matters set out in section 23-5 (but see section 26-5); and
  - (c) the Registrar is satisfied that, on registration, the corporation will meet the following basic requirements set out in Division 29 (but see section 26-10):
    - (i) the minimum number of members requirement (see section 29-1);
    - (ii) the Indigeneity requirement (see section 29-5);
    - (iii) the age of members requirement (see section 29-10);
    - (iv) if the application is made under section 21-1—the pre-incorporation requirement (see section 29-15);

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- (iva) if the application is made under section 22-1—the pre-transfer of registration requirement (see section 29-17);
- (ivb) if the application is made under section 23-1—the creditor notice requirements (see section 29-18) and the pre-amalgamation requirements (see section 29-19);
- (v) the internal governance rules requirement (see section 29-20);
- (vi) the name requirement (see section 29-25); and
- (d) section 26-15 does not preclude the registration; and
- (e) the Registrar is satisfied that it is more appropriate that the corporation be registered under this Act than under the Corporations Act or a law of a State or Territory dealing with incorporated bodies; and
- (f) the Registrar is satisfied that registering the corporation would not be contrary to the public interest.

*Special rules for amalgamation application under section 23-1*

- (3) Subsections (4) and (5) apply in deciding whether to grant an application under section 23-1 to register an Aboriginal and Torres Strait Islander corporation (the **amalgamated corporation**) to replace 2 or more existing Aboriginal and Torres Strait Islander corporations (the **amalgamating corporations**).
- (4) The Registrar must not grant the application if an objection to the grant of the application has been made under subsection 29-18(3) and the objection has not been withdrawn.
- (5) In addition to the matters referred to in subsection (2), the Registrar may have regard to the following matters in deciding whether to grant the application:
  - (a) the size and complexity of the operations of the amalgamating corporations;
  - (b) whether there are any unresolved disputes:
    - (i) internal to the operation of any of the amalgamating corporations; or
    - (ii) between any of the amalgamating corporations and other persons; or

- (iii) about whether the amalgamated corporation should replace the amalgamating corporations;
- (c) the extent to which the amalgamating corporations, and the officers of the amalgamating corporations, have complied with this Act and the regulations;
- (d) the nature of any services provided by the amalgamating corporations and the people to whom those services are provided;
- (e) the capacity of the amalgamating corporations, and their officers, to make an application to the Court for orders under Part 5.1 of the Corporations Act (as applied by Division 45 of this Act);
- (f) whether it would be desirable for a court to supervise the process of the amalgamated corporation replacing the amalgamating corporations;
- (g) whether the amalgamating corporations have different member liability arrangements;
- (h) any other matter the Registrar considers relevant.

Note: If the Registrar decides not to grant the application, the amalgamation may be able to be achieved by applying to the Court for orders under Part 5.1 of the Corporations Act (as applied by section 45-1 of this Act).

### **26-5 Registrar may grant application if application is incomplete etc.**

Despite paragraphs 26-1(2)(a), (b), (ba) and (bb), the Registrar may grant the application even if the application for registration:

- (a) is incomplete or contains errors (as long as the applicant has provided his or her name and address in the application); or
- (b) some or all of the material required to accompany the application under section 21-5, section 22-5 or 23-5 is not provided, is incomplete or contains errors.

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**26-10 Registrar may grant application if some basic requirements are not met**

*Circumstances when Registrar may register corporation*

- (1) Despite paragraph 26-1(2)(c), the Registrar may grant the application even if the Registrar is not satisfied that the corporation, on registration, would meet:
- (a) the minimum number of members requirement; or
  - (b) the age of members requirement; or
  - (c) the pre-incorporation requirement; or
  - (d) the pre-transfer of registration requirement; or
  - (e) the creditor notice requirements; or
  - (f) the pre-amalgamation requirements.

*Registrar not to register body in certain circumstances*

- (2) However, the Registrar must not grant the application and register an Aboriginal and Torres Strait Islander corporation if, on registration, the corporation would not meet:
- (a) the Indigeneity requirement; or
  - (b) the internal governance rules requirement; or
  - (c) the name requirement.

**26-15 Registrar not to register trade unions etc.**

The following cannot be registered under this Act:

- (a) a trade union;
- (b) a body that is providing financial services (within the meaning of Chapter 7 of the Corporations Act);
- (c) a body of a kind prescribed in the regulations as a kind of body that must not be registered.

## **Division 29—What are the basic requirements for registration?**

### **29-1 Minimum number of members requirement**

An Aboriginal and Torres Strait Islander corporation meets the *minimum number of members requirement* if the corporation complies with the requirement in subsection 77-5(1).

### **29-5 Indigeneity requirement**

An Aboriginal and Torres Strait Islander corporation meets the *Indigeneity requirement* if the corporation has the following required number or percentage of its members who are Aboriginal and Torres Strait Islander persons:

- (a) if the corporation has 5 or more members—at least the percentage of members prescribed in the regulations for the purposes of this section;
- (b) if the corporation has fewer than 5 members but more than one member—all of the members, or all but one of the members;
- (c) if the corporation has only one member—that member.

Note: For the meaning of *Aboriginal and Torres Strait Islander person*, see section 700-1.

### **29-10 Age of members requirement**

An Aboriginal and Torres Strait Islander corporation meets the *age of members requirement* if each member of the corporation who is an individual is at least 15 years of age.

### **29-15 Pre-incorporation requirement**

- (1) An Aboriginal and Torres Strait Islander corporation meets the *pre-incorporation requirement* if 75% of the persons listed in the application for registration as persons who consent to become members of the corporation on registration have:

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- (a) authorised the applicant to apply for the incorporation of the Aboriginal and Torres Strait Islander corporation; and
  - (b) approved the proposed constitution provided to the Registrar under subsection 29-20(2) as the constitution of the corporation; and
  - (c) if the internal governance rules that would apply to the corporation will include one or more replaceable rules—agreed to those replaceable rules so applying; and
  - (d) nominated, as persons who will become directors of the corporation, the persons specified in the application as persons who will become directors on registration; and
  - (e) if the application indicates that the corporation is expected to be a small or medium corporation in respect of the corporation's first financial year—nominated, as a person who will become a contact person of the corporation, the person specified in the application as a person who will become contact person on registration; and
  - (f) if the application indicates that the corporation is expected to be a large corporation in respect of the corporation's first financial year—nominated, as a person who will become the corporation's secretary, the person specified in the application as a person who will become the corporation's secretary on registration.
- (2) The document evidencing the agreement under paragraph (1)(c) must:
- (a) refer by section or subsection number (as appropriate) to the replaceable rules that will apply without modification to the corporation; and
  - (b) set out the terms of the replaceable rules (if any) that are being modified or replaced by the proposed constitution.

**29-17 Pre-transfer of registration requirement**

- (1) A body corporate in relation to which an application is made under section 22-1 meets the *pre-transfer of registration requirement* if:
- (a) the members have by a resolution that has been passed at a meeting by at least 75% of the votes cast by members entitled to vote on the resolution:

- (i) authorised the applicant to apply for the registration of the body as an Aboriginal and Torres Strait Islander corporation; and
  - (ii) approved the proposed constitution provided to the Registrar under subsection 29-20(2) as the constitution to be adopted by the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3; and
  - (iii) if the internal governance rules that would apply to the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 will include one or more replaceable rules—agreed to those replaceable rules so applying; and
  - (iv) nominated, as persons who will become directors of the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3, the persons specified in the application as persons who will become directors on registration; and
  - (v) if the application indicates that the body is expected to be a small or medium corporation in respect of its first financial year—nominated, as a person who will become the contact person when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3, the person specified in the application as a person who will become the contact person on registration; and
  - (vi) if the application indicates that the body is expected to be a large corporation in respect of its first financial year—nominated, as a person who will become the secretary when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3, the person specified in the application as a person who will become the secretary on registration; and
- (b) the members were given at least 21 days notice of the meeting and the proposed resolution.
- (2) The document evidencing the agreement under subparagraph (1)(a)(iii) must:

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- (a) refer by section or subsection number (as appropriate) to the replaceable rules that will apply without modification to the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3; and
- (b) set out the terms of the replaceable rules (if any) that are being modified or replaced by the proposed constitution.

**29-18 Creditor notice requirement**

- (1) If an application is made under section 23-1 to register an Aboriginal and Torres Strait Islander corporation (the *amalgamated corporation*) to replace 2 or more existing Aboriginal and Torres Strait Islander corporations (the *amalgamating corporations*), the amalgamated corporation meets the *creditor notice requirement* if:
  - (a) the applicant has given the Registrar a notice of intention to make the application; and
  - (b) the applicant has, within 14 days after giving the Registrar the notice, published the following in accordance with subsection (2):
    - (i) a copy of the notice;
    - (ii) a statement informing substantial creditors of the amalgamating corporations that those creditors may, within the objection period, object under subsection (3) to the grant of the application;
    - (iii) such other information as is prescribed by the regulations for the purposes of this subparagraph; and
  - (c) each of the amalgamating corporations has, during the objection period, taken reasonable steps to bring the following to the attention of persons who are, or who are likely to or who may become, substantial creditors of the corporation:
    - (i) the proposed amalgamation;
    - (ii) the right that substantial creditors of the corporation have under subsection (3) to object to the grant of the application made under section 23-1; and
  - (d) the application under section 23-1 is made within 14 days after the end of the objection period.



Note 1: For *substantial creditor*, see paragraph (5)(a).

Note 2: For *objection period*, see paragraph (5)(b).

- (2) The material referred to in paragraph (1)(b) must be published:
- (a) in a national newspaper; or
  - (b) for each State or Territory in which any of the amalgamating corporations has its registered office (if any) or carries on business or other operations—in a daily newspaper that circulates generally in that State or Territory.

If the material is published in a number of newspapers under paragraph (b), all of the publications must occur on the same day.

- (3) A substantial creditor of any of the amalgamating corporations may object to the grant of the application by:
- (a) lodging with the Registrar a written objection that contains the information prescribed by the regulations for the purposes of this paragraph; and
  - (b) giving the applicant a copy of the objection; within the objection period.
- (4) A substantial creditor of an amalgamating corporation who has lodged an objection under subsection (3) may, by written notice to the Registrar, withdraw the objection.
- (5) For the purposes of this section:
- (a) a person is a *substantial creditor* of an amalgamating corporation if:
    - (i) the amalgamating corporation owes a debt, or debts, to the person; and
    - (ii) the amount of that debt, or the sum of the amounts of those debts, that is unsecured exceeds the amount prescribed by the regulations for the purposes of this subsection; and
  - (b) the *objection period* is the period of 21 days after the day on which the material referred to in paragraph (1)(b) is published in accordance with subsection (2); and
  - (c) an amalgamating corporation is taken to *owe a debt* to a person even if the debt is contingent or prospective.

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**29-19 Pre-amalgamation requirements**

- (1) If an application is made under section 23-1 to register an Aboriginal and Torres Strait Islander corporation (the ***amalgamated corporation***) to replace 2 or more existing Aboriginal and Torres Strait Islander corporations (the ***amalgamating corporations***), the amalgamated corporation meets the ***pre-amalgamation requirements*** if the members of each of the amalgamating corporations have passed a special resolution:
  - (a) authorising the applicant to apply for the registration of the amalgamated corporation to replace the amalgamating corporations; and
  - (b) approving the proposed constitution provided to the Registrar under subsection 29-20(2) as the constitution to be the amalgamated corporation's constitution when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3; and
  - (c) if the internal governance rules that would apply to the amalgamated corporation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 will include one or more replaceable rules—agreeing to those replaceable rules so applying; and
  - (d) nominating, as persons who will become directors of the amalgamated corporation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3, the persons specified in the application as persons who will become directors on registration; and
  - (e) if the application indicates that the amalgamated corporation is expected to be a small or medium corporation in respect of its first financial year—nominating, as a person who will become a contact person of the amalgamated corporation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3, the person specified in the application as a person who will become the contact person on registration; and
  - (f) if the application indicates that the amalgamated corporation is expected to be a large corporation in respect of its first financial year—nominating, as a person who will become the amalgamated corporation's secretary when it becomes

registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3, the person specified in the application as a person who will become the secretary on registration.

- (2) The document evidencing the agreement under paragraph (1)(c) must:
  - (a) refer by section or subsection number (as appropriate) to the replaceable rules that will apply without modification to the amalgamated corporation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3; and
  - (b) set out the terms of the replaceable rules (if any) that are being modified or replaced by the proposed constitution.

#### **29-20 Internal governance rules requirement**

- (1) An Aboriginal and Torres Strait Islander corporation meets the ***internal governance rules requirement*** if the corporation's constitution complies with the requirements set out in section 66-1.
- (2) In addition, a copy of the corporation's proposed constitution must be lodged before the time the Registrar makes a decision under section 26-1 in respect of the application.

#### **29-25 Name requirement**

An Aboriginal and Torres Strait Islander corporation meets the ***name requirement*** if the corporation complies with the requirements set out in section 85-1.

## **Division 32—Decisions on applications**

### **32-1 Successful applications**

- (1) If the Registrar grants an application under section 21-1, 22-1 or 23-1 for registration of an Aboriginal and Torres Strait Islander corporation, the Registrar must:
  - (a) register the Aboriginal and Torres Strait Islander corporation; and
  - (b) register the corporation's constitution; and
  - (c) issue a certificate to the applicant that states the following:
    - (i) the corporation's name and ICN;
    - (ii) that the corporation is registered under this Act;
    - (iii) the date of the registration.

Note: Section 37-1 requires the Registrar to register the corporation as a small, medium or large corporation.

- (2) The Registrar must keep a record of the registration and the constitution.
- (3) A certificate under subsection (1) is not a legislative instrument.

### **32-5 Unsuccessful applications**

- (1) If:
  - (a) the Registrar does not grant the application; and
  - (b) section 26-15 does not preclude the registration;the Registrar must, in writing:
  - (c) notify the applicant of the decision within 28 days after the decision; and
  - (d) invite the applicant to:
    - (i) make such changes in the application or accompanying material that will remove the grounds for refusal; and
    - (ii) advise the Registrar, within the time specified in the invitation, of any changes made or, if the changes are not made, of the reasons for the changes not being made.

- (2) If the Registrar is advised under subparagraph (1)(d)(ii), the Registrar must reconsider the application.

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**Part 2-4** Registration of an Aboriginal and Torres Strait Islander corporation as a small, medium or large corporation

**Division 37** Registration of an Aboriginal and Torres Strait Islander corporation as a small, medium or large corporation

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**Part 2-4—Registration of an Aboriginal and Torres Strait Islander corporation as a small, medium or large corporation**

**Division 37—Registration of an Aboriginal and Torres Strait Islander corporation as a small, medium or large corporation**

**37-1 Registrar to register Aboriginal and Torres Strait Islander corporation as a small, medium or large corporation**

- (1) On the registration of an Aboriginal and Torres Strait Islander corporation, the Registrar must register the corporation as a small, medium or large corporation.

Note: The classification determines the reports the corporation has to prepare (see Chapter 7) and whether or not the corporation must have a registered office and a corporation secretary.

- (2) The Registrar may register the corporation as a small corporation only if:

- (a) the application for registration indicates; or  
(b) the Registrar is otherwise satisfied;

that the corporation is likely to be a small corporation in respect of its first financial year.

Note: Subsection 37-10(1) sets out the criteria for determining whether the corporation is a small corporation for a particular financial year.

- (3) The Registrar may register the corporation as a medium corporation only if:

- (a) the application for registration indicates; or  
(b) the Registrar is otherwise satisfied;

that the corporation is likely to be a medium corporation in respect of its first financial year.

Note: Subsection 37-10(2) sets out the criteria for determining whether the corporation is a medium corporation for a particular financial year.

- (4) The Registrar may register the corporation as a large corporation only if:
- (a) the application for registration indicates; or
  - (b) the Registrar is otherwise satisfied;
- that the corporation is likely to be a large corporation in respect of its first financial year.

Note: Subsection 37-10(3) sets out the criteria for determining whether the corporation is a large corporation for a particular financial year.

### **37-5 Registrar may alter registered size of corporation after registration**

- (1) If the Registrar is satisfied that an Aboriginal and Torres Strait Islander corporation that is registered as a small corporation was in fact a medium or large corporation for the most recent financial year, the Registrar may alter the corporation's registration so that the corporation is registered as a medium or large corporation.
- (2) If the Registrar is satisfied that an Aboriginal and Torres Strait Islander corporation that is registered as a medium corporation was in fact a small or large corporation for the most recent financial year, the Registrar may alter the corporation's registration so that the corporation is registered as a small or large corporation.
- (3) If the Registrar is satisfied that an Aboriginal and Torres Strait Islander corporation that is registered as a large corporation was in fact a small or medium corporation for the most recent financial year, the Registrar may alter the corporation's registration so that the corporation is registered as a small or medium corporation.
- (4) An alteration to an Aboriginal and Torres Strait Islander corporation's registration made under subsection (1), (2) or (3) is not a legislative instrument.
- (5) The Registrar must notify an Aboriginal and Torres Strait Islander corporation in writing of an alteration made under this section.

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**Part 2-4** Registration of an Aboriginal and Torres Strait Islander corporation as a small, medium or large corporation

**Division 37** Registration of an Aboriginal and Torres Strait Islander corporation as a small, medium or large corporation

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**37-10 Small, medium and large corporations**

*Small corporations*

- (1) An Aboriginal and Torres Strait Islander corporation is a ***small corporation*** for a financial year if it satisfies at least 2 of the following paragraphs:
- (a) the consolidated gross operating income for the financial year of the corporation and the entities it controls (if any) is less than the amount prescribed in the regulations for the purposes of this paragraph;
  - (b) the value of the consolidated gross assets at the end of the financial year of the corporation and the entities it controls (if any) is less than the amount prescribed in the regulations for the purposes of this paragraph;
  - (c) the corporation and the entities it controls (if any) have, at the end of the financial year, fewer employees than the number of employees prescribed for the purposes of this paragraph.

Note: A small corporation generally has reduced financial reporting requirements (see Chapter 7).

*Medium corporations*

- (2) Subject to subsection (3), an Aboriginal and Torres Strait Islander corporation is a ***medium corporation*** for a financial year if it satisfies at least 2 of the following paragraphs:
- (a) the consolidated gross operating income for the financial year of the corporation and the entities it controls (if any) is equal to or more than the amount prescribed under paragraph (1)(a);
  - (b) the value of the consolidated gross assets at the end of the financial year of the corporation and the entities it controls (if any) is equal to or more than the amount prescribed under paragraph (1)(b);
  - (c) the corporation and the entities it controls (if any) have, at the end of the financial year, a number of employees that is equal to or more than the number prescribed under paragraph (1)(c).



*Large corporations*

- (3) An Aboriginal and Torres Strait Islander corporation is a **large corporation** for a financial year if it satisfies at least 2 of the following paragraphs:
- (a) the consolidated gross operating income for the financial year of the corporation and the entities it controls (if any) is equal to or more than the amount prescribed for the purposes of this paragraph;
  - (b) the value of the consolidated gross assets at the end of the financial year of the corporation and the entities it controls (if any) is equal to or more than the amount prescribed for the purposes of this paragraph;
  - (c) the corporation and the entities it controls (if any) have, at the end of the financial year, a number of employees that is equal to or more than the number of employees prescribed for the purposes of this paragraph.

*Native Title*

- (4) The native title rights and interests held by a registered native title body corporate are to be disregarded in determining the value of the assets of a registered native title body corporate.

**37-15 When an Aboriginal and Torres Strait Islander corporation controls an entity**

In deciding, for the purposes of section 37-10, whether an Aboriginal and Torres Strait Islander corporation controls an entity, apply the accounting standards made for the purposes of paragraph 295(2)(b) of the Corporations Act.

**37-20 Counting employees**

- (1) The regulations may prescribe one or more methods for calculating the number of employees of Aboriginal and Torres Strait Islander corporations.

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**Part 2-4** Registration of an Aboriginal and Torres Strait Islander corporation as a small, medium or large corporation

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- (2) Without limiting subsection (1), regulations made under that subsection may specify:
- (a) that employees of a class are to be disregarded for the purposes of section 37-10; or
  - (b) that employees of a class are to be taken into account by treating each employee as representing a specified fraction of an employee.

**37-25 Accounting standards**

In consolidating under section 37-10:

- (a) the consolidated gross operating income; and
- (b) the value of consolidated gross assets;

apply the accounting standards in force at the relevant time (even if the standards do not otherwise apply to the financial year of some or all of the bodies concerned).

## **Part 2-5—Effects of registration**

### **Division 42—Effects of registration**

#### **42-1 Corporation comes into existence on registration**

If an Aboriginal and Torres Strait Islander corporation is registered under Part 2-3 as a result of an application made under section 21-1, the Aboriginal and Torres Strait Islander corporation comes into existence as a body corporate with perpetual succession at the beginning of the day on which it is registered.

Note: The corporation remains in existence until it is deregistered (see Chapter 12).

#### **42-3 Effect of registration of existing body corporate under Part 2-3**

If a body corporate is registered under Part 2-3 as an Aboriginal and Torres Strait Islander corporation as a result of an application made under section 22-1, registration under Part 2-3 does not:

- (a) create a new legal entity; or
- (b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members); or
- (c) render defective any legal proceedings by or against the body or its members.

Note: The Aboriginal and Torres Strait Islander corporation remains in existence until it is deregistered (see Chapter 12).

#### **42-4 Effect of registration of amalgamated corporation under Part 2-3**

- (1) This section applies if an Aboriginal and Torres Strait Islander corporation (the *amalgamated corporation*) is registered under Part 2-3 as a result of an application made under section 23-1 to register the amalgamated corporation to replace 2 or more existing Aboriginal and Torres Strait Islander corporations (the *amalgamating corporations*).

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- (2) The amalgamated corporation comes into existence as a body corporate with perpetual succession at the beginning of the day on which it is registered.

Note: The amalgamated corporation remains in existence until it is deregistered (see Chapter 12).

- (3) On registration:

- (a) the assets of each of the amalgamating corporations cease to be assets of the amalgamating corporation and become assets of the amalgamated corporation without any conveyance, transfer or assignment and the amalgamated corporation becomes the amalgamating corporation's successor in law in relation to those assets; and
- (b) the liabilities of each of the amalgamating corporations cease to be liabilities of the amalgamating corporations and become liabilities of the amalgamated corporation and the amalgamated corporation becomes the amalgamating corporation's successor in law in relation to those liabilities; and
- (c) if any proceedings to which an amalgamating corporation was a party were pending in any court or tribunal immediately before registration—the amalgamated corporation is substituted for the amalgamating corporation as a party to the proceedings; and
- (d) any investigation that was commenced before registration in relation to an amalgamating corporation may be continued after registration as if the investigation were an investigation in relation to the amalgamated corporation; and
- (e) an act or thing done, or omitted to be done, before registration by or in relation to an amalgamating corporation is taken to have been done, or to have been omitted to be done, by or in relation to the amalgamated corporation; and
- (f) a reference in any document to an amalgamating corporation is taken to be a reference to the amalgamated corporation.

Note 1: The Registrar deregisters the amalgamating corporations under subsection 546-10(3).

Note 2: Paragraph (3)(e) has the effect, for example, that any regulatory action taken in relation to an amalgamating corporation under Part 10-3 may

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be continued as if that action had been taken in relation to the amalgamated corporation.

- (4) Paragraph (3)(e) does not apply to a determination under section 487-1 that an amalgamating corporation is to be under special administration.
- (5) To avoid doubt, if an asset of an amalgamating corporation was, immediately before registration, subject to a charge of any kind, the asset becomes the asset of the amalgamated corporation under subsection (3) subject to that charge.
- (6) Subsection (7) applies if:
  - (a) any land vests in the amalgamated corporation under this section; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Registrar; and
    - (ii) identifies the land, whether by reference to a map or otherwise; and
    - (iii) states that the land has become vested in the amalgamated corporation under this section.
- (7) The land registration official may:
  - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.
- (8) Subsection (9) applies if:
  - (a) any asset other than land vests in the amalgamated corporation under this section; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the Registrar; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in the amalgamated corporation under this section.
- (9) The assets official may:

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- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b) make such entries in the register as are necessary having regard to the effect of this section.
- (10) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (11) The Registrar may certify in writing:
- (a) that a specified matter is an exempt matter; or
  - (b) that a specified thing was connected with a specified exempt matter.
- (12) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subsection (11) is prima facie evidence of the matters stated in the certificate.
- (13) For the purposes of this section, an *exempt matter* is:
- (a) the vesting of an asset or liability under this section; or
  - (b) the operation of this section in any other respect.
- (14) In this section:
- asset* means:
- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
  - (b) any right, power, privilege or immunity, whether actual, contingent or prospective.
- assets official*, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.
- land* means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

**land registration official**, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective.

#### **42-5 Corporation's name**

An Aboriginal and Torres Strait Islander corporation's name on registration is the name specified in the certificate of registration.

#### **42-10 Members, directors, corporation secretary and contact person of corporation**

*Persons become members on registration*

- (1) A person becomes a member of an Aboriginal and Torres Strait Islander corporation on registration of the corporation if:
  - (a) the corporation was registered as a result of an application made under section 21-1 and the person is specified in the application with his or her consent as a proposed member of the corporation; or
  - (b) the corporation was registered as a result of an application made under section 22-1 for registration of a body corporate as an Aboriginal and Torres Strait Islander corporation under Part 2-3 and the person is a member of the body corporate immediately before registration of the corporation; or
  - (c) the corporation was registered as a result of an application made under section 23-1 to register an Aboriginal and Torres Strait Islander corporation (the **amalgamated corporation**) under Part 2-3 to replace 2 or more existing Aboriginal and Torres Strait Islander corporations (the **amalgamating corporations**) and the person is a member of any of the amalgamating corporations immediately before the registration of the amalgamated corporation.

Note: A member's name must be entered in the register of members (see section 180-5).

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*Persons become directors etc. on registration*

- (1A) A person becomes a director, corporation secretary or contact person of an Aboriginal and Torres Strait Islander corporation on registration of the corporation if the person is specified in the application under section 21-1, 22-1 or 23-1 with his or her consent as a proposed director, corporation secretary or contact person of the corporation.

*If no contact person nominated in the application for registration*

- (2) If:
- (a) an Aboriginal and Torres Strait Islander corporation is registered as a small or medium corporation; and
  - (b) the application for registration does not specify a person to be the contact person for the corporation;
- the applicant becomes the contact person for the corporation on registration.

*If person nominated in application for registration as contact person without the person's consent*

- (3) If:
- (a) a person is specified in an application for registration of an Aboriginal and Torres Strait Islander corporation as the contact person for the corporation; and
  - (b) the person is specified without his or her consent; and
  - (c) before registration, the Registrar becomes aware of that fact;
- the Registrar may determine, by notice in writing given to the applicant, that the applicant for registration is the contact person for the corporation on registration.
- (4) A determination under subsection (3) is not a legislative instrument.

**42-15 Registered office**

If an Aboriginal and Torres Strait Islander corporation is registered as a large corporation, the address (if any) specified in the corporation's application for registration as the proposed registered



office becomes the address of the corporation's registered office on registration.

#### **42-20 Document access address**

If an Aboriginal and Torres Strait Islander corporation is registered as a small or medium corporation, the address (if any) specified in the corporation's application for registration as the proposed document access address becomes the corporation's document access address on registration.

#### **42-25 Corporation may have common seal**

- (1) An Aboriginal and Torres Strait Islander corporation may have a common seal. If an Aboriginal and Torres Strait Islander corporation does have a common seal, the corporation must set out on it the corporation's name and ICN.

Note 1: An Aboriginal and Torres Strait Islander corporation may make contracts and execute documents without using a seal (see sections 99-1 and 99-5).

Note 2: For abbreviations that can be used on a seal, see section 85-10.

- (2) An Aboriginal and Torres Strait Islander corporation may have a duplicate common seal. The duplicate must be a copy of the common seal with the words "duplicate seal" added.
- (3) A person commits an offence if:
- (a) the person uses, or authorises the use of, a seal; and
  - (b) the seal purports to be the common seal of an Aboriginal and Torres Strait Islander corporation or a duplicate; and
  - (c) the seal does not comply with the requirements set out in subsection (1) or (2).

Penalty: 10 penalty units.

- (4) An offence against paragraph (3)(a) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**42-30 Vesting of property in corporation on registration**

*Application of section*

- (1) This section applies if an application is lodged to register an unincorporated body as an Aboriginal and Torres Strait Islander corporation.

*Personal property other than land*

- (2) Upon registration, any personal property held by a person, in trust or otherwise, for or on behalf of the members of the body vests in the corporation. The property vests subject to any trust, covenant, contract or liability affecting the property (other than a trust for the members).

*Estate or interest in land*

- (3) If:
- (a) a person holds an estate or interest in land, in trust or otherwise, for or on behalf of the members of the body; and
  - (b) the body is registered;
- that person must, upon the registration, take all action required to vest the estate or interest in the corporation. The vesting is subject to any trust (other than a trust for the members), or any covenant, contract or liability affecting the estate or interest.

- (4) In subsection (2):

*personal property* does not include property consisting of an estate or interest in land.

**42-35 Body corporate registered as Aboriginal and Torres Strait Islander corporation (liability of members on winding up)**

- (1) This section applies if:
- (a) a body corporate is registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 as a result of an application made under section 22-1; and

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- (b) a person stopped being a member of a body corporate before it was registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3.
- (2) The person is to be treated as a past member of the Aboriginal and Torres Strait Islander corporation in applying Division 2 of Part 5.6 of the Corporations Act (as applied by section 526-35 of this Act) to a winding up of the Aboriginal and Torres Strait Islander corporation.
- (3) However, the person's liability to contribute to the Aboriginal and Torres Strait Islander corporation's property is further limited by this section to an amount sufficient for the following:
  - (a) payment of debts and liabilities contracted by the body corporate before the day on which it was registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3;
  - (b) payment of the costs, charges and expenses of winding up the Aboriginal and Torres Strait Islander corporation, so far as those costs, charges and expenses relate to those debts and liabilities;
  - (c) the adjustment of the rights between the contributories, so far as the adjustment relates to those debts and liabilities.

**42-40 Body corporate registered as Aboriginal and Torres Strait Islander corporation (modification by regulations)**

- (1) The regulations may modify the operation of this Part in relation to an Aboriginal and Torres Strait Islander corporation registered under Part 2-3 as a result of an application made under section 22-1.
- (2) Regulations made for the purposes of subsection (1) must not:
  - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.

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**42-45 Registration of amalgamated corporation (liability of members on winding up)**

- (1) This section applies if:
  - (a) an Aboriginal and Torres Strait Islander corporation (the *amalgamated corporation*) is registered under Part 2-3 as a result of an application made under section 23-1 to register the amalgamated corporation to replace 2 or more existing Aboriginal and Torres Strait Islander corporations (the *amalgamating corporations*); and
  - (b) a person stopped being a member of an amalgamating corporation before the registration of the amalgamated corporation.
- (2) The person is to be treated as a past member of the amalgamated corporation in applying Division 2 of Part 5.6 of the Corporations Act (as applied by section 526-35 of this Act) to a winding up of the amalgamated corporation.
- (3) However, the person's liability to contribute to the amalgamated corporation's property is further limited by this section to an amount sufficient for the following:
  - (a) payment of debts and liabilities contracted by the amalgamating corporation before the registration of the amalgamated corporation;
  - (b) payment of the costs, charges and expenses of winding up the amalgamated corporation, so far as those costs, charges and expenses relate to those debts and liabilities;
  - (c) the adjustment of the rights between the contributories, so far as the adjustment relates to those debts and liabilities.

**42-50 Registration of amalgamated corporation (modification by regulations)**

- (1) The regulations may modify the operation of this Part in relation to an Aboriginal and Torres Strait Islander corporation registered under Part 2-3 as a result of an application made under section 23-1.
  - (2) Regulations made for the purposes of subsection (1) must not:
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- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
- (b) widen, or have the effect of widening, the scope of any offence.

## Part 2-6—Arrangements and reconstructions

### Division 45—Application of Corporations Act arrangements and reconstructions provisions

#### 45-1 Applying Corporations Act arrangements and reconstructions provisions to Aboriginal and Torres Strait Islander corporations

- (1) The Corporations Act arrangements and reconstructions provisions apply to an Aboriginal and Torres Strait Islander corporation as if the following substitutions were made:

<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to ...</b>	<b>substitute a reference to ...</b>
1	a Part 5.1 body	an Aboriginal and Torres Strait Islander corporation
2	a body	an Aboriginal and Torres Strait Islander corporation
3	a company	an Aboriginal and Torres Strait Islander corporation
4	ASIC	the Registrar
5	registered office	registered office or document access address

Note: If a number of Aboriginal and Torres Strait Islander corporations wish to amalgamate, it may be possible, in some circumstances, for them to proceed with the amalgamation by means of an application to the Registrar under Division 23 (as an alternative to applying to a court for an order under the applied Corporations Act arrangements and reconstructions provisions).

- (2) The Corporations Act arrangements and reconstructions provisions apply to an Aboriginal and Torres Strait Islander corporation:
- (a) only to the extent to which they are capable of applying to an Aboriginal and Torres Strait Islander corporation; and
  - (b) with the modifications specified in the regulations.

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- (3) Regulations made for the purposes of paragraph (2)(b) must not:
- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.
- (4) In this Act:

***Corporations Act arrangements and reconstructions provisions***  
means:

- (a) Part 5.1 of the Corporations Act (other than paragraph 411(17)(a), subsection 412(3) and (5) and section 414); and
- (b) section 425, subsections 427(2) and (4) and sections 428, 432, 434 and 536 of that Act to the extent to which they are applied by subsection 411(9) of that Act; and
- (c) the other provisions of that Act (including Parts 1.2, 5.8, 5.9 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of Part 5.1 of that Act and the provisions referred to in paragraph (b) of this definition; and
- (d) the regulations made under that Act for the purposes of Part 5.1 of that Act and the provisions referred to in paragraphs (b) and (c) of this definition.

## **Chapter 3—Basic features of an Aboriginal and Torres Strait Islander corporation**

### **Part 3-1—Introduction**

#### **Division 52—Introduction**

##### **52-1 What this Chapter is about**

This Chapter deals with the internal governance rules, the minimum number of members requirement, names and the powers of an Aboriginal and Torres Strait Islander corporation. It also deals with other basic matters affecting an Aboriginal and Torres Strait Islander corporation.



## **Part 3-2—Rules dealing with the internal governance of corporations**

### **Division 57—Introduction**

#### **57-1 What this Part is about**

The rules dealing with the internal governance of an Aboriginal and Torres Strait Islander corporation are of 4 kinds:

- (a) common law rules; and
- (b) rules in this Act that cannot be replaced by the corporation's constitution; and
- (c) replaceable rules in this Act that may be modified or replaced by the corporation's constitution; and
- (d) rules that are in the corporation's constitution.

Some of the rules in paragraph (d):

- (a) may be required by this Act to be in the constitution; or
- (b) may be there to modify or replace a replaceable rule; or
- (c) may be there as a special rule applying to that particular corporation.

This Part deals with the rules in paragraphs (c) and (d) and refers to them as internal governance rules of the corporation (see section 63-1).

The corporation may choose to adopt all or some of the replaceable rules as rules of its internal governance.

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The corporation's internal governance rules must comply with the internal governance rules requirements (see Division 66).

There are a number of ways the corporation's constitution may be changed. Any changes must comply with the internal governance rules requirements (see Division 69).

Division 72 deals with other matters concerning constitutions.

**57-5 List of internal governance rules**

The following table sets out the main provisions of this Act that deal with the internal governance of Aboriginal and Torres Strait Islander corporations. The table indicates those rules that operate as replaceable rules and Division 60 tells you how replaceable rules operate.

<b>Item</b>	<b>Subject of provision</b>	<b>Provision</b>
<b>Chapter 4—Members and observers</b>		
1	How does a person become a member?	section 144-1
2	Application to corporation	section 144-5 <i>subsection (2) is a replaceable rule</i>
3	Determination of applications for membership	section 144-10 <i>subsection (7) is a replaceable rule</i>
4	Fees for membership and being an observer	section 144-15
5	Obligation to contribute on winding up	section 147-1
6	Corporation may impose other membership obligations	section 147-5
7	Liability of corporation members	section 147-10
8	Cessation of membership	section 150-1
9	Resolution of disputes	section 150-5
10	Resignation	section 150-10 <i>subsection (2) is a replaceable rule</i>

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<b>Item</b>	<b>Subject of provision</b>	<b>Provision</b>
11	General	section 150-15
12	Member not eligible for membership etc.	section 150-20 <i>this section is a replaceable rule</i>
13	Member not contactable	section 150-25
14	Member is not an Aboriginal and Torres Strait Islander person	section 150-30
15	Member misbehaves	section 150-35
16	Different classes of members	section 153-1
17	Observers	section 158-5 <i>subsection (2) is a replaceable rule</i>
18	What protections apply to variations or cancellations of class rights?	Division 172
19	Corporation or directors may allow member to inspect books	section 175-15 <i>this section is a replaceable rule</i>
<b>Chapter 5—Meetings</b>		
20	Director may call meetings	section 201-1 <i>this section is a replaceable rule</i>
21	Request by members for directors to call general meetings	section 201-5
22	When must directors comply with members' request?	section 201-10
23	When must a requested meeting be held?	section 201-15
24	Amount of notice for general meeting	section 201-20
25	Notice of general meeting to members, officers and observers	section 201-25 <i>subsections (2), (5) and (6) are replaceable rules</i>
26	Auditor entitled to notice and other communications	section 201-30
27	Contents of notice of general meeting	section 201-35
28	Members' resolutions	section 201-40
29	Notice of members' resolutions	section 201-45
30	Members' statements to be distributed	section 201-50
31	Purpose	section 201-55

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<b>Item</b>	<b>Subject of provision</b>	<b>Provision</b>
32	Time and place for general meeting	section 201-60
33	Technology	section 201-65
34	Quorum	section 201-70 <i>subsections (1), (2), (5) and (6) are replaceable rules</i>
35	Chairing general meeting	section 201-75 <i>this section is a replaceable rule</i>
36	Auditor's right to be heard at general meetings	section 201-80
37	Adjourned meetings	section 201-85 <i>subsection (2) is a replaceable rule</i>
38	Who may appoint a proxy	section 201-90 <i>this section is a replaceable rule</i>
39	Rights of proxies	section 201-95
40	Appointing a proxy	section 201-100
41	Proxy documents	section 201-105
42	Body corporate representative	section 201-110
43	How many votes a member has	section 201-115 <i>this section is a replaceable rule</i>
44	Objections to right to vote	section 201-120 <i>this section is a replaceable rule</i>
45	How voting is carried out	section 201-125 <i>this section is a replaceable rule</i>
46	Matters on which a poll may be demanded	section 201-130
47	When a poll is effectively demanded	section 201-135
48	When and how polls must be taken	section 201-140 <i>this section is a replaceable rule</i>
49	Corporation must hold first general meeting within 3 months of registration	section 201-145
50	Corporation must hold AGM	section 201-150
51	Extension of time for holding AGM	section 201-155
52	Business of AGM	section 201-160

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<b>Item</b>	<b>Subject of provision</b>	<b>Provision</b>
53	Questions and comments by members on corporation management at AGM	section 201-165
54	Questions by members of auditors at AGM	section 201-170
55	Circulating resolutions	section 204-1
56	Resolutions of 1 member corporations	section 204-5
57	Constitution to provide for meetings	section 212-1
58	Calling directors' meetings	section 212-5 <i>this section is a replaceable rule</i>
59	Use of technology	section 212-10
60	Chairing directors' meetings	section 212-15 <i>this section is a replaceable rule</i>
61	Quorum at directors' meetings	section 212-20
62	Passing of directors' resolutions	section 212-25 <i>this section is a replaceable rule</i>
63	Circulating resolutions of corporation with more than 1 director	section 215-1 <i>this section is a replaceable rule</i>
64	Resolutions and declarations of 1 director corporation	section 215-5
65	Minutes	section 220-5
66	Members' access to minutes	section 220-10
<b>Chapter 6—Officers</b>		
67	Minimum number of directors	section 243-1
68	Maximum number of directors	section 243-5
69	Eligibility for appointment as a director	section 246-1
70	Majority of director requirements	section 246-5
71	Consent to act as director	section 246-10
72	Corporation may appoint a director	section 246-15 <i>this section is a replaceable rule</i>
73	Directors may appoint other directors to make up a quorum	section 246-20 <i>this section is a replaceable rule</i>
74	Term of appointment	section 246-25 <i>subsections (1) and (3) are replaceable rules</i>

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<b>Item</b>	<b>Subject of provision</b>	<b>Provision</b>
75	Alternate directors	section 246-30 <i>this section is a replaceable rule</i>
76	How does a person cease to be a director?	section 249-1
77	Director may resign	section 249-5 <i>subsection (2) is a replaceable rule</i>
78	Removal by members	section 249-10
79	Removal by other directors	section 249-15
80	Remuneration	section 252-1
81	How a secretary or contact person is appointed	section 257-20
82	Terms and conditions of office for secretaries	section 257-45 <i>this section is a replaceable rule</i>
83	Terms and conditions of contact person's appointment	section 257-50 <i>this section is a replaceable rule</i>
84	Duties in relation to disclosure of, and voting on matters involving, material personal interests	Division 268
85	Powers of directors	section 274-1 <i>this section is a replaceable rule</i>
86	Negotiable instruments	section 274-5 <i>this section is a replaceable rule</i>
87	Delegation	section 274-10
88	Right of access to corporation books	section 274-15
89	Member approval needed for related party benefit	Part 6-6

## **Division 60—What are the replaceable rules and when do they apply to a corporation?**

### **60-1 Replaceable rules**

*Which are the replaceable rules?*

- (1) A section or subsection whose heading contains the words “replaceable rule—see section 60-1” is a replaceable rule.

*To which corporations do the replaceable rules apply?*

- (2) The replaceable rules apply to:
  - (a) an Aboriginal and Torres Strait Islander corporation (not being a corporation to which paragraph (b) applies) that is registered on or after the day this section commences (the **commencing day**); and
  - (b) an Aboriginal and Torres Strait Islander corporation:
    - (i) that was registered under the *Aboriginal Councils and Associations Act 1976* as an Aboriginal corporation immediately before the commencing day; and
    - (ii) that repeals its constitution after the commencing day; except to the extent to which the rules are modified or replaced by the corporation’s constitution as provided for in section 60-5.

### **60-5 Corporation’s constitution can modify or replace replaceable rules**

A provision of a section or subsection of a replaceable rule that applies to an Aboriginal and Torres Strait Islander corporation can be modified or replaced by the corporation’s constitution.

Note: In modifying or replacing a replaceable rule, an Aboriginal and Torres Strait Islander corporation must ensure that the matter covered by the original replaceable rule is provided for in the corporation’s constitution. If it is not, then the constitution may not be covering the matters provided for in the replaceable rules (see section 66-1).

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**60-10 Effect of constitution and replaceable rules**

- (1) An Aboriginal and Torres Strait Islander corporation's constitution, and any replaceable rules that apply to the corporation, have effect as a contract:
  - (a) between the corporation and each member; and
  - (b) between the corporation and each director and corporation secretary; and
  - (c) between a member and each other member.
- (2) Under the contract, each person agrees to observe and perform the requirements of the constitution and rules so far as they apply to that person.

**60-15 Failure to comply with replaceable rules**

A failure to comply with the replaceable rules as they apply to an Aboriginal and Torres Strait Islander corporation is not of itself a contravention of this Act (so the provisions about criminal liability, civil liability and injunctions do not apply).

**60-20 Modification by regulations**

- (1) The regulations may modify the replaceable rules in relation to:
  - (a) a specified Aboriginal and Torres Strait Islander corporation; or
  - (b) a specified class of Aboriginal and Torres Strait Islander corporation.
- (2) Without limiting subsection (1), the regulations may:
  - (a) modify or repeal the replaceable rules; and
  - (b) set out new replaceable rules.



## **Division 63—What are the internal governance rules of a corporation?**

### **63-1 Meaning of internal governance rules**

The following constitute the *internal governance rules* of an Aboriginal and Torres Strait Islander corporation:

- (a) the replaceable rules (if any) applying to the corporation;
- (b) the rules (if any) in the corporation's constitution that modify or replace some or all of the replaceable rules;
- (c) the other rules dealing with the internal governance of the corporation that are in the corporation's constitution.

## **Division 66—What are the internal governance rules requirements?**

### **66-1 Requirements**

- (1) The following are the *internal governance rules requirements* for an Aboriginal and Torres Strait Islander corporation.
- (2) The corporation must have a constitution written in English that sets out the corporation's objects.
- (3) The corporation's constitution must cover the matters that this Act specifies must be covered in the corporation's constitution.
- (3A) The corporation's constitution must provide for the resolution of disputes internal to the operation of the corporation.
- (4) The internal governance rules must cover the matters that are provided for in the replaceable rules (see section 66-5).
- (5) The internal governance rules must also be:
  - (a) internally consistent; and
  - (b) adequate and workable, given the context in which the corporation operates; and
  - (c) consistent with this Act; and
  - (d) consistent with the Native Title legislation if:
    - (i) an application for registration of an Aboriginal and Torres Strait Islander corporation seeks registration of the corporation for the purpose of becoming a registered native title body corporate; or
    - (ii) the corporation is a registered native title body corporate.
- (6) The corporation must meet the requirements at all times after registration.

Note 1: An application for registration of an Aboriginal and Torres Strait Islander corporation may not be successful unless the corporation, on registration, is complying with the requirements (see section 29-20).

Note 2: If an Aboriginal and Torres Strait Islander corporation is making a change to its constitution and the Registrar is of the opinion that the corporation's internal governance rules, after the change, would not comply with the internal governance rules requirements, the Registrar may refuse to register the change (see section 69-30).

**66-5 Meaning of *cover the matters provided for in the replaceable rules***

*If all replaceable rules apply or all are replaced*

- (1) The internal governance rules of an Aboriginal and Torres Strait Islander corporation ***cover the matters provided for in the replaceable rules*** if:
- (a) all of the replaceable rules apply to the corporation; or
  - (b) none of the replaceable rules apply to the corporation and the corporation's constitution covers all of the matters provided for in the replaceable rules.

*If some replaceable rules apply and some are modified or replaced*

- (2) The internal governance rules of an Aboriginal and Torres Strait Islander corporation also ***cover the matters provided for in the replaceable rules*** if:
- (a) some of the replaceable rules apply to the corporation; and
  - (b) the corporation's constitution provides for the matters covered by the replaceable rules that the corporation has modified or replaced.

*Corporation may also have other rules unrelated to the replaceable rules in its constitution*

- (3) To avoid doubt, and subject to the internal governance rules requirements, nothing in this Part precludes the constitution of an Aboriginal and Torres Strait Islander corporation providing for a matter that is in addition to those matters provided for in the replaceable rules.

*Regulations may modify section*

- (4) The regulations may modify this section.

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- (5) Without limiting subsection (4), the regulations may provide for further situations in which the internal governance rules of an Aboriginal and Torres Strait Islander corporation *cover the matters provided for in the replaceable rules*.

## **Division 69—Constitutions and amendment and replacement of constitutions**

### **Subdivision 69-A—Constitution on registration**

#### **69-1 Constitution of an Aboriginal and Torres Strait Islander corporation**

- (1) The constitution of an Aboriginal and Torres Strait Islander corporation is the constitution that is registered in respect of the corporation.

Note: 75% of the persons specified in the application for registration as persons who consent to become members must approve the constitution before the application for registration is lodged (see section 29-15).

- (2) A *constitution* is an instrument (other than this Act):
- (a) constituting, or defining the constitution of, an Aboriginal and Torres Strait Islander corporation; or
  - (b) governing the activities of such a corporation or its members.

### **Subdivision 69-B—Constitutional changes after registration**

#### **69-5 Overview—ways a constitution may be changed**

##### *Corporation wants to change its constitution*

- (1) For an Aboriginal and Torres Strait Islander corporation to change its constitution, the following steps must be complied with:
- (a) the corporation must pass a special resolution effecting the change;
  - (b) if, under the corporation's constitution, there are further steps that must also be complied with to make a constitutional change—those steps must be complied with (see section 69-15);
  - (c) the corporation must lodge certain documents (see section 69-20);

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- (d) the Registrar must make certain decisions in respect of the constitutional change and, if appropriate, must register the change (see section 69-30).

Note: The constitutional change takes effect when it is registered (see section 69-40).

*Court may change a constitution*

- (2) The court may also change an Aboriginal and Torres Strait Islander corporation's constitution (see section 166-5).

Note: The constitutional change takes effect as provided for in paragraph 69-40(b).

*Registrar may change a constitution*

- (3) The Registrar may also change an Aboriginal and Torres Strait Islander corporation's constitution (see section 69-35).

Note 1: If the Registrar changes a constitution under section 69-35, the steps in subsection (1) of this section do not apply.

Note 2: The constitutional change takes effect when it is registered (see section 69-40).

*Special administrator may change a constitution*

- (4) A special administrator for an Aboriginal and Torres Strait Islander corporation may also change the corporation's constitution (see section 499-5).

Note 1: If the special administrator changes a constitution under section 499-5, the steps in paragraphs (1)(a), (b) and (c) of this section do not apply (but the administrator must lodge the change with the Registrar under section 69-25 and the Registrar must take the steps in section 69-30).

Note 2: The constitutional change takes effect when it is registered (see section 69-40).

**69-10 Meaning of *constitutional change* etc.**

- (1) For the purposes of this Act, an Aboriginal and Torres Strait Islander corporation's constitution is ***changed*** if:
- (a) the constitution is repealed and a new constitution is substituted; or

- (b) a provision of the constitution is repealed and a new provision is substituted; or
  - (c) a provision of the constitution is repealed; or
  - (d) a new provision is added to the constitution; or
  - (e) a provision of the constitution is modified.
- (2) The particular *constitutional change* is:
- (a) in the case of paragraph (1)(a)—the new constitution; and
  - (b) in the case of paragraphs (1)(b) and (d)—the repeal (if any) and the new provision; and
  - (c) in the case of paragraph (1)(c)—the repeal; and
  - (d) in the case of paragraph (1)(e)—the modification.

### **69-15 Extra requirements for constitutional change in constitution**

- (1) An Aboriginal and Torres Strait Islander corporation's constitution may provide that a change to its constitution does not have any effect unless a requirement specified in the constitution relating to that constitutional change has been complied with.
- (2) Unless the constitution provides otherwise, the corporation may modify or repeal a requirement described in subsection (1) only if the requirement is itself complied with.

Note: Section 69-40 deals with when the constitutional change takes effect.

### **69-20 Corporation to lodge copy of constitutional changes**

- (1) If no requirement of a kind mentioned in section 69-15 is specified in the corporation's constitution, within 28 days after the special resolution is passed, the corporation must lodge with the Registrar:
  - (a) a copy of the special resolution; and
  - (b) a copy of those parts of the minutes of the meeting at which the special resolution was passed that relate to the passing of the special resolution; and
  - (c) a directors' statement (see subsection (5)); and
  - (d) a copy of the constitutional change.

Penalty: 5 penalty units.

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- (2) If a constitutional change is not to have effect until a requirement specified in the corporation's constitution has been complied with, the corporation must lodge the documents referred to in subsection (1) in addition to proof that the requirement has been met within 28 days after the requirement has been met.

Penalty: 5 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) The Registrar may direct the corporation to lodge a consolidated copy of the corporation's constitution. The consolidation must set out the constitution as it will be if the Registrar registers the constitutional change.

- (5) A *directors' statement* is a statement signed by:

- (a) 2 directors of the corporation; or  
(b) if there is only 1 director—that director;

to the effect that the special resolution was passed in accordance with the internal governance rules.

Note: See also section 265-40 for offences committed by the secretary of an Aboriginal and Torres Strait Islander corporation.

**69-25 Special administrator to lodge copy of constitutional changes**

If the special administrator of an Aboriginal and Torres Strait Islander corporation changes the corporation's constitution under section 499-5, the special administrator must lodge a copy of the change with the Registrar.

**69-30 Registrar to determine if constitutional change should be registered**

*Registrar to decide*

- (1) The Registrar must decide whether to register a constitutional change lodged under section 69-20 or 69-25.



*Changed internal governance rules must comply with the internal governance rules requirement*

- (2) The Registrar must not register the change unless the Registrar is satisfied that, with the constitutional change, the internal governance rules of the corporation would comply with the internal governance rule requirements.

*Proposed change after Registrar's change*

- (3) In addition to being satisfied as required by subsection (2), the Registrar must not register a constitutional change lodged after the Registrar has changed the constitution under section 69-35 unless the Registrar is satisfied that:
- (a) the lodged change is consistent with the change made by the Registrar, taking into account the Registrar's reasons for making that change; and
  - (b) the reasons for the Registrar making that change are no longer applicable.

*If Registrar is not satisfied*

- (4) If the Registrar is not satisfied as required by this section, the Registrar must:
- (a) refuse to register the change; and
  - (b) notify the corporation or special administrator concerned in writing of the decision within 28 days after that decision.

*If Registrar is satisfied*

- (5) If the Registrar is satisfied as required by this section, the Registrar must register the change within 28 days after making the decision.

**69-35 Registrar may change an Aboriginal and Torres Strait Islander corporation's constitution on own initiative**

- (1) The Registrar may, on his or her own initiative, change an Aboriginal and Torres Strait Islander corporation's constitution in the circumstances set out in subsection (2) or (3).

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- (2) The Registrar may change the constitution if the Registrar is satisfied that the corporation is not meeting the internal governance rules requirements.

Note: Section 66-1 sets out the requirements.

- (3) The Registrar may change the constitution if the Registrar is satisfied that:

- (a) the conduct of the corporation's affairs; or
- (b) an actual or proposed act or omission by or on behalf of the corporation; or
- (c) a resolution, or a proposed resolution, of members or a class of members of the corporation;

is either:

- (d) contrary to the interests of the members as a whole; or
- (e) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.

- (4) The changes that the Registrar may make are the changes that the Registrar considers appropriate having regard to the internal governance rules requirements and the circumstances of the particular corporation.

- (5) If the corporation is a registered native title body corporate, the Registrar must not change the constitution on the basis of:

- (a) an act (or omission from doing an act); or
- (b) a proposed act (or omission from doing an act);

if an officer or employee of the corporation does (or refrains from doing), or proposes to do (or refrain from doing), the act:

- (c) in good faith; and
- (d) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

- (6) The Registrar makes the change by registering it.

- (7) If the Registrar changes the constitution, the Registrar must give the corporation written notice within 28 days after registration of the changes:

- (a) stating that the Registrar has changed the constitution; and
  - (b) setting out the terms of the change.
- (8) In making a change under this section, the Registrar does not have to comply with paragraph 69-5(1)(a) (special resolution), section 69-15 (satisfying extra requirements in constitution), section 69-20 (corporation to lodge copy of changes) or section 69-30 (Registrar to determine if constitutional change should be registered).

#### **69-40 Date of effect of constitutional change**

A constitutional change takes effect:

- (a) if it is the result of a special resolution—on the day the change is registered; or
- (b) if it is the result of a Court order made under section 166-5:
  - (i) on the date on which the order is made if it specifies no later date; or
  - (ii) on a date specified by the order; or
- (c) if the Registrar has made the change—on the day the change is registered; or
- (d) if a special administrator has made the change—on the day the change is registered.

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**Division 72—Other matters concerning constitutions etc.**

**72-1 Registrar may direct corporation to lodge constitution**

- (1) The Registrar may direct an Aboriginal and Torres Strait Islander corporation to lodge a copy of its constitution.

Note: Under section 322-5, an Aboriginal and Torres Strait Islander corporation must keep an up-to-date copy of its constitution.

- (2) A direction made under subsection (1) is not a legislative instrument.

**72-5 Corporation must provide governance material to members**

*Corporation must provide member with constitution etc.*

- (1) If a member of an Aboriginal and Torres Strait Islander corporation asks for a copy of the corporation's constitution or internal governance framework rules, the corporation must provide to the member a copy of the corporation's internal governance framework rules:

- (a) free of charge; and  
(b) within 7 days.

Penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Registered office*

- (3) An Aboriginal and Torres Strait Islander corporation that is registered as a large corporation must make available for inspection by members and officers at its registered office, its internal governance framework rules. The rules must be available for inspection each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm.

Note: Failure to comply with this subsection is an offence under section 376-1.

*Document access address*

- (4) An Aboriginal and Torres Strait Islander corporation that is registered as a small or medium corporation must make available for inspection by members and officers at its document access address, its internal governance framework rules. The rules must be made available for inspection within 7 days of a member's or officer's written request for inspection.

Note: Failure to comply with this subsection is an offence under section 376-1.

- (5) A corporation must make rules available under subsections (3) and (4) free of charge.

Penalty: 5 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7) The *internal governance framework rules* of an Aboriginal and Torres Strait Islander corporation are:

- (a) the corporation's constitution; and
- (b) any replaceable rules that apply to the corporation; and
- (c) any other material concerning the internal governance of the corporation that is prescribed.

## **72-10 Constitution may limit powers**

- (1) An Aboriginal and Torres Strait Islander corporation's constitution may contain an express restriction on, or a prohibition of, the corporation's exercise of any of its powers. The exercise of a power by the corporation is not invalid merely because it is contrary to an express restriction or prohibition in the corporation's constitution.
- (2) An act of the corporation is not invalid merely because it is contrary to or beyond the objects set out in the corporation's constitution.

**Chapter 3** Basic features of an Aboriginal and Torres Strait Islander corporation

**Part 3-3** Minimum number of members of Aboriginal and Torres Strait Islander corporations

**Division 77** Minimum number of members of Aboriginal and Torres Strait Islander corporations

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## **Part 3-3—Minimum number of members of Aboriginal and Torres Strait Islander corporations**

### **Division 77—Minimum number of members of Aboriginal and Torres Strait Islander corporations**

#### **77-1 What this Part is about**

<p>This Part deals with the minimum number of members that an Aboriginal and Torres Strait Islander corporation must have.</p>
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#### **77-5 Minimum number of members requirement**

##### *Minimum number of members*

- (1) An Aboriginal and Torres Strait Islander corporation must have the following minimum number of members:
  - (a) at least 5 members; or
  - (b) the lesser number of members determined under subsection (2), (3) or (4).

##### *Request in application for registration for exemption from at least 5 members*

- (2) If:
  - (a) an application for registration of an Aboriginal and Torres Strait Islander corporation is to be made; and
  - (b) the corporation is to have fewer than 5 members; the applicant for registration must, in the application under section 21-1, request that the Registrar:
    - (c) exempt the corporation from having at least 5 members; and
    - (d) determine the corporation to have the lesser minimum number of members specified in the application.

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*Request after registration if determination under subsection (2) is in force*

- (3) If:
- (a) the Registrar has determined a lesser number of members under subsection (2) in respect of an Aboriginal and Torres Strait Islander corporation and the determination is in force; and
  - (b) after registration of the corporation, the corporation wants to have fewer members than the number determined;
- the corporation may request the Registrar in writing to:
- (c) exempt the corporation from having the number previously determined; and
  - (d) determine the corporation to have the lesser minimum number of members specified in the application.

*Request after registration if no determination under subsection (2) is in force*

- (4) If:
- (a) an Aboriginal and Torres Strait Islander corporation is required to have at least 5 members; and
  - (b) after registration of the corporation, the corporation wants to have fewer than 5 members;
- the corporation may request the Registrar in writing to:
- (c) exempt the corporation from having at least 5 members; and
  - (d) determine the corporation to have the lesser minimum number of members specified in the application.

#### **77-10 Registrar may exempt if appropriate and reasonable to do so**

The Registrar may grant an exemption on a request under subsection 77-5(2), (3) or (4) and allow a lesser number if the Registrar is satisfied that it is appropriate and reasonable in the circumstances to do so.

Note: For example, the Registrar may grant an exemption if the corporation was formed as a result of a court order.

**Chapter 3** Basic features of an Aboriginal and Torres Strait Islander corporation

**Part 3-3** Minimum number of members of Aboriginal and Torres Strait Islander corporations

**Division 77** Minimum number of members of Aboriginal and Torres Strait Islander corporations

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**77-15 Registrar may determine a different number to number requested**

In determining a lesser minimum number of members on a request under subsection 77-5(2), (3) or (4), the Registrar may determine a number that is higher or lower than the number requested (so long as the number is less than 5).

**77-20 Earlier determination taken to be revoked**

If the Registrar grants an exemption on a request under subsection 77-5(3), the determination referred to in paragraph 77-5(3)(a) is taken to be revoked.

**77-25 Notice to be given**

- (1) If the Registrar grants an exemption under section 77-10, the Registrar must notify the applicant or corporation, as the case may be, in writing of the exemption and the minimum number of members that the corporation is instead required to have.
- (2) If the Registrar does not grant the exemption, the Registrar must notify the applicant or corporation, as the case may be, in writing that the exemption has not been granted.



## **Part 3-4—Names**

### **Division 82—Introduction**

#### **82-1 What this Part is about**

This Part deals with the names requirement (Division 85) and how a name is changed (Division 88).

## **Division 85—What names may a corporation have?**

### **85-1 Corporation's name requirements**

- (1) The requirements concerning an Aboriginal and Torres Strait Islander corporation's name are set out in the following subsections.
- (2) The corporation may have as its name:
  - (a) a name that is available (see section 85-5); or
  - (b) the expression "Indigenous Corporation Number" followed by the corporation's ICN.
- (3) The corporation must have as part of its name one of the following sets of words:
  - (a) "Aboriginal corporation";
  - (b) "Torres Strait Islander corporation";
  - (c) "Aboriginal and Torres Strait Islander corporation";
  - (d) "Torres Strait Islander and Aboriginal corporation";
  - (e) "Indigenous corporation".
- (4) If the corporation is a registered native title body corporate, then the corporation must also have as part of its name the words "registered native title body corporate".
- (5) If abbreviations are used in its name, the corporation must use only the abbreviations that are acceptable (see section 85-10).
- (6) If the corporation is not a registered native title body corporate the corporation must not:
  - (a) have the term "registered native title body corporate" as part of its name; or
  - (b) include the abbreviation "RNTBC" in its name.
- (7) The requirements must be met by an Aboriginal and Torres Strait Islander corporation at all times after registration.

Note: The requirements must be complied with on registration of an Aboriginal and Torres Strait Islander corporation (see section 29-25).

### **85-5 Available names**

*Name is available unless identical or unacceptable*

- (1) A name is available unless the name is:
- (a) identical (under rules set out in the regulations) to a name that is:
    - (i) used in an application for registration under this Act; or
    - (ii) registered under this Act for another Aboriginal and Torres Strait Islander corporation; or
    - (iii) registered under the Corporations Act; or
    - (iv) reserved for a company under section 152 of the Corporations Act; or
  - (b) identical (under rules set out in the regulations) to a name that is included on the national business names register in respect of another individual or body who is not the person applying to have the name; or
  - (c) unacceptable for registration under the regulations.

*Registrar may consent to a name being available*

- (2) The Registrar may consent in writing to a name being available to a corporation even if the name is:
- (a) identical to a name:
    - (i) that is used in another current application for registration under this Act; or
    - (ii) registered under this Act for another Aboriginal and Torres Strait Islander corporation; or
    - (iii) registered under the Corporations Act; or
    - (iv) reserved for a company under section 152 of the Corporations Act; or
    - (v) that is included on the national business names register; or
  - (b) unacceptable for registration under the regulations.
- (3) The Registrar's consent may be given subject to conditions.

Note: If the corporation breaches a condition, the Registrar may direct it to change its name under section 88-5.

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- (4) The regulations may specify that a particular unacceptable name is available if:
- (a) a specified public authority, or an instrumentality or agency of the Crown in right of the Commonwealth, a State or an internal Territory has consented to the corporation using or assuming the name; or
  - (b) the corporation is otherwise permitted to use or assume the name by or under:
    - (i) an Act of the Commonwealth, a State or an internal Territory; or
    - (ii) a specified provision of an Act of the Commonwealth, a State or an internal Territory.

The consent of the authority, instrumentality or agency may be given subject to conditions.

**Note:** If the consent is withdrawn, the corporation ceases to be permitted or the corporation breaches a condition, the Registrar may direct it to change its name under section 88-5.

**85-10 Acceptable abbreviations**

- (1) The abbreviations set out in the following table may be used:
- (a) instead of words that this Act requires to be part of an Aboriginal and Torres Strait Islander corporation's name, or to be included in a document or on an Aboriginal and Torres Strait Islander corporation's common seal; and
  - (b) instead of words that are part of an Aboriginal and Torres Strait Islander corporation's name; and
  - (c) with or without full stops.

<b>Acceptable abbreviations</b>		
	<b>Word</b>	<b>Abbreviation</b>
1	Australian	Aust
2	Number	No
3	and	&
4	Indigenous Corporation Number	ICN
5	Australian Business Number	ABN

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<b>Acceptable abbreviations</b>		
	<b>Word</b>	<b>Abbreviation</b>
6	registered native title body corporate	RNTBC

- (2) If an Aboriginal and Torres Strait Islander corporation’s name includes any of these abbreviations, the word corresponding to the abbreviation may be used instead.

**85-15 Using a name and ICN on documents**

- (1) An Aboriginal and Torres Strait Islander corporation must set out its name on all its public documents and negotiable instruments.
- (2) Subject to sections 85-20 and 85-25, if the corporation’s ICN is not used in its name, the corporation must also set out with its name, or with one of the references to its name, the expression “Indigenous Corporation Number” followed by the corporation’s ICN.
- (3) If the corporation’s name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

Note 1: If an Aboriginal and Torres Strait Islander corporation has a common seal, its name and ICN must be set out on the seal (see section 42-25).

Note 2: An Aboriginal and Torres Strait Islander corporation that is registered as a large corporation must display its name at its registered office and at places at which the corporation carries on business (see section 112-15).

Note 3: Section 85-10 provides that “ICN” is an acceptable abbreviation of “Indigenous Corporation Number”.

- (4) An Aboriginal and Torres Strait Islander corporation commits an offence if it contravenes subsection (1), (2) or (3).

Penalty: 10 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**85-20 Exception to requirement to have ICN on receipts**

An Aboriginal and Torres Strait Islander corporation does not have to set out the expression “Indigenous Corporation Number” followed by its ICN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.

**85-25 Regulations may exempt from requirement to set out information on documents**

The regulations may exempt an Aboriginal and Torres Strait Islander corporation, or a specified class of Aboriginal and Torres Strait Islander corporation, from the requirement in subsection 85-15(2) to set out information on its public documents and negotiable instruments.

## **Division 88—How is a corporation's name changed?**

### **88-1 Corporation changing its name**

- (1) If an Aboriginal and Torres Strait Islander corporation wants to change its name, it must:
  - (a) pass a special resolution adopting a new name; and
  - (b) lodge an application in writing with the Registrar.
- (2) The corporation must lodge:
  - (a) a copy of the special resolution; and
  - (b) a copy of those parts of the minutes of the meeting at which the special resolution was passed that relate to the passing of the special resolution;with the Registrar within 28 days after the resolution is passed.

Penalty: 5 penalty units.

Note: See also section 265-40 for offences committed by the secretary of an Aboriginal and Torres Strait Islander corporation.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) If the proposed name complies with the requirements in section 85-1, the Registrar must change the corporation's name by altering the details of the corporation's registration to reflect the change. The change of name takes effect when the Registrar alters the details of the corporation's registration.

### **88-5 Registrar's power to direct corporation to change its name**

- (1) The Registrar may direct an Aboriginal and Torres Strait Islander corporation in writing to change its name within 2 months if:
  - (a) the name should not have been registered; or
  - (b) the corporation has breached a condition under subsection 85-5(3) on the availability of the name; or
  - (c) a consent given under subsection 85-5(4) to use or assume the name has been withdrawn; or

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- (d) the corporation has breached a condition on a consent given under subsection 85-5(4); or
  - (e) the corporation ceases to be permitted to use or assume the name (as referred to in paragraph 85-5(4)(b)).
- (2) The corporation must comply with the direction within 2 months after being given it by doing everything necessary to change its name under section 88-1.
- Penalty: 50 penalty units or 12 months imprisonment, or both.
- (3) If the corporation does not comply with subsection (2), the Registrar may change the corporation's name to its ICN and any other words that section 85-1 requires, by altering the details of the corporation's registration to reflect the change.
- (4) A change of name under subsection (3) takes effect when the Registrar alters the details of the corporation's registration.
- (5) An offence against subsection (2) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) A direction under subsection (1) is not a legislative instrument.

**88-10 If Aboriginal and Torres Strait Islander corporation becomes a registered native title body corporate**

*Notice required*

- (1) If an Aboriginal and Torres Strait Islander corporation becomes a registered native title body corporate, the corporation must, within 28 days after becoming registered, notify the Registrar in writing accordingly.

*Registrar to change registration*

- (2) If:
- (a) the Registrar is notified under subsection (1) that the corporation has become a registered native title body corporate; or
  - (b) the Registrar otherwise becomes aware of that fact;



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the Registrar must change the corporation's name by altering the details of the corporation's registration to include the words "registered native title body corporate" in the corporation's name.

*When name change takes effect*

- (3) A change of name under subsection (2) takes effect when the Registrar alters the details of the corporation's registration.

**88-15 If Aboriginal and Torres Strait Islander corporation ceases to be a registered native title body corporate**

*Notice required*

- (1) If an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate (*RNTBC*) ceases to be a RNTBC, the corporation must, within 28 days after ceasing to be a RNTBC, notify the Registrar in writing accordingly.

*Registrar to change registration*

- (2) If:
- (a) the Registrar is notified under subsection (1) that the corporation has ceased to be a RNTBC; or
  - (b) the Registrar otherwise becomes aware of that fact;
- the Registrar must change the corporation's name by altering the details of the corporation's registration to delete the words "registered native title body corporate" from the corporation's name.

*When name change takes effect*

- (3) A change of name under subsection (2) takes effect when the Registrar alters the details of the corporation's registration.

**88-20 Registrar must issue new certificate if name changes**

- (1) If the Registrar changes an Aboriginal and Torres Strait Islander corporation's name, he or she must give to the corporation a new certificate of registration. The corporation's new name is the name specified in the certificate of registration issued under this section.

**Chapter 3** Basic features of an Aboriginal and Torres Strait Islander corporation

**Part 3-4** Names

**Division 88** How is a corporation's name changed?

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Note 1: An Aboriginal and Torres Strait Islander corporation's name may be changed under section 88-1, 88-5, 88-10 or 88-15.

Note 2: For the evidentiary value of a certificate of registration, see subsection 424-5(2).

- (2) A certificate under subsection (1) is not a legislative instrument.

**88-25 Effect of name change**

- (1) The changing of an Aboriginal and Torres Strait Islander corporation's name does not:
- (a) create a new legal entity; or
  - (b) affect the corporation's existing property, rights or obligations; or
  - (c) render defective any legal proceedings by or against the corporation.
- (2) Any legal proceedings that could have been continued or begun by or against the corporation in its former name may be continued or begun by or against it in its new name.

## **Part 3-5—Corporation powers and how they are exercised**

### **Division 93—Introduction**

#### **93-1 What this Part is about**

This Part deals with the legal capacity and powers of Aboriginal and Torres Strait Islander corporations.

## **Division 96—What are a corporation's powers?**

### **96-1 Legal capacity and powers**

- (1) An Aboriginal and Torres Strait Islander corporation has the legal capacity and powers of an individual within and outside Australia.
- (2) An Aboriginal and Torres Strait Islander corporation also has all the powers of a body corporate, including the power to, if the corporation's constitution permits, distribute any of the corporation's property among the members, in kind or otherwise.
- (3) An Aboriginal and Torres Strait Islander corporation's legal capacity to do something is not affected by the fact that the corporation's interests are not, or would not be, served by doing it.
- (4) For the avoidance of doubt, this section does not:
  - (a) authorise an Aboriginal and Torres Strait Islander corporation to do an act that is prohibited by a law of a State or Territory; or
  - (b) give an Aboriginal and Torres Strait Islander corporation a right that a law of a State or Territory denies to the corporation.

## **Division 99—How are a corporation's powers exercised?**

### **99-1 Agent exercising a corporation's power to make contracts etc.**

- (1) An Aboriginal and Torres Strait Islander corporation's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the corporation's express or implied authority and on behalf of the corporation. The power may be exercised without using a common seal.
- (2) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.

### **99-5 Execution of documents (including deeds) by the corporation itself**

- (1) An Aboriginal and Torres Strait Islander corporation may execute a document without using a common seal if the document is signed by:
  - (a) 2 directors of the corporation; or
  - (b) a director and a corporation secretary (if any) of the corporation; or
  - (c) if the corporation has only 1 director—that director.

Note: If an Aboriginal and Torres Strait Islander corporation executes a document in this way, people will be able to rely on the assumptions in subsection 104-5(6) for dealings in relation to the corporation.

- (2) An Aboriginal and Torres Strait Islander corporation with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
  - (a) 2 directors of the corporation; or
  - (b) a director and a corporation secretary of the corporation; or
  - (c) for an Aboriginal and Torres Strait Islander corporation that has only 1 director—that director.

Note: If an Aboriginal and Torres Strait Islander corporation executes a document in this way, people will be able to rely on the assumptions in subsection 104-5(7) for dealings in relation to the corporation.

**Chapter 3** Basic features of an Aboriginal and Torres Strait Islander corporation

**Part 3-5** Corporation powers and how they are exercised

**Division 99** How are a corporation's powers exercised?

Section 99-5

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- (3) An Aboriginal and Torres Strait Islander corporation may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).
- (4) This section does not limit the ways in which an Aboriginal and Torres Strait Islander corporation may execute a document (including a deed).

## **Part 3-6—Assumptions people dealing with Aboriginal and Torres Strait Islander corporations are entitled to make**

### **Division 104—Assumptions people dealing with Aboriginal and Torres Strait Islander corporations are entitled to make**

#### **104-1 Entitlement to make assumptions**

- (1) A person is entitled to make the assumptions in section 104-5 in relation to dealings with an Aboriginal and Torres Strait Islander corporation. The corporation is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (2) A person is entitled to make the assumptions in section 104-5 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to property from an Aboriginal and Torres Strait Islander corporation. The corporation and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (3) The assumptions may be made even if an officer or agent of the corporation acts fraudulently, or forges a document, in connection with the dealings.
- (4) A person is not entitled to make an assumption in section 104-5 if at the time of the dealings the person knew or suspected that the assumption was incorrect.

**Chapter 3** Basic features of an Aboriginal and Torres Strait Islander corporation

**Part 3-6** Assumptions people dealing with Aboriginal and Torres Strait Islander corporations are entitled to make

**Division 104** Assumptions people dealing with Aboriginal and Torres Strait Islander corporations are entitled to make

Section 104-5

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**104-5 Assumptions that can be made under section 104-1**

*Constitution and replaceable rules complied with*

- (1) A person may assume that the corporation's constitution and any provisions of this Act that apply to the corporation as replaceable rules, have been complied with.

*Director or corporation secretary*

- (2) A person may assume that anyone who appears, from information provided by the corporation that is available to the public from the Registrar, to be a director or a corporation secretary of the corporation:
  - (a) has been duly appointed; and
  - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or corporation secretary of a similar Aboriginal and Torres Strait Islander corporation.

*Contact person*

- (3) A person may assume that anyone who appears, from information that is available to the public from the Registrar to be the contact person of the corporation, is the contact person.

*Officer or agent*

- (4) A person may assume that anyone who is held out by the corporation to be an officer or agent of the corporation:
  - (a) has been duly appointed; and
  - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent of a similar Aboriginal and Torres Strait Islander corporation.

*Proper performance of duties*

- (5) A person may assume that the officers and agents of the corporation properly perform their duties to the corporation.



*Document duly executed without seal*

- (6) A person may assume that a document has been duly executed by the corporation if the document appears to have been signed in accordance with subsection 99-5(1). For the purposes of making the assumption, a person may also assume that anyone who signs the document and states next to his or her signature that he or she is the only director of the corporation is the only director of the corporation.

*Document duly executed with seal*

- (7) A person may assume that a document has been duly executed by the corporation if:
- (a) the corporation's common seal appears to have been fixed to the document in accordance with subsection 99-5(2); and
  - (b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.

For the purposes of making the assumption, a person may also assume that anyone who witnesses the fixing of the common seal and states next to his or her signature that he or she is the only director of the corporation is the only director of the corporation.

*Officer or agent with authority to warrant that document is genuine or true copy*

- (8) A person may assume that an officer or agent of the corporation who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.
- (9) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

**Chapter 3** Basic features of an Aboriginal and Torres Strait Islander corporation

**Part 3-6** Assumptions people dealing with Aboriginal and Torres Strait Islander corporations are entitled to make

**Division 104** Assumptions people dealing with Aboriginal and Torres Strait Islander corporations are entitled to make

Section 104-10

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**104-10 Information available to the public from Registrar does not constitute constructive notice**

A person is not taken to have information about an Aboriginal and Torres Strait Islander corporation merely because the information is available to the public from the Registrar.

## **Part 3-7—Registered office or document access address**

### **Division 109—Introduction**

#### **109-1 What this Part is about**

This Part deals with:

- (a) the registered office of an Aboriginal and Torres Strait Islander corporation that is registered as a large corporation; and
- (b) the document access address of an Aboriginal and Torres Strait Islander corporation that is registered as a small or medium corporation.

## **Division 112—Registered office**

### **112-1 General**

#### *Application of Division*

- (1) This Division applies to an Aboriginal and Torres Strait Islander corporation if it is registered as a large corporation.

#### *Small and medium corporations not to have registered office*

- (2) An Aboriginal and Torres Strait Islander corporation that is registered as a small or medium corporation must not have a registered office.

### **112-5 Corporation to have registered office**

- (1) An Aboriginal and Torres Strait Islander corporation that is registered as a large corporation must have a registered office in Australia.

Note: A document may be served on a large corporation by leaving it at, or posting it to, the corporation's registered office (see section 120-1).

- (2) If the corporation has one or more places of business in Australia, one of those places must be its registered office.
- (3) The corporation must lodge notice of a change of address of its registered office with the Registrar not later than 28 days after the date on which the change occurs.

Note: If the corporation is not to be the occupier of premises at the address of its new registered office, the notice must state that the occupier has consented to the address being specified in the notice and has not withdrawn that consent (see section 112-20).

- (4) A notice of change of address takes effect when the changed address is included on the Register of Aboriginal and Torres Strait Islander Corporations.
- (5) The corporation commits an offence if the corporation does not have a registered office in Australia.

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Penalty: 5 penalty units.

- (6) The corporation commits an offence if:
- (a) the corporation has one or more places of business in Australia; and
  - (b) one of those places of business is not the corporation's registered office.

Penalty: 5 penalty units.

- (7) The corporation commits an offence if:
- (a) the corporation's registered office address changes; and
  - (b) the corporation does not lodge the notice required by subsection (3) within 28 days after the change.

Penalty: 5 penalty units.

- (8) An offence against subsection (5) or (6) or paragraph (7)(b) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: See also section 265-40 for offences committed by the secretary of an Aboriginal and Torres Strait Islander corporation.

**112-10 Registrar may change address of registered office to a director's address**

- (1) If the corporation does not occupy the premises at the address of its registered office, the corporation must be able to show the Registrar the occupier's written consent to the corporation's use of those premises as its registered office.

Note: The Registrar can require the corporation to produce the consent (see section 112-20).

- (2) The corporation commits an offence if it contravenes subsection (1).

Penalty: 5 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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- (4) If the Registrar becomes aware that the occupier of those premises:
- (a) has not consented to the use of the premises as the address of the corporation's registered office; or
  - (b) has withdrawn the consent;
- the Registrar may:
- (c) give written notice to a director of the corporation who resides in Australia that the Registrar intends to change the address of the corporation's registered office to the director's address; and
  - (d) if the Registrar is not notified of the address of the corporation's proposed new registered office under section 112-5 within 14 days after the notice under that section is sent—change the address of the corporation's registered office to the address of that director.
- (5) A notice under paragraph (4)(c) is not a legislative instrument.

**112-15 Corporation's name must be displayed**

- (1) The corporation must display its name and ICN prominently at its registered office. The corporation must also display its name and ICN at every place at which the corporation carries on business if that place is open to the public.
- (2) The corporation commits an offence if the corporation fails to prominently display its name and ICN:
- (a) at its registered office; or
  - (b) at a place at which the corporation carries on business that is open to the public.

Penalty: 10 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**112-20 Address of registered office etc.**

- (1) If a provision of this Act requires a notice to be lodged of, or information in an application to specify:

Section 112-20

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- (a) the address of an office, or of a proposed office, of an Aboriginal and Torres Strait Islander corporation or other person; or
  - (b) a change in the situation and address of an office of an Aboriginal and Torres Strait Islander corporation or other person;
- the notice or information must specify the matters set out in subsections (2) and (3).
- (2) The notice or information must specify the full address, or the full new address, as the case requires, of the relevant office including, where applicable, the number of the room and of the floor or level of the building in which the office is situated.
  - (3) If:
    - (a) the notice or application relates to the address or situation of an office of an Aboriginal and Torres Strait Islander corporation; and
    - (b) the address specified in accordance with paragraph (1)(a) is the address of premises that the corporation will not occupy;the notice or information must include a written statement to the effect that the person who occupies those premises:
    - (c) has consented in writing to the address being specified in the notice or application; and
    - (d) has not withdrawn that consent.
  - (4) The Registrar may require a person who has lodged a notice or application that includes a statement under subsection (3) to produce to the Registrar the consent referred to in the statement.
  - (5) A requirement under subsection (4) is not a legislative instrument.

Section 115-1

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**Division 115—Document access address**

**115-1 Division applies to Aboriginal and Torres Strait Islander corporations registered as small or medium corporations**

This Division applies to an Aboriginal and Torres Strait Islander corporation that is registered as a small or medium corporation.

**115-5 Corporation to have document access address**

- (1) The corporation must have a document access address in Australia.

Note 1: Certain documents must be kept at this address and must be available for inspection at this address.

Note 2: The document access address is not an address at which documents can be served on the corporation. See section 120-1 for the addresses at which documents can be served on the corporation.

- (2) The corporation must lodge notice of a change of address of its document access address with the Registrar not later than 28 days after the date on which the change occurs.

Note: If the corporation is not to be the occupier of premises at the address of its document access address, the notice must state that the occupier has consented to the address being specified in the notice and has not withdrawn that consent (see section 115-20).

- (3) A notice of change of address takes effect from the later of:
- (a) the seventh day after the notice was lodged; or
  - (b) a later day specified in the notice as the date from which the change is to take effect.

- (4) The corporation commits an offence if the corporation does not have a document access address in Australia.

Penalty: 5 penalty units.

- (5) The corporation commits an offence if:
- (a) the corporation's document access address changes; and
  - (b) the corporation does not lodge the notice required by subsection (2) within 28 days after the change.



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Penalty: 5 penalty units.

- (6) An offence against subsection (4) or paragraph (5)(b) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**115-10 Registrar may change document access address to a director's address**

- (1) If the corporation does not occupy the premises at the address of its document access address, the corporation must be able to show the Registrar the occupier's written consent to the corporation's use of those premises as its document access address.

Note: The Registrar can require the corporation to produce the consent (see section 115-20).

- (2) The corporation commits an offence if it fails to comply with a request by the Registrar to show the Registrar that consent.

Penalty: 5 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) If the Registrar becomes aware that the occupier of those premises:
- (a) has not consented to the use of the premises as the address of the corporation's document access address; or
  - (b) has withdrawn the consent;

the Registrar may:

- (c) give written notice to a director of the corporation who resides in Australia that the Registrar intends to change the address of the corporation's document access address to the director's address; and
  - (d) if the Registrar is not notified of the address of the corporation's proposed new document access address under section 115-5 within 14 days after the notice under that section is sent—change the address of the corporation's document access address to the address of that director.
- (5) A notice under paragraph (4)(c) is not a legislative instrument.

Section 115-15

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**115-15 Registrar may direct corporation to change the location of its document access address**

- (1) If the Registrar is satisfied that the corporation's document access address is not in an area that allows the corporation's members appropriate access to the corporation's books, the Registrar may direct the corporation to change its document access address so that it is within the area specified in the direction.
- (2) The direction must:
  - (a) be given by notice in writing to the corporation; and
  - (b) specify the period within which the direction must be complied with.
- (3) The period specified under paragraph (2)(b) must be at least 28 days after the day on which the notice is given to the corporation.
- (4) The corporation commits an offence if it does not comply with the direction.

Penalty: 5 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) A direction under subsection (1) is not a legislative instrument.

**115-20 Address of document access address**

- (1) If a provision of this Act requires a notice to be lodged of, or information in an application to specify:
  - (a) the address of the document access address, or of a proposed document access address, of an Aboriginal and Torres Strait Islander corporation; or
  - (b) a change in the situation and address of the document access address of an Aboriginal and Torres Strait Islander corporation;the notice or information must specify the matters set out in subsections (2) and (3).

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- (2) The notice or information must specify the full address, or the full new address, as the case requires, of the document access address including, where applicable, the number of the room and of the floor or level of the building in which the document access address is situated.
- (3) If the address specified in accordance with paragraph (1)(a) is the address of premises that the corporation will not occupy, the notice or information must include a written statement to the effect that:
  - (a) the person who occupies those premises has consented in writing to the address being specified in the notice or application; and
  - (b) has not withdrawn that consent.
- (4) The Registrar may require a person who has lodged a notice or application that includes a statement under subsection (3) to produce to the Registrar the consent referred to in the statement.
- (5) A requirement under subsection (4) is not a legislative instrument.

## **Part 3-8—Service on Aboriginal and Torres Strait Islander corporations**

### **Division 120—Service on Aboriginal and Torres Strait Islander corporations**

#### **120-1 Service on Aboriginal and Torres Strait Islander corporation**

- (1) A notice, demand, summons, writ or other document or process may be served on an Aboriginal and Torres Strait Islander corporation by:
  - (a) if the corporation is registered as a large corporation—leaving it at, or posting it to, the corporation’s registered office; or
  - (b) if the corporation is registered as a large corporation—serving a copy of the document personally on the corporation secretary; or
  - (c) if the corporation is registered as a small or medium corporation—serving a copy of the document personally on the contact person or by sending it by post to his or her address; or
  - (d) serving a copy of the document personally on a director; or
  - (e) if a liquidator of the corporation has been appointed—leaving it at, or posting it to, the address of the liquidator’s office in the most recent notice of that address lodged with the Registrar; or
  - (f) if an administrator of the corporation has been appointed—leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with the Registrar; or
  - (g) if a special administrator of the corporation has been appointed—leaving it at, or posting it to, the address of the special administrator in the most recent notice of that address lodged with the Registrar.

- (2) The address for service of the contact person is the address that is on the Register of Aboriginal and Torres Strait Islander Corporations for the contact person.
- (3) The Registrar may change the address on the register in respect of the registered office or contact person if:
  - (a) the Registrar is notified of a new address by the corporation or contact person; or
  - (b) the Registrar otherwise becomes aware that the corporation or contact person has a new address.

Note: This subsection also applies to a director's address that has become the corporation's registered office under section 112-10 and to a director who has become a contact person under section 257-25.

**Chapter 4** Members and observers

**Part 4-1** Introduction

**Division 130** Introduction

Section 130-1

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## **Chapter 4—Members and observers**

### **Part 4-1—Introduction**

#### **Division 130—Introduction**

##### **130-1 What this Chapter is about**

This Chapter deals with membership of Aboriginal and Torres Strait Islander corporations (Part 4-2), observers of Aboriginal and Torres Strait Islander corporations (Part 4-3), members' rights (Part 4-4) and the register of members and the register of former members (Part 4-5).

## **Part 4-2—Members**

### **Division 135—Introduction**

#### **135-1 What this Part is about**

This Part deals with membership of an Aboriginal and Torres Strait Islander corporation.

Division 138 deals with the meaning of member of an Aboriginal and Torres Strait Islander corporation.

Subdivision 141-B deals with various rules that are imposed on an Aboriginal and Torres Strait Islander corporation concerning membership.

Subdivision 141-C imposes 1 eligibility requirement for membership but a corporation may impose other such requirements.

Division 144 deals with how a person becomes a member.

Division 147 deals with member obligations.

Division 150 deals with how a person ceases to be member.

Division 153 provides for different classes of members.

## Division 138—Who is a member of an Aboriginal and Torres Strait Islander corporation?

### 138-1 Meaning of *member*

(1) A person is a *member* of an Aboriginal and Torres Strait Islander corporation if the person:

- (a) is a member of the corporation on its registration; or
- (b) agrees to become a member of the corporation after its registration and his or her name is entered on the register of members.

Note: Section 180-5 requires the corporation to enter the names and addresses of all of its members on the register of members.

(2) A person referred to in paragraph (1)(b) becomes a member when his or her name is entered on the register of members.

Note: Under section 42-10, a person who is specified in the application for registration of an Aboriginal and Torres Strait Islander corporation as a member of the corporation becomes a member on registration of the corporation.



## **Division 141—Membership of Aboriginal and Torres Strait Islander corporations**

### **Subdivision 141-A—Introduction**

#### **141-1 Overview**

- (1) There are ongoing requirements relating to the membership of an Aboriginal and Torres Strait Islander corporation that are imposed on the corporation (see Subdivision 141-B).
- (2) These requirements have implications for the eligibility of persons for membership of Aboriginal and Torres Strait Islander corporations (see section 141-20).
- (3) In addition, an Aboriginal and Torres Strait Islander corporation may impose additional eligibility requirements for membership of the corporation (see section 141-25).

### **Subdivision 141-B—Ongoing requirements relating to membership that are imposed on an Aboriginal and Torres Strait Islander corporation**

#### **141-5 Minimum number of members requirement**

An Aboriginal and Torres Strait Islander corporation must meet the minimum number of members requirement set out in section 77-5 at all times.

Note: Section 26-1 also requires the minimum number of members requirement (explained in section 29-1) to be met at registration of the corporation.

#### **141-10 Indigeneity requirement**

- (1) An Aboriginal and Torres Strait Islander corporation must meet the Indigeneity requirement set out in section 29-5 at all times.

Note: Section 26-1 also requires the Indigeneity requirement (explained in section 29-5) to be met at registration of the corporation.

Section 141-15

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- (2) However, the corporation's constitution may provide that the corporation must have a number or percentage of persons who are Aboriginal and Torres Strait Islander persons that is higher than the number or percentage required in the Indigeneity requirement.
- (3) An Aboriginal and Torres Strait Islander corporation that does increase the number or percentage of persons that are required to be Aboriginal and Torres Strait Islander persons is not in breach of subsection (1) only because that increased number or percentage is not attained.

**141-15 Age of members requirement**

- (1) An Aboriginal and Torres Strait Islander corporation must meet the age of members requirement set out in section 29-10 at all times.

Note 1: The requirement is that the members of the corporation be at least 15 years of age.

Note 2: Section 29-10 also requires the age of members requirement to be met at registration of the corporation.

- (2) However, the corporation's constitution may provide that the members of the corporation must be at least of an age that is older than 15 years.
- (3) An Aboriginal and Torres Strait Islander corporation that does increase the minimum age of members is not in breach of subsection (1) only because some members are younger than that increased minimum age.

**Subdivision 141-C—A person's eligibility for membership of an Aboriginal and Torres Strait Islander corporation**

**141-20 Eligibility for membership**

An individual who is at least 15 years of age is eligible for membership of an Aboriginal and Torres Strait Islander corporation.

**141-25 Corporation may have other eligibility requirements for membership**

The constitution of an Aboriginal and Torres Strait Islander corporation may provide for other eligibility requirements for membership of the corporation.

## **Division 144—How to become a member of an Aboriginal and Torres Strait Islander corporation**

### **144-1 How does a person become a member?**

A person becomes a member of an Aboriginal and Torres Strait Islander corporation if:

- (a) the person applies as provided for in section 144-5; and
- (b) the person is eligible for membership; and
- (c) the application is accepted as provided for in section 144-10; and
- (d) the person is entered on the register of members (see subsection 144-10(5)).

### **144-5 Application to corporation**

- (1) A person (the *applicant*) who wants to become a member of an Aboriginal and Torres Strait Islander corporation must apply to the corporation.

*Application to be in writing (replaceable rule—see section 60-1)*

- (2) The application must be in writing.

### **144-10 Determination of applications for membership**

- (1) The directors are responsible for deciding membership applications in respect of an Aboriginal and Torres Strait Islander corporation.
- (2) The directors must not accept an application for membership of the corporation unless:
  - (a) the applicant applies for membership in the required manner; and
  - (b) the applicant meets the eligibility for membership requirements of the corporation.

## Section 144-10

*Discretion to refuse to accept membership application*

- (3) The directors may refuse to accept the membership application even if paragraphs (2)(a) and (b) are complied with.

*Circumstances when application not to be accepted*

- (4) However, the directors must not accept the application if, by accepting the application, the corporation would be in breach of the requirement in section 141-10 (to at all times be complying with the Indigeneity requirement).

*If application accepted, entry on the register of members*

- (5) If the directors accept the application, the corporation must enter the member on the register of members. Subject to subsection (8), the corporation must do so within 14 days of the acceptance.

Penalty: 5 penalty units.

*Corporation to give notice if application not accepted*

- (6) If the directors decide not to accept the application, the corporation must notify the person of the decision and the reasons for it.

*Notice to be in writing (replaceable rule—see section 60-1)*

- (7) The notice must be in writing.

*No admission to membership before a general meeting has been held*

- (8) If:
- (a) the applicant applies for membership after a notice has been given for the holding of a general meeting; and
  - (b) the meeting has not been held at the time that the directors consider the application;

then the corporation must not enter the person on the register of members until after the general meeting has been held.

Penalty: 5 penalty units.

## Chapter 4 Members and observers

### Part 4-2 Members

**Division 144** How to become a member of an Aboriginal and Torres Strait Islander corporation

#### Section 144-15

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Note: An application may be made to exempt the corporation from the requirement of this subsection (see section 187-5).

- (9) An offence against subsection (5) or (8) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **144-15 Fees for membership and being an observer**

- (1) Unless an Aboriginal and Torres Strait Islander corporation's constitution provides otherwise, the corporation must not impose fees in respect of membership of the corporation or in respect of being an observer of the corporation.

Note: Section 158-5 deals with observers.

- (2) If the corporation's constitution provides for the charging of such fees, the fees, and the amount of the fees, are to be determined by the corporation by resolution in general meeting.

## **Division 147—Obligations of members**

### **147-1 Obligation to contribute on winding up**

If an Aboriginal and Torres Strait Islander corporation's constitution provides that the members must contribute to the property of the corporation on winding up then the members must so contribute. Otherwise, the members are not liable to contribute.

### **147-5 Corporation may impose other member obligations**

The constitution of an Aboriginal and Torres Strait Islander corporation may provide for other obligations that attach to membership of the corporation.

### **147-10 Liability of corporation members**

*If application for registration says members are not to be liable for debts of the body*

- (1) If the application for registration of an Aboriginal and Torres Strait Islander corporation states that people who are members and former members are not to be liable to contribute towards the payment of the debts and liabilities of the corporation, the members and former members are not liable so to contribute.

*If application for registration says members are to be liable for debts of the body*

- (2) If the application for registration states that people who are members and former members are to be liable to contribute towards the payment of the debts and liabilities of the corporation on a particular basis, the members and former members are liable so to contribute on that basis.

## **Division 150—How does a person cease to be a member of an Aboriginal and Torres Strait Islander corporation?**

### **Subdivision 150-A—General**

#### **150-1 Cessation of membership**

*Ways a membership ceases*

- (1) This Division deals with the various ways in which a person ceases to be a member of an Aboriginal and Torres Strait Islander corporation. The various ways are:
  - (a) if the person resigns as a member of the corporation (see Subdivision 150-B); or
  - (b) if the person dies; or
  - (c) if the person's membership of the corporation is cancelled (see Subdivision 150-C); or
  - (d) if the member is a body corporate and the body corporate ceases to exist.

*When a person ceases to be a member*

- (2) A person ceases to be a member when the member's name is removed from the register of members as a current member of the corporation.

### **Subdivision 150-B—Resignation of membership**

#### **150-10 Resignation**

*Resignation to be given to corporation*

- (1) A member of an Aboriginal and Torres Strait Islander corporation may resign as a member by notice given to the corporation.



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**Section 150-15**

*Notice to be in writing (replaceable rule—see section 60-1)*

- (2) The notice must be in writing.

*Register to be amended within 14 days of resignation*

- (3) Within 14 days after receiving the notice, the corporation must remove the member's name from the register of members as a current member of the corporation.

Penalty: 5 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**Subdivision 150-C—Cancellation of membership****150-15 General**

*Eligibility for membership etc.*

- (1) Section 150-20 is a replaceable rule that provides a model for the cancellation of membership on the grounds of ineligibility for membership or failure to pay fees.

Note: As a replaceable rule, section 150-20 can be modified or replaced by an Aboriginal and Torres Strait Islander corporation and replaced in whole or in part by a provision that suits the corporation's particular circumstances (subject to the internal governance rules requirements).

*Specific grounds for cancellation of membership*

- (2) Sections 150-25, 150-30 and 150-35 deal with cancellation of membership on the grounds that:
- (a) the member is uncontactable (see section 150-25); and
  - (b) the member is not an Aboriginal and Torres Strait Islander person (see section 150-30); and
  - (c) the member has misbehaved (see section 150-35).

If a membership is to be cancelled on any of the grounds set out in these sections, the only way the membership may be cancelled is as provided for in the applicable section.

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*Register to be amended within 14 days of membership being cancelled*

- (3) Within 14 days after the cancellation of membership, the corporation must remove the member's name from the register of members as a current member of the corporation.

Penalty: 5 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**150-20 Member not eligible for membership etc. (replaceable rule—see section 60-1)**

*Cancellation of membership if member is not eligible etc.*

- (1) The directors of an Aboriginal and Torres Strait Islander corporation may, by resolution, cancel the membership of a member of the corporation if:
- (a) either:
    - (i) the member is not eligible for membership; or
    - (ii) the member has ceased to be eligible for membership of the corporation; or
  - (b) the member has not paid his or her membership fees (if any).

*Member to be given notice*

- (2) Before cancelling the membership, the directors must give the member notice in writing:
- (a) stating that the directors intend to cancel the membership for the reasons specified in the notice; and
  - (b) stating that the member has 14 days to object to the cancellation of the membership; and
  - (c) stating that the objection must be:
    - (i) in writing; and
    - (ii) given to the corporation within the period of 14 days from the day the notice is given.

*If member does not object*

- (4) If the member does not object as provided for in paragraph (2)(c), the directors must cancel the membership.

*If member does object*

- (5) If the member does object as provided for in paragraph (2)(c):
- (a) the directors must not cancel the membership; and
  - (b) only the corporation by resolution in general meeting may cancel the membership.

*Notice of resolution to be given*

- (6) If the membership is cancelled, the directors must give the member a copy of the resolution (being either the resolution of the directors or the resolution of the general meeting) as soon as practicable after the resolution has been passed.

**150-25 Member not contactable**

*Operation of section*

- (1) This section operates despite section 150-20 or any provision of an Aboriginal and Torres Strait Islander corporation's constitution.

Note: An application may be made to exempt the corporation, or the directors of the corporation, from the requirements of this section (see section 187-5).

*Membership may be cancelled if not contactable*

- (2) If the membership of a member of an Aboriginal and Torres Strait Islander corporation is to be cancelled on the ground that the member is not contactable, the membership may only be cancelled on that ground if the cancellation is effected in the manner and circumstances set out in subsection (3).

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*Manner and circumstances*

- (3) The membership may be cancelled by special resolution in general meeting if:
- (a) the corporation has not been able to contact the member at the address for the member that is entered on the register of members; and
  - (b) the corporation has not been able to contact that person at that address for a continuous period of 2 years prior to the meeting; and
  - (c) the corporation has made 2 or more reasonable attempts to otherwise contact the member during that 2 year period but has been unable to.

*Notice*

- (4) If the corporation does so cancel the membership, the directors must send the member a copy of the resolution at the last known address of the member, as soon as practicable after the resolution has been passed.

Penalty: 5 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**150-30 Member is not an Aboriginal and Torres Strait Islander person**

*Operation of section*

- (1) This section operates despite section 150-20 or any provision of an Aboriginal and Torres Strait Islander corporation's constitution.

Note: An application may be made to exempt the corporation, or the directors of the corporation, from the requirements of this section (see section 187-5).

*Membership may be cancelled if not an Aboriginal and Torres Strait Islander person*

- (2) If it is a requirement for eligibility for membership of an Aboriginal and Torres Strait Islander corporation that a member be an Aboriginal and Torres Strait Islander person, a member's membership may only be cancelled on the ground that the person is not such a person if the cancellation is effected in the manner and circumstance set out in subsection (3).

*Manner and circumstances*

- (3) The corporation, by special resolution in general meeting, may cancel the membership of the member if the general meeting is satisfied that the member is not an Aboriginal and Torres Strait Islander person.

*Notice*

- (4) If the corporation does so cancel the membership, the directors must give the member a copy of the resolution as soon as practicable after the resolution has been passed.

Penalty: 5 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **150-35 Member misbehaves**

*Operation of section*

- (1) This section operates despite section 150-20 or any provision of an Aboriginal and Torres Strait Islander corporation's constitution.

Note: An application may be made to exempt the corporation, or the directors of the corporation, from the requirements of this section (see section 187-5).

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*Membership may be cancelled if member misbehaves*

- (2) If the membership of a member of an Aboriginal and Torres Strait Islander corporation is to be cancelled on the grounds that the member has misbehaved, the membership may only be cancelled on that ground if the cancellation is affected in the manner and circumstance provided for in subsection (3).

*Manner and circumstances*

- (3) The corporation may cancel the membership by special resolution in general meeting if the general meeting is satisfied that member has behaved in a manner that significantly interfered with the operation of the corporation or of corporation meetings.

*Notice*

- (4) If the corporation does so cancel the membership, the directors must give the member a copy of the resolution as soon as practicable after the resolution has been passed.

Penalty: 5 penalty units.

## **Division 153—Can there be different classes of members?**

### **153-1 Different classes of members**

- (1) An Aboriginal and Torres Strait Islander corporation's constitution may provide that the corporation has different classes of members.
- (2) The corporation's constitution may provide that different rights may attach to different classes of membership.

Note: The rule under section 201-115 that, subject to those different rights, each member has 1 vote on a show of hands and, on a poll, 1 vote is a replaceable rule.

## Part 4-3—Observers

### Division 158—Observers

#### 158-1 What this Part is about

This Part enables an Aboriginal and Torres Strait Islander corporation to have observers of the corporation if observers are provided for in the corporation's constitution.

If the corporation chooses to have observers, the corporation's constitution must also provide for the appointment of observers, their rights and obligations (if any) and how the observers cease to be observers.

#### 158-5 Observers

*Corporation may have observers*

- (1) An Aboriginal and Torres Strait Islander corporation's constitution may provide for the corporation to have observers.

*Entitlement of observer to attend general meeting (replaceable rule—see section 60-1)*

- (2) An observer is entitled to attend a general meeting of the corporation but is not a member of the corporation.

Note: Only members of an Aboriginal and Torres Strait Islander corporation may vote at a meeting of the corporation (see section 201-115).

*Other matters for which constitution must provide if corporation has observers*

- (3) If the constitution provides for the corporation to have observers, the constitution must also provide for the following matters:
  - (a) the application process for becoming an observer of the corporation;



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- (b) the eligibility criteria for becoming an observer of the corporation;
- (c) the obligations (if any) imposed on an observer of the corporation;
- (d) the rights (if any) that an observer has in relation to the corporation;
- (e) how an observer ceases to be an observer of the corporation.

## **Part 4-4—Protection of members' interests**

### **Division 163—Rights and remedies to protect interests of members**

#### **163-1 Rights and remedies**

The rights and remedies that are conferred by this Part to protect the interests of members of Aboriginal and Torres Strait Islander corporations are:

- (a) the right to seek a Court order concerning oppressive conduct of the affairs of the corporation as provided for in Division 166; and
- (b) the right to bring or intervene in proceedings on behalf of the corporation as provided for in Division 169; and
- (c) the rights relating to the changing of class rights as provided for in Division 172; and
- (d) the right to apply to the Court for an order to inspect the corporation's books as provided for in Division 175.

## **Division 166—Oppressive conduct of affairs**

### **166-1 Grounds for Court order**

- (1) Subject to subsection (2), the Court may make an order under section 166-5 if:
  - (a) the conduct of an Aboriginal and Torres Strait Islander corporation's affairs; or
  - (b) an actual or proposed act or omission by or on behalf of an Aboriginal and Torres Strait Islander corporation; or
  - (c) a resolution, or a proposed resolution, of members or a class of members of an Aboriginal and Torres Strait Islander corporation;is either:
  - (d) contrary to the interests of the members as a whole; or
  - (e) oppressive to, unfairly prejudicial to or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.
- (2) If the corporation is a registered native title body corporate, the Court must not make an order under subsection 166-5(1) on the basis of:
  - (a) an act (or omission from doing an act); or
  - (b) a proposed act (or omission from doing an act);if an officer or employee of the corporation does (or refrains from doing), or proposes to do (or refrain from doing), the act:
  - (c) in good faith; and
  - (d) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

### **166-5 Orders the Court can make**

- (1) The Court can make any order under this section that it considers appropriate in relation to the corporation, including the following:
  - (a) an order that the corporation be wound up;

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- (b) an order that the corporation's existing constitution be modified or repealed and replaced;
- (c) an order regulating the conduct of the corporation's affairs in the future;
- (d) an order for the corporation to institute, prosecute, defend or discontinue specified proceedings;
- (e) an order appointing a receiver, or a receiver and manager, of any or all of the corporation's property;
- (f) an order restraining a person from engaging in specified conduct or from doing a specified act;
- (g) an order requiring a person to do a specified act.

*Order that the corporation be wound up*

- (2) If an order that the corporation be wound up is made under this section, the provisions of this Act relating to the winding up of Aboriginal and Torres Strait Islander corporations apply:
  - (a) as if the order were made under section 526-1; and
  - (b) with such changes as are necessary.

Without limiting this, section 526-35 (which applies certain provisions of the Corporations Act) applies to the winding up.

*Changes to constitution made after order that are inconsistent with the Court ordered change*

- (3) If:
  - (a) the constitution of the corporation is changed by an order made under this section; and
  - (b) after the order, a change to the constitution is proposed; and
  - (c) the proposed change is inconsistent with the change made by the order;the Registrar must not register the proposed change unless:
  - (d) the order states that the constitution can be changed; or
  - (e) the leave of the court is obtained by:
    - (i) in any case—the Registrar; or
    - (ii) if the change is not to be made under section 69-35—the corporation.

Note: See section 69-10 for the meaning of *changed* in relation to an Aboriginal and Torres Strait Islander corporation's constitution.

### **166-10 Who can apply for an order?**

An application for an order under section 166-5 in relation to an Aboriginal and Torres Strait Islander corporation may be made by:

- (a) a member of the corporation, even if the application relates to an act or omission that is against:
  - (i) the member in a capacity other than as a member; or
  - (ii) another member in that member's capacity as a member; or
- (b) a person who has ceased to be a member of the corporation if the application relates to the circumstances in which the person ceased to be a member; or
- (c) a person whom the Registrar thinks appropriate having regard to investigations the Registrar is conducting or has conducted into:
  - (i) the corporation's affairs; or
  - (ii) matters connected with the corporation's affairs; or
- (d) the Registrar.

### **166-15 Requirement for person to lodge order**

- (1) If an order is made under section 166-5, the applicant must lodge a copy of the order with the Registrar within 14 days after it is made.
- (2) Subsection (1) does not apply if the applicant is the Registrar.
- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**Division 169—When may a person bring or intervene in proceedings on behalf of an Aboriginal and Torres Strait Islander corporation?**

**169-1 Bringing, or intervening in, proceedings on behalf of a corporation**

- (1) A person who is:
  - (a) either:
    - (i) a member, former member, or person entitled to be registered as a member of an Aboriginal and Torres Strait Islander corporation or of a related body corporate; or
    - (ii) an officer or former officer of the corporation; or
    - (iii) the Registrar; and
  - (b) acting with leave granted under section 169-5;may:
  - (c) bring proceedings on behalf of an Aboriginal and Torres Strait Islander corporation; or
  - (d) intervene in any proceedings to which an Aboriginal and Torres Strait Islander corporation is a party for the purpose of taking responsibility on behalf of the corporation for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them).
- (2) Proceedings brought on behalf of the corporation must be brought in the corporation's name.
- (3) Any right a person may have otherwise had at general law to bring, or intervene in, proceedings on behalf of an Aboriginal and Torres Strait Islander corporation is abolished.

Note: This section does not prevent a person bringing, or intervening in, proceedings on the person's own behalf in respect of a personal right.

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**169-5 Applying for and granting leave**

*Who may apply for leave?*

- (1) A person referred to in paragraph 169-1(1)(a) may apply to the Court for leave to bring, or to intervene in, proceedings.

*Court to grant the application in certain circumstances*

- (2) The Court must grant the application if it is satisfied that:
- (a) it is probable that the corporation will not itself bring the proceedings, or properly take responsibility for them, or for the steps in them; and
  - (b) the applicant is acting in good faith; and
  - (c) it is in the best interests of the corporation that the applicant be granted leave; and
  - (d) if the applicant is applying for leave to bring proceedings—there is a serious question to be tried; and
  - (e) either:
    - (i) at least 14 days before making the application, the applicant gave written notice to the corporation of the intention to apply for leave and of the reasons for applying; or
    - (ii) it is appropriate to grant leave even though subparagraph (i) is not satisfied.

This subsection has effect subject to subsections (3) and (5).

*When leave is not in the best interests of the corporation*

- (3) A rebuttable presumption that granting leave is not in the best interests of the corporation arises if it is established that:
- (a) the proceedings are:
    - (i) by the corporation against a person who is not a related party of the corporation; or
    - (ii) by such a person against the corporation;  
(including any appeal from a decision made in proceedings by or against the corporation); and
  - (b) the corporation has decided:
    - (i) not to bring the proceedings; or

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- (ii) not to defend the proceedings; or
- (iii) to discontinue, settle or compromise the proceedings;  
and
- (c) all of the directors who participated in that decision:
  - (i) acted in good faith for a proper purpose; and
  - (ii) did not have a material personal interest in the decision;  
and
  - (iii) informed themselves about the subject matter of the decision to the extent they reasonably believed to be appropriate; and
  - (iv) rationally believed that the decision was in the best interests of the corporation.

Note: *Related party* is defined in section 293-1.

- (4) A director's belief that the decision was in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in his or her position would hold.

*Decision taken to give effect to Native Title legislation obligation*

- (5) The Court must not grant the application if:
  - (a) the corporation has decided:
    - (i) not to bring the proceedings; or
    - (ii) not to defend the proceedings; or
    - (iii) to discontinue, settle or compromise the proceedings;  
and
  - (b) an officer or employee of the corporation made that decision:
    - (i) in good faith; and
    - (ii) with the belief that making the decision was necessary to ensure that the corporation complies with a Native Title legislation obligation.

**169-10 Substitution of another person for the person granted leave**

- (1) Any of the following persons may apply to the Court for an order that the person be substituted for a person to whom leave has been granted under section 169-5:



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- (a) a member, former member, or a person entitled to be registered as a member of the corporation or of a related body corporate;
- (b) an officer, or former officer of the corporation;
- (c) the Registrar.

*When may Court make order*

- (2) The Court may make the order if it is satisfied that:
  - (a) the applicant is acting in good faith; and
  - (b) it is appropriate to make the order in all the circumstances.
- (3) An order substituting one person for another has the effect that:
  - (a) the grant of leave is taken to have been made in favour of the substituted person; and
  - (b) if the other person has already brought the proceedings or intervened—the substituted person is taken to have brought those proceedings or to have made that intervention.

**169-15 Effect of ratification by members**

- (1) If the members of an Aboriginal and Torres Strait Islander corporation ratify or approve conduct, the ratification or approval:
  - (a) does not prevent a person from bringing or intervening in proceedings with leave under section 169-5 or from applying for leave under that section; and
  - (b) does not have the effect that proceedings brought or intervened in with leave under section 169-5 must be determined in favour of the defendant, or that an application for leave under that section must be refused.

*Effect of ratification on court*

- (2) If the members of an Aboriginal and Torres Strait Islander corporation ratify or approve conduct, the Court may take the ratification or approval into account in deciding what order or judgment (including as to damages) to make in:
  - (a) proceedings brought or intervened in with leave under section 169-5; or

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- (b) in relation to an application for leave under that section.
- (3) In doing this, it must have regard to:
  - (a) how well-informed about the conduct the members were when deciding whether to ratify or approve the conduct; and
  - (b) whether the members who ratified or approved the conduct were acting for proper purposes.

**169-20 Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave**

Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court.

**169-25 General powers of the Court**

- (1) The Court may make any orders, and give any directions, that it considers appropriate in relation to proceedings brought or intervened in with leave, or an application for leave, including:
  - (a) interim orders; and
  - (b) directions about the conduct of the proceedings, including requiring mediation; and
  - (c) an order directing the corporation, or an officer of the corporation, to do, or not to do, any act; and
  - (d) an order appointing an independent person to investigate, and report to the Court on:
    - (i) the financial affairs of the corporation; or
    - (ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings; or
    - (iii) the costs incurred in the proceedings by the parties to the proceedings and the person granted leave.

*Persons appointed under paragraph (1)(d) may inspect books*

- (2) A person appointed by the Court under paragraph (1)(d) is entitled, on giving reasonable notice to the corporation, to inspect any books of the corporation for any purpose connected with his or her appointment.

*Remuneration and expenses for persons appointed under  
paragraph (1)(d)*

- (3) If the Court appoints a person under paragraph (1)(d):
- (a) the Court must also make an order stating who is liable for the remuneration and expenses of the person appointed; and
  - (b) the Court may vary the order at any time; and
  - (c) the persons who may be made liable under the order, or the order as varied, are:
    - (i) all or any of the parties to the proceedings or application; and
    - (ii) the corporation; and
  - (d) if the order, or the order as varied, makes 2 or more persons liable, the order may also determine the nature and extent of the liability of each of those persons.
- (4) Subsection (3) does not affect the powers of the Court as to costs.

**169-30 Power of the Court to make costs orders**

- (1) The Court may at any time make any orders it considers appropriate about the costs of the following persons in relation to proceedings brought or intervened in with leave under section 169-5 or an application for leave under that section:
- (a) the person who applied for or was granted leave;
  - (b) the corporation;
  - (c) any other party to the proceedings or application.
- (2) An order under this section may require indemnification for costs.

## **Division 172—What protections apply to variations or cancellations of class rights?**

### **172-1 Varying and cancelling class rights**

*If constitution sets out procedure*

- (1) If an Aboriginal and Torres Strait Islander corporation's constitution sets out the procedure for varying or cancelling rights of members in a class of members, those rights may be varied or cancelled only in accordance with the procedure. The procedure may be changed only if the procedure itself is complied with.

*If constitution does not set out procedure*

- (2) If an Aboriginal and Torres Strait Islander corporation's constitution does not set out the procedure for varying or cancelling rights of members in a class of members, those rights may be varied or cancelled only by special resolution of the corporation and:
  - (a) by special resolution passed at a meeting of the class of members whose rights are being varied or cancelled; or
  - (b) with the written consent of members with at least 75% of the votes in the class.

*Notice of variation*

- (3) The corporation must give written notice of the variation or cancellation to the members of the class within 7 days after the variation or cancellation is made.
- (4) The corporation commits an offence if it contravenes subsection (3).

Penalty: 5 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**172-5 Certain actions taken to vary rights etc**

- (1) If the members in a class of members of an Aboriginal and Torres Strait Islander corporation are divided into further classes of members and, after the division, the rights of all of those members are not the same:
  - (a) the division is taken to vary the rights of every member who was in the class existing before the division; and
  - (b) members who have the same rights after the division form a separate class.
- (2) If the rights of some of the members in a class of members are varied:
  - (a) the variation is taken to vary the rights of every other member who was in the class existing before the variation; and
  - (b) members who have the same rights after the variation form a separate class.

**172-10 Variation, cancellation or modification without unanimous support of class**

- (1) If members in a class of members of an Aboriginal and Torres Strait Islander corporation do not all agree (whether by resolution or written consent) to:
  - (a) a variation or cancellation of their rights; or
  - (b) a modification of the corporation's constitution (if any) to allow their rights to be varied or cancelled;members with at least 10% of the votes in the class may apply to the Court to have the variation, cancellation or modification set aside.
- (2) An application may only be made within 28 days after the variation, cancellation or modification is made.
- (3) The variation, cancellation or modification takes effect:
  - (a) if no application is made to the Court to have it set aside—28 days after the variation, cancellation or modification is made; or

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- (b) if an application is made to the Court to have it set aside—  
when the application is withdrawn or finally determined.
- (4) The members of the class who want to have the variation, cancellation or modification set aside may appoint one or more of themselves to make the application on their behalf. The appointment must be in writing.
- (5) The Court may set aside the variation, cancellation or modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the variation, cancellation or modification if the Court is not satisfied of unfair prejudice.
- (6) Within 14 days after the Court makes an order, the corporation must lodge a copy of the order with the Registrar.
- (7) The corporation commits an offence if it contravenes subsection (6).  
  
Penalty: 5 penalty units.
- (8) An offence against subsection (6) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**172-15 Variation, cancellation or modification with unanimous support of class**

If the members in a class of members of an Aboriginal and Torres Strait Islander corporation all agree (whether by resolution or written consent) to the variation, cancellation or modification, it takes effect:

- (a) if no later date is specified in the resolution or consent—on the date of the resolution or consent; or
- (b) on a later date specified in the resolution or consent.

## **Division 175—When may a member inspect a corporation's books?**

### **175-1 Order for inspection of books of corporation**

- (1) On application by a member of an Aboriginal and Torres Strait Islander corporation, the Court may make an order:
  - (a) authorising the applicant to inspect books of the corporation;  
or
  - (b) authorising another person (whether a member or not) to inspect books of the corporation on the applicant's behalf.The Court may only make the order if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose.
- (2) A person authorised to inspect books may make copies of the books unless the Court orders otherwise.
- (3) A person who:
  - (a) is granted leave under section 169-5; or
  - (b) applies for leave under that section; or
  - (c) is eligible to apply for leave under that section;may apply to the Court for an order under this section.
- (4) On application, the Court may make an order authorising:
  - (a) the applicant to inspect books of the corporation; or
  - (b) another person to inspect books of the corporation on the applicant's behalf.
- (5) The Court may make the order only if it is satisfied that:
  - (a) the applicant is acting in good faith; and
  - (b) the inspection is to be made for a purpose connected with:
    - (i) applying for leave under section 169-5; or
    - (ii) bringing or intervening in proceedings with leave under that section.

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- (6) A person authorised to inspect books may make copies of the books unless the Court orders otherwise.
- (7) If the person authorised by the Court under paragraph (1)(b) or paragraph (4)(b) is the Registrar, the Registrar may appoint another person to inspect the books of the corporation on the Registrar's behalf.

**175-5 Ancillary orders**

If the Court makes an order under section 175-1, the Court may make any other orders it considers appropriate, including either or both of the following:

- (a) an order limiting the use that a person who inspects books may make of information obtained during the inspection;
- (b) an order limiting the right of a person who inspects books to make copies in accordance with subsection 175-1(2).

**175-10 Disclosure of information acquired in inspection**

- (1) A person who inspects books on behalf of an applicant under section 175-1 must not disclose information obtained during the inspection.
- (2) Subsection (1) does not apply to the extent that the disclosure is to:
  - (a) the Registrar; or
  - (b) the applicant.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



**175-15 Corporation or directors may allow member to inspect books  
(replaceable rule—see section 60-1)**

The directors of an Aboriginal and Torres Strait Islander corporation, or the corporation by a resolution passed at a general meeting, may authorise a member to inspect books of the corporation.

## **Part 4-5—Registers of members and former members**

### **Division 180—Registers of members and former members**

#### **180-1 Aboriginal and Torres Strait Islander corporations to maintain register of members**

- (1) An Aboriginal and Torres Strait Islander corporation must set up and maintain a register of members.
- (2) An Aboriginal and Torres Strait Islander corporation commits an offence if it contravenes subsection (1).

Penalty: 10 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **180-5 Information on the register of members**

- (1) The register of members must contain the following information about each member who is an individual:
  - (a) the member's given and family name;
  - (b) the member's address;
  - (c) the date on which the entry of the member's name in the register was made.

The register may also contain any other name by which the member is or was known.

- (1A) The register of members must contain the following information about each member who is a body corporate:
  - (a) the member's name and address;
  - (b) the date on which the entry of the member's name in the register was made.
- (2) If:

- (a) the corporation's constitution allows for members who are not Aboriginal and Torres Strait Islander persons; and
- (b) a member is not an Aboriginal and Torres Strait Islander person;

the entry for the member in the register must also indicate that the member is not an Aboriginal and Torres Strait Islander person.

#### **180-10 Aboriginal and Torres Strait Islander corporations to maintain register of former members**

- (1) An Aboriginal and Torres Strait Islander corporation must set up and maintain a register of former members.
- (2) An Aboriginal and Torres Strait Islander corporation commits an offence if it contravenes subsection (1).

Penalty: 10 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **180-15 Information on the register of former members**

- (1) The register of former members must contain the following information about each individual who stopped being a member of the corporation within the last 7 years:
  - (a) the member's given and family name;
  - (b) the member's address;
  - (c) the date on which the individual stopped being a member.

The register may also contain any other name by which the individual is or was known.

- (2) The register of former members must contain the following information about each body corporate that stopped being a member of the corporation within the last 7 years:
  - (a) the member's name and address;
  - (b) the date on which the body stopped being a member.

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**180-20 Location and inspection of registers**

- (1) An Aboriginal and Torres Strait Islander corporation must keep the register of members and the register of former members at:
  - (a) the corporation's registered office if the corporation is registered as a large corporation; or
  - (b) the corporation's document access address if the corporation is registered as a small or medium corporation.

Penalty: 10 penalty units.

- (2) The register must be open for inspection by any person.
- (3) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**180-22 Register of members and register of former members may be maintained in one document**

Nothing in this Act prevents an Aboriginal and Torres Strait Islander corporation from maintaining its register of members, and its register of former members, in the one document.

**180-25 Right to inspect and get copies**

*Right to inspect*

- (1) Any person has a right to inspect an Aboriginal and Torres Strait Islander corporation's register of members and register of former members.

Note 1: A corporation commits an offence under section 376-1 if it does not allow inspection of a register.

Note 2: Other provisions that are relevant to the inspection of a register are:

- (a) section 180-45 (evidentiary value); and
  - (b) section 376-1 (place and times for inspection); and
  - (c) section 376-20 (form).
- (2) If the register is not kept on computer, the corporation must allow the person to inspect the register itself.

- (3) If the register is kept on a computer, the corporation must (unless the person and the corporation agree that the person can access the information by computer) allow the person to inspect a hard copy of the information on the register.

*Inspection fees*

- (4) A member of the corporation may inspect the register without charge. Other people may inspect the register only on payment of any fee (up to the prescribed amount) required by the corporation.

*Right to get copies*

- (5) The corporation must give a person a copy of the register (or a part of the register) within 7 days if the person:
- (a) asks for the copy; and
  - (b) pays any fee (up to the prescribed amount) required by the corporation.

The Registrar may allow a longer period to comply with the request.

Penalty: 10 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**180-30 Aboriginal and Torres Strait Islander corporation to make register of members available at AGM**

- (1) An Aboriginal and Torres Strait Islander corporation must:
- (a) make the register of members available for inspection (without charge) by members at the AGM; and
  - (b) ask each member attending the AGM to:
    - (i) check the entry for that member in the register; and
    - (ii) inform the corporation of any corrections that need to be made to that entry.

Penalty: 10 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Section 180-35

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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**180-35 Aboriginal and Torres Strait Islander corporation to give Registrar copy of register of members or register of former members**

- (1) The Registrar may, at any time, request the corporation to give him or her a copy of the register of members, or the register of former members, as at the date when the copy is given to the Registrar, and the corporation must comply with the request within 14 days or such longer period as the Registrar specifies.

Note: An Aboriginal and Torres Strait Islander corporation must give a general report to the Registrar in respect of each financial year. That report must include details of the names and addresses of the corporation's members: see sections 330-1 and 330-5.

- (2) An Aboriginal and Torres Strait Islander corporation commits an offence if it contravenes subsection (1).

Penalty: 10 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: See also section 265-40 for offences committed by the secretary of an Aboriginal and Torres Strait Islander corporation.

**180-40 Correction of register of members or register of former members**

- (1) The corporation, or a person aggrieved, may apply to the Court to have the register of members or the register of former members corrected.
- (2) If the Court orders the corporation to correct the register, it may also order the corporation to compensate a party to the application for loss or damage suffered.

**180-45 Evidentiary value of registers**

In the absence of evidence to the contrary, the register of members and the register of former members are proof of the matters shown in the registers under this Part.

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**Division 183—Use of information on the register of members or register of former members**

**183-1 Use of information on register of members or register of former members**

- (1) A person must not:
- (a) use information about a person obtained from a register of members, or register of former members, to contact or send material to the person; or
  - (b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person.

Note: An example of using information to send material to a person is putting a person's name and address on a mailing list for advertising material.

- (2) Subsection (1) does not apply if the use or disclosure of the information is:
- (a) relevant to the person's membership, or former membership, of the corporation or the exercise of the person's rights as a member, or former member, of the corporation; or
  - (b) approved by the corporation.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 10 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.



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- (6) A person who makes a profit from a contravention of subsection (1) owes a debt to the corporation. The amount of the debt is the amount of the profit.
- (7) If a person owes a debt under subsection (6) to the corporation:
  - (a) the debt may be recovered by the corporation as a debt due to it; and
  - (b) any amount paid or recovered in respect of the debt forms part of the corporation's property.

## **Part 4-6—Exemption from operation of certain provisions of this Chapter**

### **Division 187—Exemption from operation of certain provisions of this Chapter**

#### **187-1 What this Part is about**

The Registrar may exempt an Aboriginal and Torres Strait Islander corporation from certain provisions of this Chapter. The Registrar may do so on application or on his or her own volition.

#### **187-5 Exemption from certain provisions of this Chapter**

- (1) On an application made in accordance with subsection (3) in relation to an Aboriginal and Torres Strait Islander corporation, the Registrar may make a determination in writing exempting any of the following from the exemptible provisions of this Chapter specified in the Registrar's determination:
  - (a) the corporation itself;
  - (b) the directors of the corporation.

Note: For the criteria for making determinations under this section, see section 187-20.
- (2) For the purposes of this section, the *exemptible provisions* of this Chapter are:
  - (a) subsection 144-10(8); and
  - (b) section 150-25; and
  - (c) section 150-30; and
  - (d) section 150-35.
- (3) The application must:
  - (a) specify the exemptible provisions in relation to which the exemption is being sought; and
  - (b) be authorised by a resolution of the directors; and

- (c) be in writing and signed by a director; and
  - (d) be lodged with the Registrar.
- (4) The determination may:
- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (5) The Registrar may, in writing, revoke, vary or suspend the determination.
- (6) The Registrar must give the applicant written notice within 28 days of the making, revocation, variation or suspension of the determination.
- (7) A determination under subsection (1), or a revocation, variation or suspension under subsection (5), is not a legislative instrument.

**187-10 Registrar may make determination even if application is incomplete**

Despite subsection 187-5(3), the Registrar may make a determination even if the application does not specify the provisions in relation to which the exemption is being sought.

**187-15 Registrar's power to make determinations**

- (1) The Registrar may determine in writing that:
- (a) a specified Aboriginal and Torres Strait Islander corporation or a specified class of Aboriginal and Torres Strait Islander corporation; and
  - (b) the directors of a specified Aboriginal and Torres Strait Islander corporation or of a specified class of Aboriginal and Torres Strait Islander corporation (as the case may be);
- are exempted from the exemptible provision of this Chapter specified in the Registrar's determination.

Note: For the criteria for making determinations under this section, see section 187-20.

- (2) For the purposes of this section, the *exemptible provisions* of this Chapter are:

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- (a) subsection 144-10(8); and
  - (b) section 150-25; and
  - (c) section 150-30; and
  - (d) section 150-35.
- (3) The determination may:
- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (4) The Registrar may, in writing, revoke, vary or suspend the determination.
- (5) Notice of the making, revocation, variation or suspension of a determination in relation to a specified class of Aboriginal and Torres Strait Islander corporation, or the directors of a specified class of Aboriginal and Torres Strait Islander corporation, must be published in the *Gazette*.
- (6) A determination under subsection (1) in relation to:
- (a) a specified class of Aboriginal and Torres Strait Islander corporation; or
  - (b) the directors of a specified class of Aboriginal and Torres Strait Islander corporation;
- is a legislative instrument.
- (7) A determination under subsection (1) in relation to:
- (a) a specified Aboriginal and Torres Strait Islander corporation; or
  - (b) the directors of a specified Aboriginal and Torres Strait Islander corporation;
- is not a legislative instrument.

**187-20 Criteria for determinations**

- (1) In making a determination under section 187-5 or 187-15, the Registrar must be satisfied that the requirements of the relevant exemptible provisions of this Chapter would:
- (a) be inappropriate in the circumstances; or
  - (b) impose unreasonable burdens.

*Unreasonable burden*

- (2) In deciding for the purposes of subsection (1) if the relevant exemptible provisions impose an unreasonable burden on the corporation or corporations, the Registrar is to have regard to:
- (a) the expected costs of complying with the obligations; and
  - (b) the expected benefits of having the corporation or corporations comply with the obligations; and
  - (c) any practical difficulties that the corporation or corporations face in complying effectively with the obligations; and
  - (d) any other matters that the Registrar considers relevant.

## **Chapter 5—Meetings**

### **Part 5-1—Introduction**

#### **Division 193—Introduction**

##### **193-1 What this Chapter is about**

This Chapter deals with 2 kinds of meetings that Aboriginal and Torres Strait Islander corporations may have—directors’ meetings and general meetings.

This Chapter sets out the rules for those meetings. Some of those rules may be modified or replaced by the corporation’s constitution. Others cannot be.

An Aboriginal and Torres Strait Islander corporation may be exempted in part from some of the requirements of this Chapter (see Part 5-5).

## **Part 5-2—General meetings**

### **Division 198—Introduction**

#### **198-1 What this Part is about**

This Part sets out the rules for holding general meetings. An Aboriginal and Torres Strait Islander corporation is required to hold annual general meetings.

Some of the rules in this Chapter may be modified or replaced by the corporation's constitution. Others cannot be.

## **Division 201—What are the rules concerning general meetings?**

### **Subdivision 201-A—Who may call general meetings?**

#### **201-1 Director may call meetings (replaceable rule—see section 60-1)**

A director of an Aboriginal and Torres Strait Islander corporation may call a general meeting of the corporation.

#### **201-5 Request by members for directors to call general meetings**

*Which members may make a request?*

- (1) The directors of an Aboriginal and Torres Strait Islander corporation must call and arrange to hold a general meeting on the request of at least the required number of members under subsection (4).
- (2) The request must:
  - (a) be in writing; and
  - (b) state any resolution to be proposed at the meeting; and
  - (c) be signed by the members making the request; and
  - (d) nominate a member (the *nominated member*) to be the contact member on behalf of the members making the request; and
  - (e) be given to the corporation.
- (3) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- (4) The required number of members for an Aboriginal and Torres Strait Islander corporation is the greater of:
  - (a) 5 members of the corporation; or
  - (b) 10% of the members of the corporation.



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- (5) The regulations may prescribe a different number of members for the purposes of applying paragraph (4)(a) to:
- (a) a particular Aboriginal and Torres Strait Islander corporation;  
or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.
- Without limiting this, the regulations may specify the number as a percentage of the number of members of the corporation.
- (6) The regulations may prescribe a different percentage for the purposes of applying paragraph (4)(b) to:
- (a) a particular Aboriginal and Torres Strait Islander corporation;  
or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.

**201-10 When must directors comply with members' request?**

- (1) If the directors resolve:
- (a) that the request under section 201-5 is frivolous or unreasonable; or
  - (b) that complying with the request would be contrary to the interests of the members as a whole;
- a director, on behalf of all of the directors, may apply to the Registrar for permission to deny the request.
- (2) The application must:
- (a) be in writing; and
  - (b) set out the ground on which the application is made; and
  - (c) be made within 21 days after the request is made.
- (3) The directors must, as soon as is practicable after making the application, give the nominated member notice that an application has been made under subsection (1).
- (4) The Registrar must:
- (a) determine the application within 21 days after receiving it;  
and

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- (b) notify the director, the corporation and the nominated member in writing of the outcome of the determination.

**201-15 When must a requested meeting be held?**

*No application to Registrar under section 201-10*

- (1) If a director has not applied to the Registrar under section 201-10 in respect of the request, the directors must call the requested meeting within 21 days after the request is given to the corporation.

*Application to Registrar under section 201-10*

- (2) If:
  - (a) a director has applied under section 201-10 in respect of the request; and
  - (b) the Registrar's decision is that the ground is not made out;the directors must call the meeting within 21 days after being notified of the Registrar's determination.

**Subdivision 201-B—How to call general meetings**

**201-20 Amount of notice of general meetings**

*General rule*

- (1) Subject to subsection (2), at least 21 days notice must be given of a general meeting. However, an Aboriginal and Torres Strait Islander corporation's constitution may specify a longer minimum period of notice.

*Calling meetings on shorter notice*

- (2) An Aboriginal and Torres Strait Islander corporation:
  - (a) may call an AGM on shorter notice, if all the members of the corporation agree beforehand; and
  - (b) may call any other general meeting on shorter notice, if at least 95% of the members of the corporation agree beforehand.

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An Aboriginal and Torres Strait Islander corporation cannot call an AGM or other general meeting on shorter notice if it is a meeting of the kind referred to in subsection (3) or (4).

*Shorter notice not allowed—removing or appointing director*

- (3) At least 21 days notice must be given of a general meeting at which a resolution will be moved to:
- (a) remove a director under section 249-10; or
  - (b) appoint a director in place of a director removed under that section.

*Shorter notice not allowed—removing auditor*

- (4) At least 21 days notice must be given of a general meeting at which a resolution will be moved to remove an auditor.

**201-25 Notice of general meeting to members, officers and observers**

*Notice to members, officers and observers*

- (1) Written notice of a general meeting must be given by the corporation to the following persons:
- (a) each member entitled to vote at the meeting;
  - (b) each director;
  - (c) the corporation secretary (if any);
  - (d) the contact officer (if any);
  - (e) any observer entitled to attend the meeting.

Note: A failure to give notice to a member might not invalidate the meeting (see section 576-15).

*Notice to joint members (replaceable rule—see section 60-1)*

- (2) Notice to joint members must be given to the joint member named first in the register of members.

*How notice is given*

- (3) The corporation may give the notice of meeting to a member:
- (a) personally; or

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- (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member; or
- (d) by sending it to the member by other electronic means (if any) nominated by the member; or
- (e) by notifying the member in accordance with subsection (4); or
- (f) by any other means that the corporation's constitution (if any) permits.

Note: A defect in the notice given may not invalidate a meeting (see section 576-15).

- (4) If the member nominates:
  - (a) an electronic means (the *nominated notification means*) by which the member may be notified that notices of meeting are available; and
  - (b) an electronic means (the *nominated access means*) the member may use to access notices of meeting;the corporation may give the member notice of the meeting by notifying the member (using the nominated notification means):
  - (c) that the notice of meeting is available; and
  - (d) how the member may use the nominated access means to access the notice of meeting.

This subsection does not limit subsection (3).

*When notice by post or fax is given (replaceable rule—see section 60-1)*

- (5) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

*When notice under paragraph (3)(e) is given (replaceable rule—see section 60-1)*

- (6) A notice of meeting given to a member under paragraph (3)(e) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

### **201-30 Auditor entitled to notice and other communications**

- (1) An Aboriginal and Torres Strait Islander corporation must give its auditor (if any):
- (a) notice of a general meeting in the same way that a member of the corporation is entitled to receive notice; and
  - (b) any other communications relating to the general meeting that a member of the corporation is entitled to receive.

Penalty: 5 penalty units.

Note: An auditor may authorise a representative to attend a meeting (see subsection 201-80(4)).

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **201-35 Contents of notice of general meeting**

- (1) A notice of a general meeting must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
  - (b) state the general nature of the meeting's business; and
  - (c) if a special resolution is to be proposed at the meeting—set out an intention to propose the special resolution and state the resolution; and
  - (d) if a member is entitled to appoint a proxy—contain a statement setting out the following information:
    - (i) that the member has a right to appoint a proxy;
    - (ii) whether or not the proxy needs to be a member of the corporation;

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- (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

Note: There may be other requirements for disclosure to members.

- (2) The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.

**Subdivision 201-C—Members’ rights to put resolutions etc. to general meeting**

**201-40 Members’ resolutions**

- (1) Notice of a resolution that they propose to move at a general meeting may be given to an Aboriginal and Torres Strait Islander corporation by at least the required number of members under subsection (4).
- (2) The notice must:
  - (a) be in writing; and
  - (b) set out the wording of the proposed resolution; and
  - (c) be signed by the members proposing to move the resolution.
- (3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
- (4) The required number of members for an Aboriginal and Torres Strait Islander corporation is the greater of:
  - (a) 5 members of the corporation; or
  - (b) 10% of the members of the corporation.
- (5) The regulations may prescribe a different number of members for the purposes of applying paragraph (4)(a) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation; or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.

Without limiting this, the regulations may specify the number as a percentage of the number of members of the corporation.

- (6) The regulations may prescribe a different percentage for the purposes of applying paragraph (4)(b) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation;  
or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.

#### **201-45 Notice of members' resolutions**

- (1) If an Aboriginal and Torres Strait Islander corporation has been given notice of a resolution under section 201-40, the resolution is to be considered at the next general meeting that occurs more than 28 days after the notice is given.
- (2) The corporation must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.
- (3) The corporation is responsible for the cost of giving members notice of the resolution.
- (4) The corporation need not give notice of the resolution if it is defamatory.

#### **201-50 Members' statements to be distributed**

- (1) Members may request an Aboriginal and Torres Strait Islander corporation to give to all its members a statement provided by the members making the request about:
  - (a) a resolution that is proposed to be moved at a general meeting; or
  - (b) any other matter that may be properly considered at a general meeting.
- (2) The request must be made by at least the required number of members under subsection (8).
- (3) The request must be:
  - (a) in writing; and
  - (b) signed by the members making the request; and

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- (c) given to the corporation.
- (4) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- (5) After receiving the request, the corporation must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of the general meeting.
- (6) The corporation is responsible for the cost of making the distribution.
- (7) The corporation need not comply with the request if the statement is defamatory.
- (8) The required number of members for an Aboriginal and Torres Strait Islander corporation is the greater of:
  - (a) 5 members of the corporation; or
  - (b) 10% of the members of the corporation.
- (9) The regulations may prescribe a different number of members for the purposes of applying paragraph (8)(a) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation; or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.Without limiting this, the regulations may specify the number as a percentage of the number of members of the corporation.
- (10) The regulations may prescribe a different percentage for the purposes of applying paragraph (8)(b) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation; or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.



## **Subdivision 201-D—Holding general meetings**

### **201-55 Purpose**

A general meeting must be held for a proper purpose.

### **201-60 Time and place for general meeting**

A general meeting must be held at a reasonable time and place.

### **201-65 Technology**

An Aboriginal and Torres Strait Islander corporation may hold a general meeting at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Note: See section 576-15 for the consequences of a member not being given a reasonable opportunity to participate.

### **201-70 Quorum**

*Quorum (replaceable rule—see section 60-1)*

- (1) If an Aboriginal and Torres Strait Islander corporation has 11 or more members, the quorum for a meeting of the corporation's members is the lesser of:
  - (a) 10 members; or
  - (b) the greater of:
    - (i) the number of members holding 10% of the voting rights; or
    - (ii) 2 members.

*Corporations with 10 members or less (replaceable rule—see section 60-1)*

- (2) If an Aboriginal and Torres Strait Islander corporation has 10 members or less, the quorum for a meeting of the corporation's members is 2 members.

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*Quorum to be present*

- (3) The quorum must be present at all times during the meeting.

*How to determine if quorum is present*

- (4) In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note 1: For rights to appoint proxies, see section 201-90.

Note 2: For body corporate representatives, see section 201-110.

*Adjourned meeting (replaceable rule—see section 60-1)*

- (5) A meeting of the corporation's members that does not have a quorum present within 1 hour after the time for the meeting set out in the notice of meeting is adjourned to the same time of the same day in the next week, and to the same place, unless the directors specify otherwise.

*No quorum at resumed meeting (replaceable rule—see section 60-1)*

- (6) If no quorum is present at the resumed meeting within 1 hour after the time for the meeting, the meeting is dissolved.

**201-75 Chairing general meeting (replaceable rule—see section 60-1)**

- (1) The directors may elect an individual to chair general meetings.
- (2) The directors at a general meeting must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).
- (3) The members at a general meeting must elect a member present to chair the meeting (or part of it) if:

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- (a) a chair has not previously been elected by the directors to chair the meeting; or
  - (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).
- (4) The chair must adjourn a general meeting if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

**201-80 Auditor's right to be heard at general meetings**

- (1) If an Aboriginal and Torres Strait Islander corporation has an auditor, the auditor is entitled to attend any general meeting of the corporation.

Note: See section 333-20 for when a financial report is required to be audited.

- (2) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in the auditor's capacity as auditor.
- (3) The auditor is entitled to be heard even if:
- (a) the auditor retires at the meeting; or
  - (b) the meeting passes a resolution to remove the auditor from office.
- (4) The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any general meeting.

Note: At an AGM, members may ask the auditor questions (see section 201-170).

**201-85 Adjourned meetings**

*When resolution passed*

- (1) A resolution passed at a general meeting resumed after an adjournment is passed on the day it was passed.

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*Business at adjourned meetings (replaceable rule—see section 60-1)*

- (2) Only unfinished business is to be transacted at a general meeting resumed after an adjournment.

**Subdivision 201-E—Proxies**

**201-90 Who may appoint a proxy (replaceable rule—see section 60-1)**

*Who may appoint proxy*

- (1) A member of an Aboriginal and Torres Strait Islander corporation who is entitled to attend and cast a vote at a general meeting may appoint a person as the member's proxy to attend and vote for the member at the meeting.

*Proxy may be individual or a body corporate*

- (2) The person appointed as the member's proxy may be an individual or a body corporate.

Note: A body corporate may appoint a representative to exercise the powers that the body corporate may exercise as the member's proxy (see section 201-110).

- (3) The appointment may specify the proportion or number of votes that the proxy may exercise.

**201-95 Rights of proxies**

*Rights of proxies*

- (1) A proxy appointed to attend and vote for a member has the same rights as the member:
  - (a) to speak at the meeting; and
  - (b) to vote (but only to the extent allowed by the appointment); and
  - (c) join in a demand for a poll.

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*Proxy's right to vote*

- (2) An Aboriginal and Torres Strait Islander corporation's constitution may provide that a proxy is not entitled to vote on a show of hands.

Note: Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll.

*Effect of member's presence on proxy's authority*

- (3) An Aboriginal and Torres Strait Islander corporation's constitution may provide for the effect that a member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the member. However, if the constitution does not deal with this, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

*Exercise of proxies*

- (4) A person must not exercise proxies for more than the number of members:
- (a) prescribed in the regulations for the purposes of this subsection; or
  - (b) worked out using the method prescribed in the regulations for the purposes of this subsection.

Penalty: 5 penalty units.

- (5) To avoid doubt, a contravention of subsection (4) does not affect the validity of the votes cast.

**201-100 Appointing a proxy**

- (1) An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the regulations, by the member of the Aboriginal and Torres Strait Islander corporation making the appointment and contains the following information:
- (a) the member's name and address;
  - (b) the corporation's name;
  - (c) the proxy's name or the name of the office held by the proxy;
  - (d) the meetings at which the appointment may be used.

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An appointment may be a standing one.

- (2) The regulations made for the purposes of subsection (1) may prescribe different requirements for the authentication of an appointment given to the corporation by different means (electronic or otherwise).
- (3) The corporation's constitution may provide that an appointment is valid even if it contains only some of the information required by subsection (1).
- (4) An undated appointment is taken to have been dated on the day it is given to the corporation.
- (5) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
  - (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
  - (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and
  - (c) if the proxy is the chair—the proxy must vote on a poll, and must vote that way; and
  - (d) if the proxy is not the chair—the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member.

Note: An Aboriginal and Torres Strait Islander corporation's constitution may provide that a proxy is not entitled to vote on a show of hands (see subsection 201-95(2)).

- (6) A person who contravenes subsection (5) commits an offence, but only if the person's appointment as a proxy resulted from the corporation sending to members:
  - (a) a list of persons willing to act as proxies; or
  - (b) a proxy appointment form holding the person out as being willing to act as a proxy.

Penalty: 5 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.

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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) An appointment does not have to be witnessed.
- (9) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

### **201-105 Proxy documents**

*Documents to be received by corporation before meeting*

- (1) For an appointment of a proxy for a meeting of members of an Aboriginal and Torres Strait Islander corporation to be effective, the following documents must be received by the corporation at least 48 hours before the meeting:
  - (a) the proxy's appointment;
  - (b) if the appointment is signed, or otherwise authenticated in a manner prescribed by regulations made for the purposes of subsection 201-100(1), by the appointor's attorney—the authority under which the appointment was signed or authenticated or a certified copy of the authority.

*Documents received following adjournment of meeting*

- (2) If a meeting of the corporation's members has been adjourned, an appointment and any authority received by the corporation at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

*Constitution or notice of meeting may provide for different notification period*

- (3) The corporation's constitution or the notice of meeting may reduce the period of 48 hours referred to in subsection (1) or (2).

### **201-110 Body corporate representative**

- (1) A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
  - (a) at meetings of an Aboriginal and Torres Strait Islander corporation's members; or

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- (b) at meetings of creditors; or
- (c) relating to resolutions to be passed without meetings; or
- (d) in the capacity of a member's proxy appointed under section 201-90.

The appointment may be a standing one.

- (2) The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (3) A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- (4) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

Note: For resolutions of members without meetings, see Division 204.

**Subdivision 201-F—Voting at general meetings**

**201-115 How many votes a member has (replaceable rule—see section 60-1)**

- (1) At a general meeting, each member of an Aboriginal and Torres Strait Islander corporation has 1 vote, both on a show of hands and a poll.

*Chair's casting vote*

- (2) The chair has a casting vote, and also, if he or she is a member, any vote he or she has as a member.

Note 1: The chair may be precluded from voting, for example, by a conflict of interest.

Note 2: For rights to appoint proxies, see section 201-90.

**201-120 Objections to right to vote (replaceable rule—see section 60-1)**

A challenge to a right to vote at a general meeting:

- (a) may only be made at the meeting; and



(b) must be determined by the chair, whose decision is final.

**201-125 How voting is carried out (replaceable rule—see section 60-1)**

- (1) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.
- (2) Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (3) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see section 201-130).

**201-130 Matters on which a poll may be demanded**

- (1) Subject to subsection (2), at a general meeting, a poll may be demanded on any resolution.
- (2) An Aboriginal and Torres Strait Islander corporation's constitution may provide that a poll cannot be demanded on any resolution concerning:
  - (a) the election of the chair of a meeting; or
  - (b) the adjournment of a meeting.
- (3) A demand for a poll may be withdrawn.

**201-135 When a poll is effectively demanded**

- (1) At a general meeting, a poll may be demanded by:
  - (a) at least 5 members entitled to vote on the resolution; or
  - (b) members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (c) the chair.

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Note: A proxy may join in the demand for a poll (see paragraph 201-95(1)(c)).

- (2) An Aboriginal and Torres Strait Islander corporation's constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll.
- (3) The poll may be demanded:
  - (a) before a vote is taken; or
  - (b) before the voting results on a show of hands are declared; or
  - (c) immediately after the voting results on a show of hands are declared.

**201-140 When and how polls must be taken (replaceable rule—see section 60-1)**

- (1) At a general meeting, a poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (2) At a general meeting, a poll on the election of a chair or on the question of an adjournment must be taken immediately.

**Subdivision 201-G—First general meeting and annual general meetings**

**201-145 Corporation must hold first general meeting within 3 months of registration**

- (1) An Aboriginal and Torres Strait Islander corporation must hold a general meeting of members within 3 months after the corporation is registered.

Penalty: 10 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **201-150 Corporation must hold AGM**

- (1) An Aboriginal and Torres Strait Islander corporation must hold an AGM within 5 months after the end of its financial year.

Penalty: 10 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) An AGM is to be held in addition to any other meetings held by an Aboriginal and Torres Strait Islander corporation in the year.
- (4) An Aboriginal and Torres Strait Islander corporation that has only 1 member is not required to hold an AGM under this section.

### **201-155 Extension of time for holding AGM**

- (1) An Aboriginal and Torres Strait Islander corporation may lodge an application with the Registrar to extend the period within which section 201-150 requires the corporation to hold an AGM.
- (2) If the corporation applies before the end of the period within which the corporation would otherwise be required to hold an AGM, the Registrar may, by written notice to the corporation, extend the period. The Registrar must specify the period of the extension.
- (3) An Aboriginal and Torres Strait Islander corporation granted an extension under subsection (2) must hold its AGM within the extended period.

Penalty: 10 penalty units.

- (4) The Registrar may impose conditions on the extension and the corporation must comply with those conditions.

Penalty: 10 penalty units.

- (5) An offence against subsection (3) or (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**201-160 Business of AGM**

The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the reports that under Chapter 7 are required to be laid before the AGM;
- (b) the election of directors;
- (c) the appointment and remuneration of the auditor (if any).

**201-165 Questions and comments by members on corporation management at AGM**

- (1) The chair of an AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the corporation.

Penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**201-170 Questions by members of auditors at AGM**

- (1) If an Aboriginal and Torres Strait Islander corporation's auditor (if any) or the auditor's representative is at an AGM, the chair of the meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to:

- (a) the conduct of the audit; and
- (b) the preparation and content of the auditor's report; and
- (c) the accounting policies adopted by the corporation in relation to the preparation of the financial statements; and
- (d) the independence of the auditor in relation to the conduct of the audit.

Penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Division 204—Resolutions without a general meeting**

### **204-1 Circulating resolutions**

- (1) An Aboriginal and Torres Strait Islander corporation may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Each member of a joint membership must sign.
- (2) Subsection (1) does not apply to a resolution to remove an auditor.
- (3) Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- (4) The resolution is passed when the last member signs.
- (5) An Aboriginal and Torres Strait Islander corporation that passes a resolution under this section without holding a meeting satisfies any requirement in this Act:
  - (a) to give members information or a document relating to the resolution—by giving members that information or document with the document to be signed; and
  - (b) to lodge with the Registrar a copy of a notice of meeting to consider the resolution—by lodging a copy of the document to be signed by members; and
  - (c) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution—by lodging a copy of the information or documents referred to in paragraph (a).
- (6) The passage of the resolution satisfies any requirement in this Act, or the corporation's constitution, that the resolution be passed at a general meeting.
- (7) This section does not affect any rule of law relating to the assent of members not given at a general meeting.

Note 1: Passage of a resolution under this section must be recorded in the corporation's minute books (see section 220-5).

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Note 2: A body corporate representative may sign a circulating resolution (see section 201-110).

**204-5 Resolutions of 1 member corporations**

- (1) An Aboriginal and Torres Strait Islander corporation that has only 1 member may pass a resolution by the member recording it and signing the record.
- (2) If this Act requires information or a document relating to the resolution to be lodged with the Registrar, that requirement is satisfied by lodging the information or document with the resolution that is passed.

Note 1: Passage of a resolution under this section must be recorded in the corporation's minute books (see section 220-5).

Note 2: A body corporate representative may sign such a resolution (see section 201-110).

## **Part 5-3—Directors' meetings**

### **Division 209—Introduction**

#### **209-1 What this Part is about**

This Part sets out the rules for directors' meetings. Some of those rules may be modified or replaced by an Aboriginal and Torres Strait Islander corporation's constitution. Others cannot be.

## **Division 212—What are the rules concerning directors' meetings?**

### **212-1 Constitution to provide for meetings**

The constitution of an Aboriginal and Torres Strait Islander corporation must specify how often directors' meetings are to be held.

### **212-5 Calling directors' meetings (replaceable rule—see section 60-1)**

A directors' meeting may be called by a director giving reasonable notice individually to every other director.

Note: A director who has appointed an alternate director may ask for the notice to be given to the alternate director (see subsection 246-30(2)).

### **212-10 Use of technology**

A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw his or her consent within a reasonable period before the meeting.

### **212-15 Chairing directors' meetings (replaceable rule—see section 60-1)**

- (1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.
- (2) The directors must elect a director present to chair a meeting, or part of it, if:
  - (a) a director has not already been elected to chair the meeting;  
or
  - (b) a previously elected chair is not available, or declines to act, for the meeting or the part of the meeting.



### **212-20 Quorum at directors' meetings**

The quorum for a directors' meeting is a majority of the directors and the quorum must be present at all times during the meeting.

Note: For resolutions of 1 director Aboriginal and Torres Strait Islander corporations without meetings, see section 215-5.

### **212-25 Passing of directors' resolutions (replaceable rule—see section 60-1)**

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- (2) The chair has a casting vote if necessary in addition to any vote he or she has as a director.

## **Division 215—Resolutions and declarations without meetings**

### **215-1 Circulating resolutions of corporation with more than 1 director (replaceable rule—see section 60-1)**

#### *Resolutions*

- (1) If an Aboriginal and Torres Strait Islander corporation has more than 1 director, the directors of the corporation may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

#### *Copies*

- (2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

#### *When the resolution is passed*

- (3) The resolution is passed when the last director signs.

Note: Passage of a resolution under this section must be recorded in the corporation's minute books (see section 220-5).

### **215-5 Resolutions and declarations of 1 director corporation**

#### *Resolutions*

- (1) The director of an Aboriginal and Torres Strait Islander corporation that has only 1 director may pass a resolution by recording it and signing the record.

#### *Declarations*

- (2) The director of an Aboriginal and Torres Strait Islander corporation that has only 1 director may make a declaration by

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recording it and signing the record. Recording and signing the declaration satisfies any requirement in this Act that the declaration be made at a directors' meeting.

Note: Passage of a resolution or the making of a declaration under this section must be recorded in the corporation's minute books (see section 220-5).

## **Part 5-4—Minutes of meetings**

### **Division 220—Minutes of meetings**

#### **220-1 What this Part is about**

An Aboriginal and Torres Strait Islander corporation is required to keep minutes of its general meetings and its directors' meetings and the passing of any resolutions without a meeting.

Minutes may be kept in writing or by means of an audio or video recording.

None of the rules in this Part may be modified or replaced by the corporation's constitution.

#### **220-5 Minutes**

- (1) An Aboriginal and Torres Strait Islander corporation must keep minute books in which it records within 1 month:
  - (a) proceedings and resolutions of general meetings; and
  - (b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors); and
  - (c) resolutions passed by members without a meeting; and
  - (d) resolutions passed by directors without a meeting; and
  - (e) if the corporation has only 1 director—the making of declarations by the director.

Penalty: 10 penalty units.

Note: For resolutions and declarations without meetings, see Divisions 204 and 215.

- (2) The minutes of the whole, or a part, of the meeting may be kept:
  - (a) in writing; or
  - (b) by means of an audio, or audio-visual, recording.

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- (3) If the minutes of the whole, or a part, of the meeting are kept by means of an audio, or audio-visual, recording of the meeting, the corporation must ensure that, on the recording:
- (a) each person attending the meeting states his or her name; and
  - (b) if a person attending the meeting holds a proxy—the person states the name of the person for whom the person is acting as proxy.

Penalty: 10 penalty units.

- (4) If the minutes of the whole, or a part, of the meeting (the *first meeting*) are kept in writing, the corporation must ensure that either:
- (a) the chair of the meeting; or
  - (b) the chair of the next meeting;
- signs those minutes within a reasonable time after the first meeting.

Penalty: 10 penalty units.

- (5) If the minutes of the whole, or a part, of the meeting (the *first meeting*) are kept by means of an audio, or audio-visual, recording, the corporation must ensure that either:
- (a) the chair of the meeting; or
  - (b) the chair of the next meeting;
- signs a declaration under subsection (6) within a reasonable time after the first meeting.

Penalty: 10 penalty units.

- (6) The declaration under this subsection must:
- (a) identify the audio, or audio-visual, recording; and
  - (b) if the recording is not a recording of the whole of the meeting—identify the part of the meeting that is recorded; and
  - (c) declare that the recording constitutes the minutes of the meeting or that part of the meeting.
- (7) The corporation must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.

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Penalty: 10 penalty units.

- (8) The director of an Aboriginal and Torres Strait Islander corporation with only 1 director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.

Penalty: 10 penalty units.

- (9) An Aboriginal and Torres Strait Islander corporation must keep its minute books at:
- (a) its registered office if it is registered as a large corporation; or
  - (b) its document access address if it is registered as a small or medium corporation.

Penalty: 10 penalty units.

- (10) An offence against subsection (1), (3), (4), (5), (7), (8) or (9) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (11) A minute that is recorded and signed in accordance with this section is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

**220-10 Members' access to minutes**

- (1) An Aboriginal and Torres Strait Islander corporation that is registered as a large corporation must make available for inspection by members, at its registered office, the minute books for the meetings of its members and for resolutions of members passed without meetings. The books must be made available for inspection each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm.

Note: Failing to comply with this subsection is an offence under section 376-1.

- (2) An Aboriginal and Torres Strait Islander corporation that is registered as a small or medium corporation must make available for inspection by members, at its document access address, the minute books for the meetings of its members and for resolutions

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of members passed without meetings. The books must be made available within 7 days of a member's written request for inspection.

Note: Failing to comply with this subsection is an offence under section 376-1.

- (3) A corporation must make minutes available under subsections (1) and (2) free of charge.

Penalty: 5 penalty units.

- (4) A member of an Aboriginal and Torres Strait Islander corporation may ask the corporation in writing for a copy of:
- (a) any minutes of a meeting of the corporation's members or an extract of the minutes; or
  - (b) any minutes of a resolution passed by members without a meeting.

Note: The member may ask the corporation for an English translation under subsection 376-5(3) if the minutes are not in the English language.

- (5) If the corporation does not require the member to pay for the copy, the corporation must send it:
- (a) within 14 days after the member asks for it; or
  - (b) within any longer period that the Registrar approves.

Penalty: 5 penalty units.

- (6) If the corporation requires payment for the copy, the corporation must send it:
- (a) within 14 days after the corporation receives the payment; or
  - (b) within any longer period that the Registrar approves.

The amount of any payment the corporation requires cannot exceed the prescribed amount.

Penalty: 5 penalty units.

- (7) An offence against subsection (3), (4) or (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part 5-5—Exemption from operation of this Chapter**

### **Division 225—Exemption from operation of this Chapter**

#### **225-1 What this Part is about**

The Registrar may exempt an Aboriginal and Torres Strait Islander corporation from some or all of the provisions of this Chapter. The Registrar may do so on application or on his or her own volition.

#### **225-5 Exemption from the provisions of this Chapter**

- (1) On an application made in accordance with subsection (2) in relation to an Aboriginal and Torres Strait Islander corporation, the Registrar may make a determination in writing exempting any of the following from the provisions of this Chapter specified in the Registrar's determination:
    - (a) the corporation itself;
    - (b) the directors of the corporation.
- Note: For the criteria for making orders under this section, see section 225-20.
- (2) The application must:
    - (a) specify the provisions in relation to which the exemption is being sought; and
    - (b) be authorised by a resolution of the directors; and
    - (c) be in writing and signed by a director; and
    - (d) be lodged with the Registrar.
  - (3) The determination may:
    - (a) be expressed to be subject to conditions; and
    - (b) be indefinite or limited to a specified period.
  - (4) The Registrar may, in writing, revoke, vary or suspend the determination.



- (5) The Registrar must give the applicant written notice within 28 days of the making, revocation, variation or suspension of the determination.
- (6) A determination under subsection (1), or a revocation, variation or suspension under subsection (4), is not a legislative instrument.

**225-10 Registrar may make determination even if application is incomplete**

Despite subsection 225-5(2), the Registrar may make a determination even if the application does not specify the provisions in relation to which the exemption is being sought.

**225-15 Registrar's power to make determinations**

- (1) The Registrar may determine in writing that:
  - (a) a specified Aboriginal and Torres Strait Islander corporation or a specified class of Aboriginal and Torres Strait Islander corporation; and
  - (b) the directors of a specified Aboriginal and Torres Strait Islander corporation or of a specified class of Aboriginal and Torres Strait Islander corporation (as the case may be);are exempted from the provisions of this Chapter specified in the Registrar's determination.

Note: For the criteria for making orders under this section, see section 225-20.
- (2) The determination may:
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (3) The Registrar may, in writing, revoke, vary or suspend the determination.
- (4) Notice of the making, revocation, variation or suspension of a determination in relation to a specified class of Aboriginal and Torres Strait Islander corporation, or the directors of a specified class of Aboriginal and Torres Strait Islander corporation, must be published in the *Gazette*.

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**Part 5-5** Exemption from operation of this Chapter

**Division 225** Exemption from operation of this Chapter

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- (5) A determination under subsection (1) in relation to:
- (a) a specified class of Aboriginal and Torres Strait Islander corporation; or
  - (b) the directors of a specified class of Aboriginal and Torres Strait Islander corporation;
- is a legislative instrument.
- (6) A determination under subsection (1) in relation to:
- (a) a specified Aboriginal and Torres Strait Islander corporation; or
  - (b) the directors of a specified Aboriginal and Torres Strait Islander corporation;
- is not a legislative instrument.

**225-20 Criteria for determinations**

- (1) In making a determination under section 225-5 or 225-15, the Registrar must be satisfied that the requirements of provisions of this Chapter would:
- (a) be inappropriate in the circumstances; or
  - (b) impose unreasonable burdens.

*Unreasonable burden*

- (2) In deciding for the purposes of subsection (1) if the provisions impose an unreasonable burden on the corporation or corporations, the Registrar is to have regard to:
- (a) the expected costs of complying with the obligations; and
  - (b) the expected benefits of having the corporation or corporations comply with the obligations; and
  - (c) any practical difficulties that the corporation or corporations face in complying effectively with the obligations; and
  - (d) any other matters that the Registrar considers relevant.

## **Chapter 6—Officers**

### **Part 6-1—Introduction**

#### **Division 235—Introduction**

##### **235-1 What this Chapter is about**

This Chapter deals with the officers of an Aboriginal and Torres Strait Islander corporation.

Part 6-2 deals with the appointment and remuneration and the cessation of appointment of directors.

Part 6-3 deals with the appointment of secretaries and contact persons.

Part 6-4 deals with the duties and powers of directors and other officers and employees.

Part 6-5 deals with the disqualification of persons from managing Aboriginal and Torres Strait Islander corporations.

Part 6-6 deals with related party transactions.

Part 6-7 deals with public information about officers of Aboriginal and Torres Strait Islander corporations.

## **Part 6-2—Appointment, remuneration and cessation of appointment of directors**

### **Division 240—Introduction**

#### **240-1 What this Part is about**

This Part deals with the directors of an Aboriginal and Torres Strait Islander corporation.

Division 243 deals with the minimum and maximum number of directors that a corporation may have.

Divisions 246 and 249 deal with the appointment, resignation and removal of directors.

Division 252 deals with the remuneration of directors.

## **Division 243—Number of directors**

### **243-1 Minimum number of directors**

#### *Corporations with 1 member*

- (1) An Aboriginal and Torres Strait Islander corporation that has 1 member must have at least 1 director.

#### *Corporations with 2 members*

- (2) An Aboriginal and Torres Strait Islander corporation that has 2 members must have at least 2 directors.

#### *Corporations with more than 2 members*

- (3) An Aboriginal and Torres Strait Islander corporation that has more than 2 members must have at least 3 directors.

### **243-5 Maximum number of directors**

An Aboriginal and Torres Strait Islander corporation must not have more than:

- (a) 12 directors; or
- (b) if the regulations prescribe a different number of directors for the purpose of this paragraph—that number of directors.

Note: An application may be made to exempt the corporation from the requirements of this section (see section 310-5).

## **Division 246—Appointment of directors**

### **246-1 Eligibility for appointment as a director**

- (1) Only an individual who is at least 18 years of age may be appointed as a director of an Aboriginal and Torres Strait Islander corporation.
- (2) An individual who is disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 may only be appointed as a director of an Aboriginal and Torres Strait Islander corporation if the appointment is made:
  - (a) with permission granted by the Registrar under section 279-30; or
  - (b) with leave granted by the Court under section 279-35.
- (3) Unless an Aboriginal and Torres Strait Islander corporation's constitution provides otherwise, the following may not be appointed as a director of the corporation:
  - (a) an individual who is not a member of the corporation;
  - (b) an individual who is not an Aboriginal and Torres Strait Islander person.

### **246-5 Majority of director requirements**

- (1) A majority of the directors of an Aboriginal and Torres Strait Islander corporation must be individuals who are Aboriginal and Torres Strait Islander persons.
- (2) A majority of the directors of the corporation must ordinarily reside in Australia.
- (3) A majority of the directors of the corporation must be members of the corporation.
- (4) A majority of the directors of the corporation must not be employees of the corporation.

- (5) If a person is performing a chief executive officer function in relation to the corporation, the person may be a director of the corporation but cannot chair the directors' meetings. The person counts as an employee for the purposes of determining under subsection (4) whether a majority of directors are employees.

Note: For the meaning of *chief executive officer function*, see section 694-85.

#### **246-10 Consent to act as director**

- (1) An Aboriginal and Torres Strait Islander corporation contravenes this subsection if a person does not give the corporation a signed consent to act as a director of the corporation before being appointed.

Penalty: 10 penalty units.

- (2) The corporation must keep the consent.

Penalty: 5 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **246-15 Corporation may appoint a director (replaceable rule—see section 60-1)**

An Aboriginal and Torres Strait Islander corporation may appoint a person as a director by resolution passed in general meeting.

#### **246-20 Directors may appoint other directors to make up a quorum (replaceable rule—see section 60-1)**

*Appointment by other directors*

- (1) Subject to section 243-5 (maximum number of directors), the directors of an Aboriginal and Torres Strait Islander corporation may appoint a person as a director.

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- (2) A person can be appointed under subsection (1) in order to make up a quorum for a directors' meeting even if the total number of directors of the corporation is not enough to make up that quorum.

*Confirmation by next AGM*

- (3) If a person is appointed under subsection (1), the corporation must confirm the appointment by resolution at the corporation's next AGM. If the appointment is not confirmed, the person ceases to be a director of the corporation at the end of the AGM.

**246-25 Term of appointment**

*Directors appointed on registration (replaceable rule—see section 60-1)*

- (1) If a director has been identified in the application for registration of an Aboriginal and Torres Strait Islander corporation as a director who is to be appointed for only one year, the director's appointment ends at the first AGM that occurs more than one year after the date of the corporation's registration.

*Other directors*

- (2) Subject to subsection (4), a director of an Aboriginal and Torres Strait Islander corporation must not be appointed for a period exceeding 2 years.

Note: An application may be made to exempt the directors of the corporation from the requirements of this subsection (see section 310-5).

*Director may be reappointed (replaceable rule—see section 60-1)*

- (3) A director is eligible for reappointment.

*Appointments continue to next general meeting*

- (4) If the terms of appointment of all of the directors of an Aboriginal and Torres Strait Islander corporation expire so that there are no directors appointed at a particular time, the terms are extended until the next general meeting occurring after the expiry of the term of the director whose appointment was last to expire.



**246-30 Alternate directors (replaceable rule—see section 60-1)**

- (1) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.
- (2) If the appointing director requests the Aboriginal and Torres Strait Islander corporation to give the alternate notice of directors' meetings, the corporation must do so.
- (3) When an alternate exercises the director's powers, the exercise of the powers is just as effective as if the powers were exercised by the director.
- (4) The appointing director may terminate the alternate's appointment at any time.
- (5) An appointment or its termination must be in writing. A copy must be given to the corporation.

Note: The Registrar must be given notice of the appointment and termination of appointment of an alternate (see subsections 304-5(3) and (6)).

**246-35 Effectiveness of acts by directors**

- (1) An act done by a director is effective even if his or her appointment, or the continuance of the appointment, is invalid because the Aboriginal and Torres Strait Islander corporation or director did not comply with the corporation's constitution or any provision of this Act.
- (2) Subsection (1) does not deal with the question whether an effective act by a director:
  - (a) binds the corporation in its dealings with other people; or
  - (b) makes the corporation liable to another person.

Note: The kinds of acts that this section validates are those that are only legally effective if the person doing them is a director (for example, calling a meeting of the corporation's members or signing a document to be lodged with the Registrar or minutes of a meeting). Division 104 contains rules about the assumptions people are entitled to make when dealing with an Aboriginal and Torres Strait Islander corporation and its officers.

## **Division 249—Resignation, retirement or removal of directors**

### **249-1 How does a person cease to be a director?**

A person ceases to be a director of an Aboriginal and Torres Strait Islander corporation if:

- (a) the person dies; or
- (b) the person resigns as a director of the corporation as provided for in section 249-5; or
- (c) the term of the person's appointment as a director of the corporation expires; or
- (d) the person is removed as a director of the corporation by the members of the corporation as provided for in section 249-10; or
- (e) the person is removed as a director of the corporation by the other directors of the corporation as provided for in section 249-15; or
- (f) the person becomes disqualified from managing corporations under Part 6-5.

### **249-5 Director may resign**

- (1) A director of an Aboriginal and Torres Strait Islander corporation may resign as a director of the corporation by giving notice of resignation to the corporation.

*Written notice to be given (replaceable rule—see section 60-1)*

- (2) The notice must be in writing.

### **249-10 Removal by members**

*Resolution for removal of director*

- (1) An Aboriginal and Torres Strait Islander corporation may, by resolution in general meeting, remove a director from office despite anything in:

- (a) the corporation's constitution; or
- (b) an agreement between the corporation and the director; or
- (c) an agreement between any or all members of the corporation and the director.

Note: See sections 201-1 and 201-5 for the rules on who may call meetings, sections 201-20 to 201-30 on how to call meetings and sections 201-40 to 201-50 for rules on members' resolutions.

*Notice of intention to move resolution for removal of director*

- (2) Notice of intention to move the resolution must be given to the corporation at least 21 days before the meeting is to be held. However, if the corporation calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 21 days after the notice of intention is given.

Note: Short notice of the meeting cannot be given for this resolution (see subsection 201-20(3)).

*Director to be informed*

- (3) The corporation must give the director a copy of the notice as soon as practicable after it is received.

Penalty: 5 penalty units.

*Director's right to put case to members*

- (4) The director is entitled to put his or her case to members by:
  - (a) giving the corporation a written statement for circulation to members (see subsections (5) and (6)); and
  - (b) speaking to the motion at the meeting (whether or not the director is a member of the corporation).

*Circulation of statement*

- (5) The written statement is to be circulated by the corporation to members by:
  - (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or

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- (b) if there is not time to comply with paragraph (a)—having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.

Penalty: 5 penalty units.

- (6) The written statement does not have to be circulated to members if it is defamatory.

*Time of retirement*

- (7) If a person is appointed to replace a director removed under this section, the time at which:
  - (a) the replacement director; or
  - (b) any other director;is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.
- (8) An offence against subsection (3) or (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**249-15 Removal by other directors**

- (1) The only ground on which the directors of an Aboriginal and Torres Strait Islander corporation may remove a director from office is that he or she fails without reasonable excuse to attend 3 or more consecutive directors' meetings. The directors may remove the director by resolution.
- (2) Subsection (1) operates despite anything in:
  - (a) the corporation's constitution; or
  - (b) an agreement between the corporation and the director; or
  - (c) an agreement between any or all members of the corporation and the director.

*Director to be given notice*

- (3) Before removing the director, the directors must give the director concerned notice in writing:

- (a) stating that the directors intend to remove the director concerned from office because he or she has failed without reasonable excuse to attend 3 or more consecutive directors' meetings; and
- (b) stating that the director concerned has 14 days to object to the removal; and
- (c) stating that the objection must be:
  - (i) in writing; and
  - (ii) given to the corporation within the period of 14 days from the day the notice is given.

Penalty: 5 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*If director does not object*

- (5) If the director does not object as provided for in paragraph (3)(c), the directors must remove the director from the office.

*If director does object*

- (6) If the director does object as provided for in paragraph (3)(c):
- (a) the directors cannot remove the director from office; and
  - (b) the corporation, by resolution in general meeting, may remove the director from office in accordance with section 249-10.

*Notice of resolution to be given*

- (7) If the director concerned is removed from office, the corporation must give him or her a copy of the resolution as soon as practicable after the applicable resolution has been passed.

Penalty: 5 penalty units.

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*Time of retirement*

- (8) If a person is appointed to replace a director removed under this section, the time at which:
- (a) the replacement director; or
  - (b) any other director;
- is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.
- (9) An offence against subsection (7) is a strict liability offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Division 252—Remuneration of directors**

### **252-1 Remuneration**

- (1) Unless the constitution of an Aboriginal and Torres Strait Islander corporation provides otherwise, the directors of the corporation are not to be paid remuneration.

Note: If a director is an employee of the corporation, the director is not precluded from receiving remuneration as an employee.

- (2) If an Aboriginal and Torres Strait Islander corporation's constitution permits the payment of remuneration, the remuneration is to be determined by the corporation by resolution in general meeting.

#### *Expenses*

- (3) The corporation may pay the directors' travelling and other expenses that the directors properly incur:
- (a) in attending directors' meetings or any meetings of committees of directors; and
  - (b) in attending any general meetings of the corporation; and
  - (c) in connection with the corporation's business.

### **252-5 Members may obtain information about directors' remuneration**

- (1) An Aboriginal and Torres Strait Islander corporation must disclose the remuneration and expenses paid to each director of the corporation or a subsidiary (if any) by the corporation or by an entity controlled by the corporation if the corporation is directed to disclose that information by at least the required number of members under subsection (7).

Penalty: 5 penalty units.

- (2) The corporation must also disclose the remuneration and expenses paid to each director of the corporation or a subsidiary (if any) by the corporation or by an entity controlled by the corporation if the

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Registrar directs the corporation in writing to disclose that information.

Penalty: 5 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Under subsection (1) or (2), the corporation must disclose all remuneration and expenses paid to the director, regardless of whether it is paid to the director as a director or in another capacity.
- (5) The corporation must comply with the direction under subsection (1) or (2) as soon as practicable by:
- (a) preparing a statement of the remuneration and expenses of each director of the corporation or a subsidiary for the last financial year before the direction was given; and
  - (b) having the statement audited; and
  - (c) either:
    - (i) in the case of a direction under subsection (1)—sending a copy of the audited statement to each person entitled to receive notice of general meetings of the corporation; or
    - (ii) in the case of a direction under subsection (2)—sending a copy of the audited statement to each person entitled to receive notice of general meetings of the corporation and to the Registrar.
- (6) If the Registrar directs the corporation under subsection (2) to disclose the remuneration and expenses paid to a director, the remuneration and expenses may be entered on the Register of Aboriginal and Torres Strait Islander Corporations.
- (7) The required number of members for an Aboriginal and Torres Strait Islander corporation is the greater of:
- (a) 5 members of the corporation; or
  - (b) 10% of the members of the corporation.



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- (8) The regulations may prescribe a different number of members for the purposes of applying paragraph (7)(a) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation;  
or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.
- (9) The regulations may prescribe a different percentage for the purposes of applying paragraph (7)(b) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation;  
or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.
- (10) A direction under subsection (2) is not a legislative instrument.

## **Part 6-3—Appointment of secretaries and contact persons**

### **Division 257—Appointment of secretaries and contact persons**

#### **257-1 What this Part is about**

This Part deals with the secretary and contact person of an Aboriginal and Torres Strait Islander corporation.

An Aboriginal and Torres Strait Islander corporation that is registered as a large corporation must have a secretary.

An Aboriginal and Torres Strait Islander corporation that is registered as a small or medium corporation must have a contact person.

#### **257-5 Requirement to have a secretary or contact person**

##### *Secretary*

- (1) An Aboriginal and Torres Strait Islander corporation that is registered as a large corporation must have at least one secretary. At least one of the secretaries must ordinarily reside in Australia.

##### *Contact person*

- (2) An Aboriginal and Torres Strait Islander corporation that is registered as a small or medium corporation must have a contact person. The contact person must ordinarily reside in Australia.
- (3) An Aboriginal and Torres Strait Islander corporation commits an offence if the corporation does not comply with subsection (1) or (2).

Penalty: 5 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **257-10 Who may be a secretary or contact person**

- (1) Only an individual who is at least 18 years of age may be appointed as a secretary or contact person of an Aboriginal and Torres Strait Islander corporation.
- (2) A person who is disqualified from managing an Aboriginal and Torres Strait Islander corporation under Part 6-5 may only be appointed as a secretary or contact person if the appointment is made:
  - (a) with permission granted by the Registrar under subsection 279-30(7); or
  - (b) with leave granted by the Court under section 279-35.

### **257-15 Consent to act as secretary or contact person**

#### *Secretary*

- (1) An Aboriginal and Torres Strait Islander corporation contravenes this subsection if a person does not give the corporation a signed consent to act as secretary of the corporation before being appointed.

Penalty: 5 penalty units.

#### *Contact person*

- (2) An Aboriginal and Torres Strait Islander corporation contravenes this subsection if a person does not give the corporation a signed consent to act as contact person of the corporation before being appointed.

Penalty: 5 penalty units.

- (3) The corporation must keep the consent.

Penalty: 5 penalty units.

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- (4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **257-20 How a secretary or contact person is appointed**

A secretary or contact person is to be appointed by the directors.

Note: An Aboriginal and Torres Strait Islander corporation must notify the Registrar of the appointment within 28 days (see subsection 304-5(1)).

#### **257-25 Director to be contact person in certain circumstances**

- (1) If the Registrar has not been able to contact the contact person of an Aboriginal and Torres Strait Islander corporation for a period of 28 days or longer, the Registrar may determine, by notice in writing given to the corporation:
- (a) that the person who is not contactable ceases to be the contact person from the date specified in the determination; and
  - (b) that the new contact person of the corporation is the director specified in the determination; and
  - (c) that the new contact person's appointment takes effect from the date the person's name is entered on the Register of Aboriginal and Torres Strait Islander Corporations as contact person of the corporation.
- (2) A notice under subsection (1) is not a legislative instrument.

#### **257-30 Contact person must pass on communications received**

A person commits an offence if:

- (a) either:
- (i) the person has been appointed with his or her consent as contact person of an Aboriginal and Torres Strait Islander corporation; or
  - (ii) the person was determined to be the contact person of an Aboriginal and Torres Strait Islander corporation under section 257-25; and

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- (b) while the person is entered on the Register of Aboriginal and Torres Strait Islander Corporations as the contact person of the corporation the person receives a communication for the corporation; and
- (c) the person fails to pass the communication on to at least one of directors of the corporation within 14 days after receiving the communication.

Penalty: 10 penalty units.

**257-35 Secretary must pass on communications received**

A person commits an offence if:

- (a) the person has been appointed with his or her consent to be the secretary of an Aboriginal and Torres Strait Islander corporation; and
- (b) while the person is entered on the Register of Aboriginal and Torres Strait Islander Corporations as the secretary of the corporation the person receives a communication for the corporation; and
- (c) the person fails to pass the communication on to at least one of directors of the corporation within 14 days after receiving the communication.

Penalty: 10 penalty units.

**257-40 Effectiveness of acts by secretaries**

- (1) An act done by a secretary is effective even if his or her appointment, or the continuance of his or her appointment, is invalid because the Aboriginal and Torres Strait Islander corporation or secretary did not comply with the corporation's constitution or any provision of this Act.
- (2) Subsection (1) does not deal with the question whether an effective act by a secretary:
  - (a) binds the corporation in its dealings with other people; or
  - (b) makes the corporation liable to another person.

Note: The kinds of acts that this section validates are those that are only legally effective if the person doing them is a secretary (for example,

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signing and sending out a notice of a meeting of directors if the corporation's constitution authorises the secretary to do so or signing a document to be lodged with the Registrar). Division 104 contains rules about the assumptions people are entitled to make when dealing with an Aboriginal and Torres Strait Islander corporation and its officers.

**257-45 Terms and conditions of office for secretaries (replaceable rule—see section 60-1)**

A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

**257-50 Terms and conditions of contact person's appointment (replaceable rule—see section 60-1)**

A contact person's appointment is subject to the terms and conditions (including as to remuneration) that the directors determine.

## **Part 6-4—Duties and powers of directors and other officers and employees**

### **Division 262—Introduction**

#### **262-1 What this Part is about**

This Part sets out some of the most significant duties of directors, secretaries, other officers and employees of Aboriginal and Torres Strait Islander corporations.

Other duties are imposed by:

- (a) other provisions of this Act; and
- (b) the provisions of the Corporations Act that are applied to Aboriginal and Torres Strait Islander corporations; and
- (c) other laws (including the general law).

A particularly important duty that is imposed on the directors of an Aboriginal and Torres Strait Islander corporation is the obligation imposed by section 558G of the Corporations Act (as applied by section 531-1 of this Act) not to incur debts, make distributions to members or enter into uncommercial transactions when the corporation is insolvent.

Division 274 deals with the powers of directors.

Note: Section 683-1 defines both *director* and *officer*. *Officer* includes, as well as directors and secretaries, some other people who manage the corporation or its property (such as receivers and liquidators).

## Division 265—General duties

### 265-1 Care and diligence—civil obligation only

#### *Care and diligence—directors and other officers*

- (1) A director or other officer of an Aboriginal and Torres Strait Islander corporation must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if that reasonable person:
- (a) were a director or officer of an Aboriginal and Torres Strait Islander corporation in the corporation's circumstances; and
  - (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Note 1: This subsection is a civil penalty provision (see section 386-1).

Note 2: Section 265-20 makes special provision for actions done to comply with Native Title legislation obligations.

#### *Business judgment rule*

- (2) A director or other officer of an Aboriginal and Torres Strait Islander corporation who makes a business judgment is taken to meet the requirements of subsection (1), and the director's or officer's equivalent duties at common law and in equity, in respect of the judgment if he or she:
- (a) makes the judgment in good faith for a proper purpose; and
  - (b) does not have a material personal interest in the subject matter of the judgment; and
  - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
  - (d) rationally believes that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in the director's or officer's position would hold.



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Note: This subsection only operates in relation to duties under this section and the equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence). It does not operate in relation to duties under any other provision of this Act or under any other laws.

- (2A) To avoid doubt, a director of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate is not taken to have a material personal interest for the purpose of paragraph (2)(b) if the director does not need to give the other directors notice of the interest because section 268-5 applies.
- (3) **Business judgment** is any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

### 265-5 Good faith—civil obligations

*Good faith—directors and other officers*

- (1) A director or other officer of an Aboriginal and Torres Strait Islander corporation must exercise his or her powers and discharge his or her duties:
- (a) in good faith in the best interests of the corporation; and
  - (b) for a proper purpose.

Note 1: This subsection is a civil penalty provision (see section 386-1).

Note 2: Section 265-20 makes special provision for actions done to comply with Native Title legislation obligations.

Note 3: Section 265-35 deals with the situation of directors of wholly-owned subsidiaries.

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 694-55 defines *involved in*.

Note 2: This subsection is a civil penalty provision (see section 386-1).

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**265-10 Use of position—civil obligations**

*Use of position—directors, other officers and employees*

- (1) A director, secretary, other officer or employee of an Aboriginal and Torres Strait Islander corporation must not improperly use his or her position to:

- (a) gain an advantage for himself or herself or someone else; or  
(b) cause detriment to the corporation.

Note 1: This subsection is a civil penalty provision (see section 386-1).

Note 2: Section 265-20 makes special provision for actions done to comply with Native Title legislation obligations.

Note 3: The contact person for the corporation is covered by the reference to an employee of the corporation.

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 694-55 defines *involved in*.

Note 2: This subsection is a civil penalty provision (see section 386-1).

**265-15 Use of information—civil obligations**

*Use of information—directors, other officers and employees*

- (1) A person who obtains information because he or she is, or has been, a director or other officer or employee of an Aboriginal and Torres Strait Islander corporation must not improperly use the information to:

- (a) gain an advantage for himself or herself or someone else; or  
(b) cause detriment to the corporation.

Note 1: This duty continues after the person stops being an officer or employee of the corporation.

Note 2: This subsection is a civil penalty provision (see section 386-1).

Note 3: Section 265-20 makes special provision for actions done to comply with Native Title legislation obligations.

Note 4: The contact person for the corporation is covered by the reference to an employee of the corporation.

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- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 694-55 defines *involved in*.

Note 2: This subsection is a civil penalty provision (see section 386-1).

**265-20 Acts done to comply with Native Title legislation obligations**

A person who is a director or other officer, or an employee, of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate does not contravene subsection 265-1(1), 265-5(1), 265-10(1) or 265-15(1), and does not breach the person's equivalent duties at common law and in equity, merely because of doing (or refraining from doing) a particular act if the person does (or refrains from doing) the act:

- (a) in good faith; and
- (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

**265-25 Good faith, use of position and use of information—criminal offences**

*Good faith—directors and other officers*

- (1) A director or other officer of an Aboriginal and Torres Strait Islander corporation commits an offence if he or she:
- (a) is reckless; or
  - (b) is intentionally dishonest;
- and fails to exercise his or her powers and discharge his or her duties:
- (c) in good faith in the best interests of the corporation; or
  - (d) for a proper purpose.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

- (2) A director or other officer of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate does not contravene subsection (1) merely because of doing (or

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refraining from doing) a particular act if the director or other officer does (or refrains from doing) the act:

- (a) in good faith; and
- (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Use of position—directors, other officers and employees*

- (3) A director, other officer or employee of an Aboriginal and Torres Strait Islander corporation commits an offence if he or she uses his or her position dishonestly:
  - (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the corporation; or
  - (b) recklessly as to whether the use may result in him or her or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

*Use of information—directors, other officers and employees*

- (4) A person who obtains information because he or she is, or has been, a director or other officer or employee of an Aboriginal and Torres Strait Islander corporation commits an offence if he or she uses the information dishonestly:
  - (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the corporation; or
  - (b) recklessly as to whether the use may result in him or her or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

**265-30 Interaction of sections 265-1 to 265-25 with other laws etc.**

- (1) Sections 265-1 to 265-25:
  - (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of the person's office or employment in relation to an Aboriginal and Torres Strait Islander corporation; and
  - (b) do not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).
- (2) This section:
  - (a) does not apply to subsections 265-1(2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of subsection 265-1(1); and
  - (b) does not apply to section 265-20 to the extent to which it operates on the duties at common law and in equity that are equivalent to the requirements of subsections 265-1(1), 265-5(1), 265-10(1) and 265-15(1).

**265-35 Directors of wholly-owned subsidiaries**

A director of an Aboriginal and Torres Strait Islander corporation that is a wholly-owned subsidiary of a body corporate is taken to act in good faith in the best interests of the subsidiary if:

- (a) the constitution of the subsidiary expressly authorises the director to act in the best interests of the holding body corporate; and
- (b) the director acts in good faith in the best interests of the holding body corporate; and
- (c) the subsidiary is not insolvent at the time the director acts and does not become insolvent because of the director's act.

**265-40 Responsibility of secretaries for certain contraventions**

- (1) A secretary of an Aboriginal and Torres Strait Islander corporation commits an offence if the corporation contravenes:

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- (a) subsection 69-20(1) or (2) (requirement to lodge copy of constitutional changes); or
- (b) section 88-1 (requirement to lodge material about change of name); or
- (c) subsection 112-5(5), (6) or (7) (requirements about registered office); or
- (d) section 180-35 (requirement to give copy of register of members or register of former members); or
- (e) subsection 304-5(1), (3), (5) or (6) (requirement to lodge details of directors and secretaries); or
- (f) section 330-10 (requirement to lodge general report); or
- (g) section 348-1 (requirement to lodge annual report).

Penalty: 5 penalty units.

- (2) An offence based on subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person does not contravene subsection (1) if they show that they took all reasonable steps to ensure that the corporation complied with the section.

Note: A defendant bears a legal burden in relation to a matter mentioned in subsection (3) (see section 13.4 of the *Criminal Code*).

**265-45 Meaning of reasonable reliance on information or advice provided by others**

- (1) If:

- (a) a director of an Aboriginal and Torres Strait Islander corporation relies on information, or professional or expert advice, given or prepared by:
  - (i) an employee of the corporation whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
  - (ii) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence; or

- (iii) another director or officer in relation to matters within the director's or officer's authority; or
  - (iv) a committee of directors on which the director did not serve in relation to matters within the committee's authority; and
  - (b) the reliance was made:
    - (i) in good faith; and
    - (ii) after making an independent assessment of the information or advice, having regard to the director's knowledge of the corporation and the complexity of the structure and operations of the corporation; and
  - (c) the reasonableness of the director's reliance on the information or advice arises in proceedings brought to determine whether a director has performed a duty under this Part or an equivalent general law duty;  
the director's reliance on the information or advice is taken to be reasonable unless the contrary is proved.
- (2) To avoid doubt, a person may be considered an expert in relation to questions of traditional laws and customs.

#### **265-50 Responsibility for actions of delegate**

- (1) If the directors of an Aboriginal and Torres Strait Islander corporation delegate a power under section 274-10, each director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.
- (2) A director of an Aboriginal and Torres Strait Islander corporation is not responsible under subsection (1) if:
  - (a) the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors of the corporation by this Act and the corporation's constitution (if any); and
  - (b) the director believed:
    - (i) on reasonable grounds; and
    - (ii) in good faith; and
    - (iii) after making proper inquiry if the circumstances indicated the need for inquiry;

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that the delegate was reliable and competent in relation to the power delegated.



## **Division 268—Duties in relation to disclosure of, and voting on matters involving, material personal interests**

### **268-1 Material personal interest—director’s duty to disclose**

*Director’s duty to notify other directors of material personal  
interest when conflict arises*

- (1) A director of an Aboriginal and Torres Strait Islander corporation who has a material personal interest in a matter that relates to the affairs of the corporation must give the other directors notice of the interest unless subsection (3) or section 268-5 says otherwise.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (2) For an offence against subsection (1), strict liability applies to the circumstance, that the director of an Aboriginal and Torres Strait Islander corporation has a material personal interest in a matter that relates to the affairs of the corporation.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) The director does not need to give notice of an interest under subsection (1) if:
- (a) the interest:
    - (i) arises because the director is a member of the corporation and is held in common with the other members of the corporation; or
    - (ii) arises in relation to the director’s remuneration as a director of the corporation; or
    - (iii) relates to a contract the corporation is proposing to enter into that is subject to approval by the members and will not impose any obligation on the corporation if it is not approved by the members; or
    - (iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the corporation; or

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- (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv); or
  - (vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the corporation (but only if the contract does not make the corporation or a related body corporate the insurer); or
  - (vii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or
- (b) all the following conditions are satisfied:
- (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the corporation under subsection (1);
  - (ii) if a person who was not a director of the corporation at the time when the notice under subsection (1) was given is appointed as a director of the corporation—the notice is given to that person;
  - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (c) the director has given a standing notice of the nature and extent of the interest under section 268-10 and the notice is still effective in relation to the interest.

Note: Subparagraph (b)(ii)—the notice may be given to the person referred to in this subparagraph by someone other than the director to whose interests it relates (for example, by the secretary).

- (4) The notice required by subsection (1) must:
- (a) give details of:
    - (i) the nature and extent of the interest; and
    - (ii) the relation of the interest to the affairs of the corporation; and
  - (b) be given at a directors' meeting as soon as practicable after the director becomes aware of the director's interest in the matter.

The details must be recorded in the minutes of the meeting.

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*Effect of contravention by director*

- (5) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

*Section does not apply to single director corporation*

- (6) This section does not apply to an Aboriginal and Torres Strait Islander corporation that has only 1 director.

**268-5 Interest as common law holder of native title**

- (1) This section applies if:
- (a) an Aboriginal and Torres Strait Islander corporation is a registered native title body corporate; and
  - (b) a director of the corporation has a particular interest as one of the common law holders of native title, being native title:
    - (i) which the corporation holds in trust for the common law holders of the native title; or
    - (ii) for which the corporation acts as agent or representative for the common law holders of the native title.
- (2) The director does not need to give the other directors notice of the interest under subsection 268-1(1).
- (3) A failure to give the other directors notice of the interest does not breach any general law rule about conflicts of interest.

**268-10 Director may give other directors standing notice about an interest**

*Power to give notice*

- (1) A director of an Aboriginal and Torres Strait Islander corporation who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the corporation at the time the notice is given.

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Note: The standing notice may be given to the other directors before the interest becomes a material personal interest.

- (2) The notice under subsection (1) must:
- (a) give details of the nature and extent of the interest; and
  - (b) be given:
    - (i) at a directors' meeting (either orally or in writing); or
    - (ii) to the other directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every director.

*Standing notice must be tabled at meeting if given to directors individually*

- (3) If the standing notice is given to the other directors individually in writing, it must be tabled at the next directors' meeting after it is given.

*Nature and extent of interest must be recorded in minutes*

- (4) The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

*Dates of effect and expiry of standing notice*

- (5) The standing notice:
- (a) takes effect as soon as it is given; and
  - (b) ceases to have effect if a person who was not a director of the corporation at the time when the notice was given is appointed as a director of the corporation.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

Note: The notice may be given to the person referred to in paragraph (b) by someone other than the director to whose interests it relates (for example, by the secretary).

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*Effect of material increase in nature or extent of interest*

- (6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

*Effect of contravention by director*

- (7) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

**268-15 Interaction of sections 268-1 and 268-10 with other laws etc.**

Sections 268-1 and 268-10 have effect in addition to, and not in derogation of:

- (a) any general law rule about conflicts of interest; and
- (b) any provision in an Aboriginal and Torres Strait Islander corporation's constitution (if any) that restricts a director from:
  - (i) having a material personal interest in a matter; or
  - (ii) holding an office or possessing property;involving duties or interests that conflict with the director's duties or interests as a director.

**268-20 Restrictions on voting**

*Restrictions on voting and being present*

- (1) A director of an Aboriginal and Torres Strait Islander corporation who has a material personal interest in a matter that is being considered at a directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter.

Penalty: 5 penalty units.

- (2) Subsection (1) does not apply if:
- (a) subsection (4) or (5) allows the director to be present; or

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- (b) subsection 268-5(2) applies in relation to the interest; or
- (c) for any other reason, the interest does not need to be disclosed under section 268-1.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Because section 268-5 provides that certain interests a director has as a common law holder of native title do not need to be disclosed, those interests will not prevent the director from being present and voting.

- (3) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

##### *Participation with approval of other directors*

- (4) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
  - (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the corporation; and
  - (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

##### *Participation with Registrar's approval*

- (5) The director may be present and vote if he or she is so entitled under a declaration or order made by the Registrar under section 268-25.

##### *Director may consider or vote on resolution to deal with matter at general meeting*

- (6) If there are not enough directors to form a quorum for a directors' meeting because of subsection (1), 1 or more of the directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

##### *Effect of contravention by director*

- (7) A contravention by a director of:

- (a) this section; or
  - (b) a condition attached to a declaration or order made by the Registrar under section 268-25;
- does not affect the validity of any resolution.

## **268-25 Registrar's power to make declarations and class orders**

### *Registrar's power to make specific declarations*

- (1) The Registrar may declare in writing that a director of an Aboriginal and Torres Strait Islander corporation who has a material personal interest in a matter that is being, or is to be, considered at a directors' meeting may, despite the director's interest:
  - (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter; or
  - (c) both be present and vote.
- (2) A declaration under subsection (1) is not a legislative instrument.
- (3) However, the Registrar may only make the declaration if:
  - (a) the number of directors entitled to be present and vote on the matter would be less than the quorum for a directors' meeting if the director were not allowed to vote on the matter at the meeting; and
  - (b) the matter needs to be dealt with urgently, or there is some other compelling reason for the matter being dealt with at the directors' meeting, rather than by a general meeting called under subsection 268-20(6).
- (4) A declaration under subsection (1) may:
  - (a) apply to all or only some of the directors; or
  - (b) specify conditions that the corporation or director must comply with.

### *Registrar's power to make class orders*

- (5) The Registrar may make an order in writing that enables directors who have a material personal interest in a matter to be present

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while the matter is being considered at a directors' meeting, vote on that matter, or both be present and vote. The order may be made in respect of a specified class of Aboriginal and Torres Strait Islander corporation, directors, resolutions or interests.

- (6) An order made under subsection (5) in respect of a class of Aboriginal and Torres Strait Islander corporation is a legislative instrument.
- (7) The order may be expressed to be subject to conditions.
- (8) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.



## **Division 271—Duty to discharge certain trust liabilities**

### **271-1 Directors liable for debts and other obligations incurred by corporation as trustee**

- (1) A person who is a director of an Aboriginal and Torres Strait Islander corporation when it incurs a liability while acting, or purporting to act, as trustee, is liable to discharge the whole or a part of the liability if the corporation:
- (a) has not discharged, and cannot discharge, the liability or that part of it; and
  - (b) is not entitled to be fully indemnified against the liability out of trust assets solely because of one or more of the following:
    - (i) a breach of trust by the corporation;
    - (ii) the corporation's acting outside the scope of its powers as trustee;
    - (iii) a term of the trust denying, or limiting, the corporation's right to be indemnified against the liability.

The person is liable both individually and jointly with the corporation and anyone else who is liable under this subsection.

Note: The person will not be liable under this subsection merely because there are insufficient trust assets out of which the corporation can be indemnified.

- (2) The person is not liable under subsection (1) if the person would be entitled to have been fully indemnified by 1 of the other directors against the liability had all the directors of the corporation been trustees when the liability was incurred.
- (3) The person is not liable under subsection (1) merely because of doing (or refraining from doing) a particular act if the director does (or refrains from doing) the act:
- (a) in good faith; and
  - (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

## **Division 274—Powers of directors**

### **274-1 Powers of directors (replaceable rule—see section 60-1)**

- (1) The business of an Aboriginal and Torres Strait Islander corporation is to be managed by or under the direction of the directors.
- (2) The directors may exercise all the powers of the corporation except any powers that this Act or the corporation's constitution requires the corporation to exercise in general meeting.

Note: For example, the directors may enter into contracts and borrow money.

### **274-5 Negotiable instruments (replaceable rule—see section 60-1)**

- (1) Any 2 directors of an Aboriginal and Torres Strait Islander corporation that has 2 or more directors, or the director of an Aboriginal and Torres Strait Islander corporation that has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

### **274-10 Delegation**

- (1) Unless the corporation's constitution provides otherwise, the directors of an Aboriginal and Torres Strait Islander corporation may by resolution delegate any of their powers to:
  - (a) a committee of directors; or
  - (b) a director; or
  - (c) an employee of the corporation; or
  - (d) any other person.
- (2) The delegate must exercise the powers delegated in accordance with any directions of the directors.

- (3) The exercise of the power by the delegate is as effective as if the directors had exercised it.

### **274-15 Right of access to corporation books**

#### *Right while director*

- (1) A person who is a director of an Aboriginal and Torres Strait Islander corporation may inspect the books of the corporation (other than its financial records) for the purposes of a legal proceeding:
- (a) to which the person is a party; or
  - (b) that the person proposes in good faith to bring; or
  - (c) that the person has reason to believe will be brought against him or her.

Note 1: Section 322-25 gives the director a right of access to financial records.

Note 2: See also section 376-1.

#### *Right during 7 years after ceasing to be director*

- (2) A person who has ceased to be a director of an Aboriginal and Torres Strait Islander corporation may inspect the books of the corporation (including its financial records) for the purposes of a legal proceeding:
- (a) to which the person is a party; or
  - (b) that the person proposes in good faith to bring; or
  - (c) that the person has reason to believe will be brought against them.

This right continues for 7 years after the person ceased to be a director of the corporation.

Note: See also section 376-1.

#### *Right to take copies*

- (3) A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.

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*Corporation not to refuse access*

- (4) An Aboriginal and Torres Strait Islander corporation must allow a person to exercise the person's rights to inspect or take copies of the books under this section.

*Interaction with other rules*

- (5) This section does not limit any right of access to corporation books that a person has apart from this section.

## **Part 6-5—Disqualification from managing corporations**

### **Division 279—Disqualification from managing corporations**

#### **279-1 Disqualified person not to manage corporations**

- (1) A person who is disqualified from managing Aboriginal and Torres Strait corporations under this Part commits an offence if:
  - (a) the person makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of an Aboriginal and Torres Strait Islander corporation; or
  - (b) the person exercises the capacity to affect significantly an Aboriginal and Torres Strait Islander corporation's financial standing; or
  - (c) the person communicates instructions or wishes (other than advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation) to the directors of an Aboriginal and Torres Strait Islander corporation:
    - (i) knowing that the directors are accustomed to act in accordance with the person's instructions or wishes; or
    - (ii) intending that the directors will act in accordance with those instructions or wishes.

Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) For an offence against subsection (1), strict liability applies to the circumstance that the person is disqualified from managing Aboriginal and Torres Strait Islander corporations under this Part.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) If the corporation is a registered native title body corporate, a person who is a common law holder of native title does not

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contravene subsection (1) merely because the directors of the corporation do (or refrain from doing) a particular act:

- (a) in good faith; and
- (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) It is a defence to a contravention of subsection (1) if the person had permission to manage the corporation under either section 279-30 or 279-35 and the person's conduct was within the terms of that permission.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) A person ceases to be a director, alternate director or a secretary of an Aboriginal and Torres Strait Islander corporation if:
  - (a) the person becomes disqualified from managing Aboriginal and Torres Strait Islander corporations under this Part; and
  - (b) the person is not given permission to manage the corporation under section 279-30 or 279-35.

Note: If a person ceases to be a director, alternate director or a secretary under subsection (5), the corporation must notify the Registrar (see subsection 304-5(5)).

**279-5 Automatic disqualification**

*Convictions*

- (1) A person becomes disqualified from managing Aboriginal and Torres Strait Islander corporations if the person:
    - (a) is convicted on indictment of an offence that:
      - (i) concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of an Aboriginal and Torres Strait Islander corporation; or
      - (ii) concerns an act that has the capacity to affect significantly the financial standing of an Aboriginal and Torres Strait Islander corporation; or
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- (b) is convicted of an offence that:
  - (i) is a contravention of this Act and is punishable by imprisonment for a period greater than 12 months; or
  - (ii) involves dishonesty and is punishable by imprisonment for at least 3 months; or
- (c) is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months.

The offences covered by paragraph (a) and subparagraph (b)(ii) include offences against the law of a foreign country.

- (2) The period of disqualification under subsection (1) starts on the day the person is convicted and lasts for:
  - (a) if the person does not serve a term of imprisonment—5 years after the day on which the person is convicted; or
  - (b) if the person serves a term of imprisonment—5 years after the day on which the person is released from prison.

*Bankruptcy or personal insolvency agreement*

- (3) A person is disqualified from managing Aboriginal and Torres Strait Islander corporations if the person is an undischarged bankrupt under the law of Australia, its external territories or another country.
- (4) A person is disqualified from managing Aboriginal and Torres Strait Islander corporations if:
  - (a) the person has executed a personal insolvency agreement under:
    - (i) Part X of the *Bankruptcy Act 1966*; or
    - (ii) a similar law of an external Territory or a foreign country; and
  - (b) the terms of the agreement have not been fully complied with.

*Disqualification under Corporations Act*

- (5) A person is disqualified from managing Aboriginal and Torres Strait Islander corporations at a particular time if the person is, at

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that time, disqualified from managing Corporations Act corporations under Part 2D.6 of the Corporations Act.

**279-10 Extension of period of automatic disqualification**

- (1) This section applies if:
  - (a) under subsection 279-5(1); or
  - (b) as a result of the operation of subsection 206B(1) of the Corporations Act and subsection 279-5(5) of this Act; a person is disqualified from managing Aboriginal and Torres Strait Islander corporations on being convicted of an offence.
- (2) On application by the Registrar, the Court may extend by up to an additional 15 years the period of disqualification.
- (3) The Registrar must apply:
  - (a) before the period of disqualification begins; or
  - (b) before the end of the first year of the disqualification.
- (4) The Registrar may apply only once in relation to the disqualification.
- (5) In determining whether an extension is justified (and if so, for how long), the Court may have regard to any matters that the Court considers appropriate.

**279-15 Court power of disqualification—contravention of civil penalty provision**

- (1) On application by the Registrar, the Court may disqualify a person from managing Aboriginal and Torres Strait Islander corporations for a period that the Court considers appropriate if:
  - (a) a declaration is made under:
    - (i) section 386-1 (civil penalty provision) that the person has contravened a civil penalty provision; or
    - (ii) section 1317E of the Corporations Act (civil penalty provision) that the person has contravened a corporation/scheme civil penalty provision (within the meaning of that Act); and
  - (b) the Court is satisfied that the disqualification is justified.



- (2) In determining whether the disqualification is justified, the Court may have regard to:
- (a) the person's conduct in relation to the management, business or property of any Aboriginal and Torres Strait Islander corporation or Corporations Act corporation; and
  - (b) any other matters that the Court considers appropriate.

**279-20 Court power of disqualification—insolvency and non-payment of debts**

- (1) On application by the Registrar, the Court may disqualify a person from managing Aboriginal and Torres Strait Islander corporations for up to 20 years if:
- (a) within the last 7 years, the person has been an officer of 2 or more corporations when they have failed in the circumstances referred to in subsection (2); and
  - (b) each of those corporations was either an Aboriginal and Torres Strait Islander corporation or Corporations Act corporation; and
  - (c) the Court is satisfied that:
    - (i) the manner in which each of the corporations was managed was wholly or partly responsible for the corporation failing; and
    - (ii) the disqualification is justified.
- (2) For the purposes of subsection (1), the circumstances are:
- (a) a Court orders the corporation to be wound up under:
    - (i) section 526-1 of this Act; or
    - (ii) section 459B of the Corporations Act;because the Court is satisfied that the corporation is insolvent; or
  - (b) the corporation enters into voluntary liquidation and creditors are not fully paid or are unlikely to be fully paid; or
  - (c) the corporation executes:
    - (i) a deed of corporation arrangement; or
    - (ii) a deed of company arrangement (within the meaning of the Corporations Act);

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and creditors are not fully paid or are unlikely to be fully paid; or

- (d) the corporation ceases to carry on business and creditors are not fully paid or are unlikely to be fully paid; or
- (e) a levy of execution against the corporation is not satisfied; or
- (f) a receiver, receiver and manager, or provisional liquidator is appointed in relation to the corporation; or
- (g) the corporation enters into a compromise or arrangement with its creditors under Part 5.1 of the Corporations Act (as applied by section 45-1 of this Act); or
- (h) the corporation is wound up and a liquidator lodges a report under subsection 533(1) of the Corporations Act (including that section as applied by section 526-35 of this Act) about the corporation's inability to pay its debts.

Note: To satisfy paragraph (h), the corporation must begin to be wound up while the person is an officer or within 12 months after the person ceases to be an officer. However, the report under subsection 533(1) of the Corporations Act may be lodged by the liquidator at a time that is more than 12 months after the person ceases to be an officer. Sections 513A to 513D of the Corporations Act contain rules about when a winding up begins.

- (3) For the purposes of subsection (1), a person is an *officer* of a Corporations Act corporation if the person is an officer of that corporation for the purposes of the Corporations Act.
- (4) In determining whether the disqualification is justified, the Court may have regard to:
  - (a) the person's conduct in relation to the management, business or property of any Aboriginal and Torres Strait Islander corporation or Corporations Act corporation; and
  - (b) any other matters that the Court considers appropriate.

**279-25 Court power of disqualification—repeated contraventions of Act**

- (1) On application by the Registrar, the Court may disqualify a person from managing Aboriginal and Torres Strait Islander corporations for the period that the Court considers appropriate if:
  - (a) the person:

- (i) has at least twice been an officer of a body corporate that has contravened this Act or the Corporations Act while the person was an officer of the body corporate and each time the person has failed to take reasonable steps to prevent the contravention; or
  - (ii) has at least twice contravened this Act or the Corporations Act while the person was an officer of a body corporate; or
  - (iii) has been an officer of a body corporate and has done something that would have contravened subsection 265-1(1) or section 265-5 if the body corporate had been an Aboriginal and Torres Strait Islander corporation; or
- (b) the Court is satisfied that the disqualification is justified.
- (2) For the purposes of subsection (1), a person is an *officer* of a Corporations Act corporation if the person is an officer of that corporation for the purposes of the Corporations Act.
- (3) In determining whether the disqualification is justified, the Court may have regard to:
- (a) the person's conduct in relation to the management, business or property of any Aboriginal and Torres Strait Islander corporation or Corporations Act corporation; and
  - (b) any other matters that the Court considers appropriate.

### **279-30 Registrar's power of disqualification**

#### *Power to disqualify*

- (1) The Registrar may disqualify a person from managing Aboriginal and Torres Strait Islander corporations for up to 5 years if:
- (a) within 7 years immediately before the Registrar gives a notice under subparagraph (b)(i):
    - (i) the person has been an officer of 2 corporations; and
    - (ii) each of those corporations was either an Aboriginal and Torres Strait Islander corporation or a Corporations Act corporation; and

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- (iii) while the person was an officer, or within 12 months after the person ceased to be an officer of those corporations, each of the corporations was wound up and a liquidator lodged a report under subsection 533(1) of the Corporations Act (including that section as applied by section 526-35 of this Act) about the corporation's inability to pay its debts; and
  - (b) the Registrar has given the person:
    - (i) a written notice requiring them to demonstrate why the person should not be disqualified; and
    - (ii) an opportunity to be heard on the question; and
  - (c) the Registrar is satisfied that the disqualification is justified.
- (2) A notice under subsection (1) is not a legislative instrument.
- (3) For the purposes of subsection (1), a person is an *officer* of a Corporations Act corporation if the person is an officer of that corporation for the purposes of the Corporations Act.

*Grounds for disqualification*

- (4) In determining whether disqualification is justified, the Registrar:
- (a) must have regard to whether any of the Aboriginal and Torres Strait Islander corporations or Corporations Act corporations mentioned in subsection (1) were related to one another; and
  - (b) may have regard to:
    - (i) the person's conduct in relation to the management, business or property of any Aboriginal and Torres Strait Islander corporation or Corporations Act corporation; and
    - (ii) whether the disqualification would be in the public interest; and
    - (iii) any other matters that the Registrar considers appropriate.

*Notice of disqualification*

- (5) If the Registrar disqualifies a person from managing Aboriginal and Torres Strait Islander corporations under this section, the

Registrar must give a written notice to the person advising the person of the disqualification.

*Start of disqualification*

- (6) The disqualification takes effect from the time when a notice referred to in subsection (5) is served on the person.

*Registrar power to grant leave*

- (7) The Registrar may give a person whom:
- (a) the Registrar has disqualified from managing Aboriginal and Torres Strait Islander corporations under this Part; or
  - (b) ASIC has disqualified from managing corporations under Part 2D.6 of the Corporations Act;
- written permission to manage a particular Aboriginal and Torres Strait Islander corporation or corporations. The permission may be expressed to be subject to conditions and exceptions determined by the Registrar.
- (8) A permission under subsection (7) is not a legislative instrument.

**279-35 Court power to grant leave**

- (1) A person who is disqualified from managing Aboriginal and Torres Strait Islander corporations may apply to the Court for leave to manage:
- (a) Aboriginal and Torres Strait Islander corporations; or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation; or
  - (c) a particular Aboriginal and Torres Strait Islander corporation.
- (2) Subsection (1) does not apply if the person:
- (a) was disqualified by the Registrar under section 279-30; or
  - (b) was disqualified under subsection 279-5(5) because ASIC disqualified the person from managing corporations under section 206F of the Corporations Act.
- (3) The person must lodge a notice with the Registrar at least 21 days before commencing the proceedings.

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- (4) The order granting leave may be expressed to be subject to exceptions and conditions determined by the Court.

Note: If the Court grants the person leave to manage the corporation, the person may be appointed as a director (see subsection 246-1(2)) or secretary (see subsection 257-10(2)) of the corporation.

- (5) The person must lodge with the Registrar a copy of any order granting leave within 14 days after the order is made.
- (6) On application by the Registrar, the Court may revoke the leave. The order revoking leave does not take effect until it is served on the person.

## **Part 6-6—Member approval needed for related party benefit**

### **Division 284—Need for member approval**

#### **284-1 Need for member approval for financial benefit**

- (1) For an Aboriginal and Torres Strait Islander corporation, or an entity that the corporation controls, to give a financial benefit to a related party of the corporation:
  - (a) the corporation or entity must:
    - (i) obtain the approval of the corporation's members in the way set out in Division 290; and
    - (ii) give the benefit within 15 months after the approval; or
  - (b) the giving of the benefit must fall within an exception set out in Division 287.

Note: Section 293-1 defines *related party*, section 700-1 defines *entity*, section 689-25 defines *control* and section 293-5 affects the meaning of *giving a financial benefit*.

- (2) If:
  - (a) the giving of the benefit is required by a contract; and
  - (b) the making of the contract was approved in accordance with subparagraph (1)(a)(i) as a financial benefit given to the related party; and
  - (c) the contract was made:
    - (i) within 15 months after that approval; or
    - (ii) before that approval, if the contract was conditional on the approval being obtained;

member approval for the giving of the benefit is taken to have been given and the benefit need not be given within the 15 months.

#### **284-5 Consequences of breach**

- (1) If the corporation or entity contravenes section 284-1:

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- (a) the contravention does not affect the validity of any contract or transaction connected with the giving of the benefit; and
- (b) the corporation or entity does not commit an offence.

Note: A Court may order an injunction to stop the corporation or entity giving the benefit to the related party (see section 576-25).

- (2) A person contravenes this subsection if they are involved in a contravention of section 284-1 by a corporation or entity.

Note 1: This subsection is a civil penalty provision (see section 386-1).

Note 2: Section 694-55 defines *involved in*.

- (3) A person commits an offence if they are involved in a contravention of section 284-1 by a corporation or entity and the involvement is dishonest.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

**284-10 Exemptions**

An application may be made to exempt an Aboriginal and Torres Strait Islander corporation, or the directors of the corporation, from the requirements of this Part (see section 310-5).



## **Division 287—Exceptions to the requirement for member approval**

### **287-1 Remuneration and reimbursement for officer or employee**

*Benefits that are reasonable remuneration to employees*

- (1) Member approval is not needed to give a financial benefit if:
  - (a) the benefit is remuneration to a related party as an employee of the following:
    - (i) the corporation;
    - (ii) an entity that the corporation controls;
    - (iii) an entity that controls the corporation;
    - (iv) an entity that is controlled by an entity that controls the corporation; and
  - (b) to give the remuneration would be reasonable given:
    - (i) the circumstances of the corporation or entity giving the remuneration; and
    - (ii) the related party's circumstances (including the responsibilities involved in the employment, the employee's experience and performance record and the employee's length of service).

*Remuneration of officers*

- (2) If an Aboriginal and Torres Strait Islander corporation's constitution provides for the remuneration of officers, member approval is not needed to give a financial benefit if:
  - (a) the benefit is remuneration to a related party as a director or officer of the following:
    - (i) the corporation;
    - (ii) an entity that the corporation controls;
    - (iii) an entity that controls the corporation;
    - (iv) an entity that is controlled by an entity that controls the corporation; and
  - (b) to give the remuneration would be reasonable given:

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- (i) the circumstances of the corporation or entity giving the remuneration; and
- (ii) the related party's circumstances (including the responsibilities involved in the office, the officer's experience and performance record and the officer's length of service).

*Benefits that are payments of expenses incurred*

- (3) Member approval is not needed to give a financial benefit if:
  - (a) the benefit is payment of expenses incurred or to be incurred, or reimbursement for expenses incurred, by a related party in performing duties as an officer or employee of the following:
    - (i) the corporation;
    - (ii) an entity that the corporation controls;
    - (iii) an entity that controls the corporation;
    - (iv) an entity that is controlled by an entity that controls the corporation; and
  - (b) to give the benefit would be reasonable in the circumstances of the corporation or entity giving the remuneration.
- (4) For the purposes of this section:
  - (a) a contribution made by an Aboriginal and Torres Strait Islander corporation or related body corporate to a fund for the purpose of making provision for, or obtaining, superannuation benefits for an officer of the corporation or related body corporate, or for dependants of an officer of the corporation or related body corporate, is remuneration provided by the body to the officer of the body; and
  - (b) a financial benefit given to a person because of the person ceasing to hold an office or employment as an officer or employee of a body corporate is remuneration paid or provided to the person in a capacity as an officer of the body.

**287-5 Benefit to or by closely-held subsidiary**

- (1) Member approval is not needed to give a financial benefit if the benefit is given:

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- (a) by a body corporate to a closely-held subsidiary of the body;  
or
  - (b) by a closely-held subsidiary of a body corporate to the body  
or an entity it controls.
- (2) For the purposes of this section, a body corporate is a ***closely-held subsidiary*** of another body corporate if, and only if, no member of the first-mentioned body is a person other than:
- (a) the other body; or
  - (b) a nominee of the other body; or
  - (c) a body corporate that is a closely-held subsidiary of the other  
body because of any other application or applications of this  
subsection; or
  - (d) a nominee of a body referred to in paragraph (c).
- (3) For the purposes of subsection (2), disregard shares that are not  
voting shares.

**287-10 Benefits to members that do not discriminate unfairly**

Member approval is not needed to give a financial benefit if:

- (a) the benefit is given to the related party in the related party's  
capacity as a member of the corporation; and
- (b) giving the benefit does not discriminate unfairly against the  
other members of the corporation.

**287-12 Benefits given to comply with Native Title legislation  
obligations**

Member approval is not needed to give a financial benefit if the  
benefit is given to the related party to comply with a Native Title  
legislation obligation.

**287-15 Court order**

Member approval is not needed to give a financial benefit under an  
order of a court.

## **Division 290—Procedure for obtaining member approval**

### **290-1 Resolution may specify matters by class or kind**

A resolution under this Division may specify anything either in particular or by reference to class or kind.

### **290-5 Corporation must lodge material that will be put to members with the Registrar**

- (1) At least 14 days before the notice convening the relevant meeting is given, the Aboriginal and Torres Strait Islander corporation must lodge:
  - (a) a proposed notice of meeting setting out the text of the proposed resolution; and
  - (b) a proposed explanatory statement satisfying section 290-10; and
  - (c) any other document that is proposed to accompany the notice convening the meeting and that relates to the proposed resolution; and
  - (d) any other document that any of the following proposes to give to members of the corporation before or at the meeting:
    - (i) the corporation;
    - (ii) a related party of the corporation to whom the proposed resolution would permit a financial benefit to be given;
    - (iii) an associate of the corporation or of such a related party;and can reasonably be expected to be material to a member in deciding how to vote on the proposed resolution.

Penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) If, when the notice convening the meeting is given, the Registrar:

- (a) has approved in writing a period of less than 14 days for the purposes of subsection (1); and
  - (b) has not revoked the approval by written notice to the corporation;
- subsection (1) applies as if the reference to 14 days were a reference to the approved period.
- (4) An approval under subsection (3) is not a legislative instrument.
  - (5) The Registrar may give and revoke approvals for the purposes of subsection (3).

### **290-10 Requirements for explanatory statement to members**

- (1) The proposed explanatory statement lodged under section 290-5 must be in writing and set out:
  - (a) the related parties to whom the proposed resolution would permit financial benefits to be given; and
  - (b) the nature of the financial benefits; and
  - (c) in relation to each director of the corporation:
    - (i) if the director wanted to make a recommendation to members about the proposed resolution—the recommendation and his or her reasons for it; or
    - (ii) if not—why not; or
    - (iii) if the director was not available to consider the proposed resolution—why not; and
  - (d) in relation to each such director:
    - (i) whether the director had an interest in the outcome of the proposed resolution; and
    - (ii) if so—what it was; and
  - (e) all other information that:
    - (i) is reasonably required by members in order to decide whether or not it is in the corporation's interests to pass the proposed resolution; and
    - (ii) is known to the corporation or to any of its directors.
- (2) An example of the kind of information referred to in paragraph (1)(e) is information about what, from an economic and commercial point of view, are the true potential costs and

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detriments of, or resulting from, giving financial benefits as permitted by the proposed resolution, including (without limitation):

- (a) opportunity costs; and
- (b) taxation consequences (such as liability to fringe benefits tax); and
- (c) benefits forgone by whoever would give the benefits.

Note: Sections 265-1 and 265-5 require an officer of a corporation to act honestly and to exercise care and diligence. These duties extend to preparing an explanatory statement under this section. Section 561-5 creates offences where false and misleading material relating to a corporation's affairs is made available or furnished to members.

**290-15 Registrar may comment on proposed resolution**

- (1) Within 14 days after the corporation lodges documents under section 290-5, the Registrar may give to the corporation written comments on those documents (other than comments about whether the proposed resolution is in the corporation's best interests).
- (2) Comments under subsection (1) are not legislative instruments.
- (3) The Registrar must keep a copy of the written comments it gives to a corporation under subsection (1) and sections 421-1 and 421-5 apply to the copy as if it were a document lodged with the Registrar.
- (4) The fact that the Registrar has given particular comments, or has declined to give comments, under subsection (1) does not in any way affect the performance or exercise of any of the Registrar's functions and powers.

**290-20 Requirements for notice of meeting**

- (1) The notice convening the meeting:
  - (a) must be the same, in all material respects, as the proposed notice lodged under section 290-5; and
  - (b) must be accompanied by an explanatory statement that is the same, in all material respects, as the proposed explanatory statement lodged under that section; and

- (c) must be accompanied by a document that is, or documents that are, the same, in all material respects, as the document or documents (if any) lodged under paragraph 290-5(1)(c); and
- (d) if the Registrar has given to the corporation, under section 290-15, comments on the documents lodged under section 290-5—must be accompanied by a copy of those comments; and
- (e) must not be accompanied by any other documents.

Penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **290-25 Other material put to members**

- (1) Each document (if any) that:
- (a) did not accompany the notice convening the meeting; and
  - (b) was given to members of the corporation before or at the meeting by:
    - (i) the corporation; or
    - (ii) a related party of the corporation to whom the proposed resolution would permit a financial benefit to be given; or
    - (iii) an associate of the corporation or of such a related party; and
  - (c) can reasonably be expected to have been material to a member in deciding how to vote on the proposed resolution; must be the same, in all material respects, as a document lodged under paragraph 290-5(1)(d).

Penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**290-30 Proposed resolution cannot be varied**

The resolution must be the same as the proposed resolution set out in the proposed notice lodged under section 290-5.

**290-35 Voting by or on behalf of related party interested in proposed resolution**

- (1) At a general meeting, a vote on a proposed resolution under this Division must not be cast (in any capacity) by or on behalf of:
  - (a) a related party of the corporation to whom the resolution would permit a financial benefit to be given; or
  - (b) an associate of such a related party.
- (2) Subsection (1) does not prevent the casting of a vote if:
  - (a) it is cast by a person as a proxy appointed by writing that specifies how the proxy is to vote on the proposed resolution; and
  - (b) it is not cast on behalf of a related party or associate of a kind referred to in subsection (1).
- (3) The regulations may prescribe cases where subsection (1) does not apply.
- (4) The Registrar may by writing declare that:
  - (a) subsection (1) does not apply to a specified proposed resolution; or
  - (b) subsection (1) does not prevent the casting of a vote, on a specified proposed resolution, by a specified entity, or on behalf of a specified entity;but may only do so if satisfied that the declaration will not cause unfair prejudice to the interests of any member of the corporation.
- (5) A declaration in force under subsection (4) has effect accordingly.
- (6) A declaration under subsection (4) is not a legislative instrument.
- (7) If a vote is cast in contravention of subsection (1), the related party or associate, as the case may be, contravenes this subsection, whether or not the proposed resolution is passed.



Penalty: 200 penalty units or imprisonment for 5 years, or both.

- (8) For the purposes of this section, a vote is cast on behalf of an entity if, and only if, it is cast:
- (a) as proxy for the entity; or
  - (b) otherwise on behalf of the entity; or
  - (c) in respect of a share in respect of which the entity has:
    - (i) power to vote; or
    - (ii) power to exercise, or control the exercise of, a right to vote.
- (9) Subject to subsection 290-40(1), a contravention of this section does not affect the validity of a resolution.
- (10) This section has effect despite:
- (a) anything else in:
    - (i) this Act; or
    - (ii) any other law (including the general law) of a State or Territory; or
  - (b) anything in a body corporate's constitution.

#### **290-40 Voting on the resolution**

- (1) If any votes on the resolution are cast in contravention of subsection 290-35(1), it must be the case that the resolution would still be passed even if those votes were disregarded.
- (2) If a poll was duly demanded on the question that the resolution be passed, subsections (3) and (4) apply in relation to voting on the poll.
- (3) In relation to each member of the corporation who voted on the resolution in person, the corporation must record in writing:
- (a) the member's name; and
  - (b) how many votes the member cast for the resolution and how many against.

Penalty: 5 penalty units.

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- (4) In relation to each member of the corporation who voted on the resolution by proxy, or by a representative authorised under section 201-110, the corporation must record in writing:
- (a) the member's name; and
  - (b) in relation to each person who voted as proxy, or as such a representative, for the member:
    - (i) the person's name; and
    - (ii) how many votes the person cast on the resolution as proxy, or as such a representative, for the member; and
    - (iii) how many of those votes the person cast for the resolution and how many against.

Penalty: 5 penalty units.

- (5) For 7 years after the day when a resolution under this Division is passed, the corporation must retain the records it made under this section in relation to the resolution.

Penalty: 5 penalty units.

- (6) An offence against subsection (3), (4) or (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**290-45 Notice of resolution to be lodged**

The corporation must lodge a notice setting out the text of the resolution within 28 days after the resolution is passed.

**290-50 Declaration by court of substantial compliance**

- (1) The Court may declare that the conditions provided for in this Division have been satisfied if it finds that they have been substantially satisfied.
- (2) A declaration may be made only on the application of an interested person.

## **Division 293—Related parties and financial benefits**

### **293-1 Related parties**

#### *Controlling entities*

- (1) An entity that controls an Aboriginal and Torres Strait Islander corporation is a **related party** of the corporation.

#### *Directors and their spouses*

- (2) The following persons are **related parties** of an Aboriginal and Torres Strait Islander corporation:
  - (a) directors of the corporation;
  - (b) directors (if any) of an entity that controls the corporation;
  - (c) if the corporation is controlled by an entity that is not a body corporate—each of the persons making up the controlling entity;
  - (d) spouses and de facto spouses of the persons referred to in paragraphs (a), (b) and (c).

#### *Relatives of directors and spouses*

- (3) The following relatives of persons referred to in subsection (2) are **related parties** of the Aboriginal and Torres Strait Islander corporation:
  - (a) parents;
  - (b) children.

#### *Entities controlled by other related parties*

- (4) An entity controlled by a related party referred to in subsection (1), (2) or (3) is a **related party** of the Aboriginal and Torres Strait Islander corporation unless the entity is also controlled by the corporation.

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*Related party in previous 6 months*

- (5) An entity is a **related party** of an Aboriginal and Torres Strait Islander corporation at a particular time if the entity was a related party of the corporation of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.

*Entity has reasonable grounds to believe it will become related party in future*

- (6) An entity is a **related party** of an Aboriginal and Torres Strait Islander corporation at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the corporation of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.

*Acting in concert with related party*

- (7) An entity is a **related party** of an Aboriginal and Torres Strait Islander corporation if the entity acts in concert with a related party of the corporation on the understanding that the related party will receive a financial benefit if the corporation gives the entity a financial benefit.

**293-5 Giving a financial benefit**

- (1) In determining what constitutes **giving a financial benefit**:
- (a) give a broad interpretation to financial benefits being given, even if criminal or civil penalties may be involved; and
  - (b) the economic and commercial substance of conduct is to prevail over its legal form; and
  - (c) disregard any consideration that is or may be given for the benefit, even if the consideration is adequate.
- (2) **Giving a financial benefit** includes the following:
- (a) giving a financial benefit indirectly, for example, through 1 or more interposed entities;
  - (b) giving a financial benefit by making an informal agreement, oral agreement or an agreement that has no binding force;

- (c) giving a financial benefit that does not involve paying money (for example by conferring a financial advantage).
- (3) The following are examples of *giving a financial benefit* to a related party:
  - (a) giving or providing the related party finance or property;
  - (b) buying an asset from or selling an asset to the related party;
  - (c) leasing an asset from or to the related party;
  - (d) supplying services to or receiving services from the related party;
  - (e) issuing securities or granting an option to the related party;
  - (f) taking up or releasing an obligation of the related party.

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**Part 6-6** Member approval needed for related party benefit

**Division 296** Interaction with other rules

Section 296-1

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**Division 296—Interaction with other rules**

**296-1 General duties still apply**

A director is not relieved from any of his or her duties under this Act (including sections 265-1 and 265-25), or his or her fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision of this Part or is approved by a resolution of members under a provision of this Part.

## **Part 6-7—Public information about directors, secretaries and contact persons**

### **Division 301—Introduction**

#### **301-1 What this Part is about**

This Part deals with the information that an Aboriginal and Torres Strait Islander corporation is required to lodge with the Registrar concerning its officers and contact person (if any).

This information is entered on the Register of Aboriginal and Torres Strait Islander Corporations and is publicly available.

## **Division 304—Information to be provided**

### **304-1 Director, alternate director, secretary or contact person may notify the Registrar of resignation or retirement**

- (1) If a director, alternate director, secretary or contact person of an Aboriginal and Torres Strait Islander corporation retires or resigns, he or she may give the Registrar written notice of the retirement or resignation.
- (2) To be effective, a notice of resignation must be accompanied by a copy of the letter of resignation given to the corporation.
- (3) Nothing in this section affects the corporation's obligations to notify the Registrar of the resignation or retirement.

### **304-5 Notice of name and address of directors and secretaries to the Registrar**

#### *New directors or secretaries*

- (1) An Aboriginal and Torres Strait Islander corporation must lodge with the Registrar a notice of the personal details of a director, secretary or contact person within 28 days after he or she is appointed.

Note 1: If a person becomes a director, secretary or contact person under section 42-10 there is no appointment and no notice is required under this subsection.

Note 2: If a person who was appointed as an alternate director becomes a director under the terms of his or her appointment as an alternate director, there is no appointment as a director and no notice is required under this subsection.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply if a contact person is appointed by the Registrar under section 257-25.



*New alternate directors*

- (3) An Aboriginal and Torres Strait Islander corporation must lodge with the Registrar a notice of:
- (a) the personal details of a person who is appointed as an alternate director; and
  - (b) the terms of his or her appointment (including terms about when the alternate director is to act as a director);
- within 28 days after his or her appointment as an alternate director.

Penalty: 10 penalty units.

*Personal details*

- (4) The personal details of a director, alternate director, secretary or contact person are:
- (a) his or her given and family names; and
  - (b) all of his or her former given and family names; and
  - (d) his or her date and place of birth; and
  - (e) his or her address.

Note: For *address* see section 304-15.

*Changes in details*

- (5) The corporation must lodge with the Registrar notice of any change in the personal details of a director, alternate director, secretary or contact person within 28 days after the change.

Penalty: 10 penalty units.

*Notice required if person stops being a director etc.*

- (6) If a person stops being a director, alternate director, secretary or contact person of the corporation, the corporation must lodge with the Registrar notice of the fact within 28 days.

Penalty: 10 penalty units.

- (7) Subsection (6) does not apply if the person was an alternate director who stopped being a director in accordance with the terms of his or her appointment as an alternate director.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) An offence against subsection (1), (3), (5) or (6) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: See also section 265-40 for offences committed by the secretary of an Aboriginal and Torres Strait Islander corporation.

**304-10 Director, alternate director, secretary and contact person must give information to corporation**

- (1) A director, alternate director, secretary or contact person must give the corporation any information the corporation needs to comply with subsection 304-5(1) or (3) within 14 days after his or her initial appointment unless he or she has previously given the information to the corporation.

Penalty: 10 penalty units.

- (2) A director, alternate director, secretary or contact person must give the corporation any information the corporation needs to comply with subsection 304-5(5) within 14 days after any change in his or her personal details.

Penalty: 10 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**304-15 Address for officers**

*Address is normally residential address*

- (1) A person's address for the purposes of an application under section 21-1 or notice under subsection 304-5(1), (3) or (5) must be his or her usual residential address unless he or she is entitled to have an alternative address substituted for his or her usual residential address under subsection (2).

*Entitlement to have alternative address*

- (2) The person is entitled to have an alternative address substituted for his or her usual residential address if:
- (a) his or her name, but not his or her residential address, is on an electoral roll under the *Commonwealth Electoral Act 1918* because of section 104 of that Act; or
  - (b) his or her name is not on an electoral roll under that Act and the Registrar determines, in writing, that including his or her residential address in the notice or application would put at risk his or her personal safety or the personal safety of members of his or her family.

This alternative address must be in Australia and be one at which documents can be served on the person. At any particular time, a person is entitled to have only 1 alternative address under this section.

- (3) A determination under paragraph (2)(b) is not a legislative instrument.
- (4) A person who takes advantage of subsection (2) must:
- (a) before or at the same time as the alternative address is first included in an application or notice, lodge with the Registrar notice of the person's usual residential address; and
  - (b) lodge with the Registrar notice of any change in the person's usual residential address within 14 days after the change.

Penalty: 5 penalty units.

- (5) If a court gives a judgment for payment of a sum of money against a person who is taking advantage of subsection (2), the Registrar may give details of the person's usual residential address to an officer of the court for the purposes of enforcing the judgment debt.
- (6) An offence against subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Division 307—Registrar may ask for information**

### **307-1 Registrar's power to ask for information about person's position as director, secretary or contact person**

- (1) The Registrar may ask a person, in writing, to inform the Registrar:
  - (a) whether the person is a director, secretary or contact person of a particular Aboriginal and Torres Strait Islander corporation; and
  - (b) if the person is no longer a director, secretary or contact person of the corporation—the date on which the person stopped being a director, secretary or contact person.
- (2) The person must give the information to the Registrar in writing by the date specified in the request.

Penalty: 10 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A request under subsection (1) is not a legislative instrument.

## **Part 6-8—Exemption from operation of certain provisions of this Chapter**

### **310-1 What this Part is about**

The Registrar may exempt an Aboriginal and Torres Strait Islander corporation from certain provisions of this Chapter. The Registrar may do so on application or on his or her own volition.

### **310-5 Exemption from certain provisions of this Chapter**

- (1) On an application made in accordance with subsection (3) in relation to an Aboriginal and Torres Strait Islander corporation, the Registrar may make a determination in writing exempting any of the following from the exemptible provisions of this Chapter specified in the Registrar's determination:
  - (a) the corporation itself;
  - (b) the directors of the corporation.

Note: For the criteria for making determinations under this section, see section 310-20.
- (2) For the purposes of this section, the *exemptible provisions* of this Chapter are:
  - (a) section 243-5; and
  - (b) subsection 246-25(2); and
  - (c) the provisions of Part 6-6.
- (3) The application must:
  - (a) specify the exemptible provisions in relation to which the exemption is being sought; and
  - (b) be authorised by a resolution of the directors; and
  - (c) be in writing and signed by a director; and
  - (d) be lodged with the Registrar.
- (4) The determination may:

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- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (5) The Registrar may, in writing, revoke, vary or suspend the determination.
- (6) The Registrar must give the applicant written notice within 28 days of the making, revocation, variation or suspension of the determination.
- (7) A determination under subsection (1), or a revocation, variation or suspension under subsection (5), is not a legislative instrument.

**310-10 Registrar may make determination even if application is incomplete**

Despite subsection 310-5(3), the Registrar may make a determination even if the application does not specify the provisions in relation to which the exemption is being sought.

**310-15 Registrar's power to make determinations**

- (1) The Registrar may determine in writing that:
- (a) a specified Aboriginal and Torres Strait Islander corporation or a specified class of Aboriginal and Torres Strait Islander corporation; and
  - (b) the directors of a specified Aboriginal and Torres Strait Islander corporation or of a specified class of Aboriginal and Torres Strait Islander corporation (as the case may be);
- are exempted from the exemptible provisions of this Chapter specified in the Registrar's determination.

Note: For the criteria for making determinations under this section, see section 310-20.

- (2) For the purposes of this section, the *exemptible provisions* of this Chapter are:
- (a) section 243-5; and
  - (b) subsection 246-25(2); and
  - (c) the provisions of Part 6-6.

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- (3) The determination may:
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (4) The Registrar may, in writing, revoke, vary or suspend the determination.
- (5) Notice of the making, revocation, variation or suspension of a determination in relation to a specified class of Aboriginal and Torres Strait Islander corporation, or the directors of a specified class of Aboriginal and Torres Strait Islander corporation, must be published in the *Gazette*.
- (6) A determination under subsection (1) in relation to:
  - (a) a specified class of Aboriginal and Torres Strait Islander corporation; or
  - (b) the directors of a specified class of Aboriginal and Torres Strait Islander corporation;is a legislative instrument.
- (7) A determination under subsection (1) in relation to:
  - (a) a specified Aboriginal and Torres Strait Islander corporation; or
  - (b) the directors of a specified Aboriginal and Torres Strait Islander corporation;is not a legislative instrument.

**310-20 Criteria for determinations**

- (1) In making a determination under section 310-5 or 310-15, the Registrar must be satisfied that the requirements of the relevant exemptible provisions of this Chapter would:
  - (a) be inappropriate in the circumstances; or
  - (b) impose unreasonable burdens.

*Unreasonable burden*

- (2) In deciding for the purposes of subsection (1) if the relevant exemptible provisions impose an unreasonable burden on the corporation or corporations, the Registrar is to have regard to:

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- (a) the expected costs of complying with the obligations; and
- (b) the expected benefits of having the corporation or corporations comply with the obligations; and
- (c) any practical difficulties that the corporation or corporations face in complying effectively with the obligations; and
- (d) any other matters that the Registrar considers relevant.



## **Chapter 7—Record keeping, reporting requirements and books**

### **Part 7-1—Introduction**

#### **Division 317—Introduction**

##### **317-1 What this Chapter is about**

An Aboriginal and Torres Strait Islander corporation must keep particular records (see Part 7-2).

An Aboriginal and Torres Strait Islander corporation has to prepare certain reports and lodge them with the Registrar. Division 327 gives an overview of these reporting requirements.

The Registrar may, under Part 7-4, make determinations relieving an Aboriginal and Torres Strait Islander corporation, or a class of Aboriginal and Torres Strait Islander corporation, from obligations imposed by Part 7-2 or 7-3 or by regulations made for the purposes of Part 7-2 or 7-3. These determinations can also relieve officers and auditors from obligations imposed by this Chapter.

The regulations may modify the operation of Parts 7-2 and 7-3 (see Part 7-7).

Part 7-8 deals with the books kept by an Aboriginal and Torres Strait Islander corporation.

## **Part 7-2—Record keeping requirements**

### **Division 322—Record keeping requirements**

#### **322-1 What this Part is about**

This Part sets out:

- the records that an Aboriginal and Torres Strait Islander corporation is required to keep (under Part 4-5 the corporation is also required to keep a register of members and a register of former members); and
- how the records are required to be kept.

It also deals with directors' access to the records (see section 322-25). Other persons' access to records is dealt with in the following provisions:

- a member may apply to the Court for an order to inspect the records (see section 175-1);
- the auditor has a right of access to the records (see section 339-85);
- a controller of an Aboriginal and Torres Strait Islander corporation's property (for example, a receiver or receiver and manager) has a right of access to the records (see section 431 of the Corporations Act (as applied by section 516-1 of this Act));
- the Registrar has certain powers in relation to the records under Chapter 10.

**322-5 Obligation to keep copy of constitution and records about officers, contact person, etc.**

An Aboriginal and Torres Strait Islander corporation must keep:

- (a) an up-to-date copy of its constitution (incorporating changes to the constitution); and
- (b) written records relating to:
  - (i) the names and addresses of the corporation's current officers and secretary or contact person (as the case may be); and
  - (ii) the corporation's registered office (if any); and
  - (iii) the corporation's document access address (if any); and
  - (iv) such other matters about the corporation as are set out in the regulations.

Note: An Aboriginal and Torres Strait Islander corporation is also required to maintain a register of members and a register of former members under Part 4-5.

**322-10 Obligation to keep financial records**

- (1) An Aboriginal and Torres Strait Islander corporation must keep written financial records that:
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) would enable true and fair financial reports to be prepared and audited.

The obligation to keep financial records of transactions extends to transactions undertaken as trustee.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Note: Section 700-1 defines *financial records*.

*Period for which records must be retained*

- (2) The financial records must be retained for 7 years after the transactions covered by the records are completed.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

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*Strict liability offences*

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**322-15 Physical format**

- (1) If the records that an Aboriginal and Torres Strait Islander corporation is required to keep under this Division are kept in electronic form, the records must be convertible into hard copy. Hard copy must be made available, within a reasonable time, to a person who is entitled to inspect the records.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**322-20 Place where records are kept**

- (1) If an Aboriginal and Torres Strait Islander corporation is registered as a large corporation, the records that the corporation is required to keep under this Division must be kept at the corporation's registered office.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (2) If an Aboriginal and Torres Strait Islander corporation is registered as a small or medium corporation, the records that the corporation is required to keep under this Division must be kept at the corporation's document access address.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **322-25 Director access**

#### *Personal access*

- (1) A director of an Aboriginal and Torres Strait Islander corporation has a right of access to the records that the corporation is required to keep under this Division.

Note: See also section 376-1.

#### *Court order for inspection on director's behalf*

- (2) On application by a director, the Court may authorise a person to inspect the records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Court orders otherwise.
- (4) The Court may make any other orders it considers appropriate, including either or both of the following:
  - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
  - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subsection (3).

## **Part 7-3—Reporting requirements**

### **Division 327—Overview of reporting obligations**

#### **327-1 Reports that an Aboriginal and Torres Strait Islander corporation must prepare and lodge**

- (1) The reports that an Aboriginal and Torres Strait Islander corporation has to prepare are:
  - (a) a general report in relation to each financial year (see Division 330); and
  - (b) any reports (which might include a financial report, or directors' report, for a financial year) that are required by the regulations (see Division 333); and
  - (c) any reports that are required by the Registrar (see Division 336).
- (2) All these reports must be lodged with the Registrar (see Division 348).
- (3) A financial report may need to be audited (see paragraphs 333-15(2)(a), 336-1(7)(a) and 336-5(7)(a)). If it does:
  - (a) Division 339 makes provision in relation to the conduct of the audit; and
  - (b) the auditor's report must be lodged with the Registrar.Subdivision 339-F allows regulations to be made in relation to the appointment and removal of auditors.
- (4) Financial reports, directors' reports and auditors' reports must be given to members on request (see Division 342).
- (5) Other reports that the corporation is required to prepare may also have to be given to members (see subsection 333-15(3) and paragraphs 336-1(6)(a) and 336-5(6)(a)).

## **Division 330—General report for each financial year**

### **330-1 Aboriginal and Torres Strait Islander corporation must prepare a general report each financial year**

An Aboriginal and Torres Strait Islander corporation must prepare a general report in respect of each financial year.

Note 1: The corporation may be exempted from this requirement under Part 7-4.

Note 2: Unless exempted, failure to lodge the general report with the Registrar is an offence (see section 330-10).

### **330-5 Contents of general report**

- (1) A general report must:
  - (a) set out the following details as at the end of the financial year:
    - (i) the names and addresses of each of the corporation's members;
    - (ii) the names and addresses of each of the corporation's directors;
    - (iii) the name and address of the corporation's secretary if the corporation is registered as a large corporation;
    - (iv) the name and address of the corporation's contact person if the corporation is registered as a small or medium corporation;
    - (v) the address of the corporation's registered office if the corporation is registered as a large corporation;
    - (vi) the address of the corporation's document access address if the corporation is registered as a small or medium corporation; and
  - (b) contain any other information required by the regulations; and
  - (c) comply with any further requirements imposed by the regulations.
- (2) Without limiting paragraph (1)(c), the regulations:

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- (a) may require that the general report be accompanied by a declaration by a particular officer, or officers, of the corporation; and
- (b) may require that a declaration in relation to the report be based on a resolution of the corporation's directors; and
- (c) may require the general report to be prepared in a particular manner.

**330-10 General report to be lodged with Registrar**

- (1) The corporation must lodge the general report with the Registrar.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Note: See also section 265-40 for offences committed by the secretary of an Aboriginal and Torres Strait Islander corporation.

- (2) The time for lodgment is:

- (a) within 3 months after the end of the financial year; or
- (b) such longer period as is prescribed by the regulations.

- (3) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



## **Division 333—Financial and other reports required by the regulations**

### **333-1 What this Division is about**

This Division deals with the financial reports, directors' reports and other reports that the regulations may require an Aboriginal and Torres Strait Islander corporation to prepare.

The Registrar may increase the reporting requirements in respect of an Aboriginal and Torres Strait Islander corporation or a class of Aboriginal and Torres Strait Islander corporation (see Division 336). This may be either by way of requiring an additional report or by way of imposing additional requirements in relation to a report that the regulations require the corporation or corporations to prepare.

The Registrar may exempt an Aboriginal and Torres Strait Islander corporation, or a class of Aboriginal and Torres Strait Islander corporation, from some or all of the reporting requirements (see Part 7-4).

### **333-5 Regulations may require financial reports, directors' reports and other reports to be prepared**

- (1) The regulations may require reports to be prepared by:
  - (a) a specified Aboriginal and Torres Strait Islander corporation;  
or
  - (b) a specified class of Aboriginal and Torres Strait Islander corporation.
- (2) Regulations made for the purposes of subsection (1) may require an Aboriginal and Torres Strait Islander corporation, or each Aboriginal and Torres Strait Islander corporation included in a class of Aboriginal and Torres Strait Islander corporation, to prepare a report:
  - (a) for a particular period or periods; or

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(b) in relation to circumstances as they exist at a particular date or dates.

This subsection does not limit subsection (1).

(3) Regulations made for the purposes of subsection (1) may require an Aboriginal and Torres Strait Islander corporation, or each Aboriginal and Torres Strait Islander corporation included in a class of Aboriginal and Torres Strait Islander corporation, to prepare either or both of the following:

- (a) a financial report for a financial year;
- (b) a directors' report for a financial year.

This subsection does not limit subsection (1).

*First financial year*

(4) Subject to subsection (4A), the first **financial year** for an Aboriginal and Torres Strait Islander corporation starts on the day on which it is registered and ends:

- (a) on the 30 June next following that day if the corporation is registered between 1 July and 31 December; and
- (b) on the second 30 June next following that day if the corporation is registered between 1 January and 30 June.

(4A) However, if the corporation is registered under Part 2-3 as a result of an application made under Division 22, the first **financial year** for the corporation is the period that:

- (a) starts on:
  - (i) the 1 June last preceding the day on which it is registered; or
  - (ii) if the corporation came into existence after that 1 June—the day on which the corporation came into existence; and
- (b) ends on the 30 June next following the day on which it is registered.

*Financial year after the first*

(5) Subsequent **financial years** must:

- (a) start at the end of the previous financial year; and

(b) be 12 months long.

### **333-10 Contents of reports**

#### *General*

- (1) A section 333-5 report must contain the information required by the regulations.
- (2) Regulations made for the purposes of subsection (1) may impose a requirement by applying, adopting or incorporating (with or without modification) provisions of the accounting standards as in force from time to time. This subsection does not limit subsection (1).

#### *Financial reports*

- (3) If a section 333-5 report is a financial report for a financial year, regulations made for the purposes of subsection (1) may impose one or more of the following requirements:
  - (a) a requirement that the financial report is to consist of the financial statements, financial notes and declarations specified in:
    - (i) the regulations; or
    - (ii) the accounting standards as in force from time to time (with the modifications (if any) specified in the regulations);
  - (b) a requirement that the financial report deal with the financial affairs of another corporation or entity or a consolidated entity of which the corporation is a member;
  - (c) a requirement that the financial report give a true and fair view of:
    - (i) the financial position and performance of the corporation; and
    - (ii) the financial position and performance of any other corporation or entity whose financial affairs are required to be reported on in the financial report or a consolidated entity of which the corporation is a member.

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This subsection does not limit subsection (1).

**333-15 Other requirements in relation to report**

*Manner of preparing report*

- (1) The regulations may require a section 333-5 report to be prepared in the manner required by the regulations.

*Manner of preparing financial report*

- (2) If a section 333-5 report is a financial report, regulations made for the purposes of subsection (1) of this section may do one or more of the following:
- (a) require that the financial report, or a part of it, be audited;
  - (b) require that the auditor be:
    - (i) an individual auditor who has particular qualifications or experience; or
    - (ii) an audit firm that has a member or members who have particular qualifications or experience; or
    - (iii) an authorised audit company;
  - (c) require that a person may only participate in the conduct of the audit in a particular capacity if the person has the qualifications or experience specified in the regulations;
  - (d) require that the audit of the financial report, or a part of it, be conducted in accordance with the auditing standards;
  - (e) require that the financial report, or a part of it, must be prepared in compliance with the accounting standards;
  - (f) require that the corporation's directors make a declaration of the kind specified in the regulations in respect of the financial report;
  - (g) require that a declaration by the directors in relation to the financial report must only be made after each person who performs a particular function in relation to the corporation has given the directors a declaration of a kind specified in the regulations in respect of the financial report;
  - (h) require that specified officers of the corporation sign the financial report.

This subsection does not limit subsection (1).

Note: Paragraph (a)—Division 339 deals with the audit of a financial report.

*Giving report to members*

- (3) If a section 333-5 report is not a financial report or a directors' report for a financial year, the regulations may:
- (a) require the corporation to give a copy of the report to its members (whether generally or on request); and
  - (b) specify the time within which, and the manner in which, the report is to be given to the members.

Note: An Aboriginal and Torres Strait Islander corporation is required to provide copies of a financial report or a directors' report to members on request under Division 342.

**333-20 Aboriginal and Torres Strait Islander corporation to obtain audit report if audit required**

If:

- (a) a section 333-5 report in relation to an Aboriginal and Torres Strait Islander corporation is a financial report; and
  - (b) the corporation is required by:
    - (i) regulations made for the purposes of section 333-15; or
    - (ii) a determination by the Registrar under section 336-1 or 336-5;to have the report, or a part of the report, audited;
- the corporation must obtain an auditor's report in relation to the report or that part of the report.

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## **Division 336—Registrar may increase reporting requirements**

### **336-1 Registrar may require additional report, or otherwise increase reporting requirements, for particular corporation**

*Additional report or additional reporting requirements*

- (1) The Registrar may:
  - (a) determine, in writing, that a particular Aboriginal and Torres Strait Islander corporation must prepare a report in addition to any general report or section 333-5 reports the corporation is required to prepare; or
  - (b) determine, in writing, that a particular Aboriginal and Torres Strait Islander corporation must:
    - (i) include particular additional information in a general report or section 333-5 report; or
    - (ii) meet particular additional requirements in relation to the manner in which a general report or section 333-5 report is to be prepared; or
    - (iii) provide a general report or section 333-5 report to its members (whether generally or on request); or
    - (iv) provide a general report or section 333-5 report to its members within the time, and in the manner, specified in the determination.

Note: See Part 7-5 for the criteria the Registrar must apply in deciding whether to make a determination under this subsection.

- (2) A determination under subsection (1) is not a legislative instrument.

*Additional reports*

- (3) A determination under paragraph (1)(a) must specify:
  - (a) the information to be included in the report; and
  - (b) any other requirements to be met in relation to the manner in which the report is prepared.

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- (4) A determination under paragraph (1)(a) may require the report to be prepared:
- (a) for a particular period or periods; or
  - (b) in relation to circumstances as they exist as at particular date or dates.

This subsection does not limit subsection (3).

- (5) The determination may require the report to be prepared for all periods of a particular kind that start or end on or after a date specified in the determination. This subsection does not limit subsection (3).

- (6) A determination under paragraph (1)(a) may:
- (a) specify that the report is to be provided to the corporation's members (whether generally or on request); and
  - (b) specify the time by which, and the manner in which, the report is to be provided to the corporation's members.

*Additional requirements for financial report*

- (7) If a section 333-5 report is a financial report, the Registrar may determine under paragraph (1)(b) that one or more of the following requirements must be met in relation to the report:
- (a) a requirement that the report, or a part of it, be audited;
  - (b) a requirement that the auditor be:
    - (i) an individual auditor who has particular qualifications or experience; or
    - (ii) an audit firm that has a member or members who have particular qualifications or experience; or
    - (iii) an authorised audit company;
  - (c) a requirement that a person may only participate in the conduct of the audit in a particular capacity if the person has the qualifications or experience specified in the regulations;
  - (d) a requirement that the audit of the report, or a part of it, be conducted in accordance with the auditing standards.

This subsection does not limit paragraph (1)(b).

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*Determination*

- (8) A determination under subsection (1) may be in respect of a past or future period but if it is in respect of a past period, the determination must be made no later than 6 years after the end of that period.
- (9) The Registrar may, in writing, revoke, vary or suspend a determination under subsection (1).
- (10) A revocation, variation or suspension under subsection (9) is not a legislative instrument.

*Notice of determination*

- (11) The Registrar must give the corporation written notice of the making, revocation, variation or suspension of the determination.

**336-5 Registrar may require additional reports, or otherwise increase reporting requirements, for class of corporation**

*Additional reports or additional reporting requirement*

- (1) The Registrar may:
  - (a) make a determination in writing requiring a particular class of Aboriginal and Torres Strait Islander corporation to prepare a report in addition to any general report or section 333-5 report the corporations are required to prepare; or
  - (b) make a determination in writing requiring a particular class of Aboriginal and Torres Strait Islander corporation to:
    - (i) include particular additional information in a general report or section 333-5 report; or
    - (ii) meet particular additional requirements in relation to the manner in which a general report or section 333-5 report is prepared; or
    - (iii) provide a general report or section 333-5 report to their members (whether generally or on request); or



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- (iv) provide a general report or section 333-5 report to their members within the time, and in the manner, specified in the determination.

Note: See Part 7-5 for the criteria the Registrar must apply in deciding whether to make a determination under this subsection.

- (2) A determination under subsection (1) is a legislative instrument.

*Additional reports*

- (3) A determination under paragraph (1)(a) must specify:
  - (a) the information to be included in the report; and
  - (b) any other requirements to be met in relation to the manner in which the report is prepared.
- (4) A determination under paragraph (1)(a) may require the report to be prepared:
  - (a) for a particular period or periods; or
  - (b) in relation to circumstances as they exist as at a particular date or dates.

This subsection does not limit subsection (3).
- (5) The determination may require the report to be prepared for all periods of a particular kind that start or end on or after a date specified in the determination. This subsection does not limit subsection (4).
- (6) A determination under paragraph (1)(a) may:
  - (a) specify that the report is to be provided to the corporations' members (whether generally or on request); and
  - (b) specify the time within which, and manner in which, the report is to be provided to the members.

*Additional requirements for financial report*

- (7) If the section 333-5 report is a financial report, the Registrar may determine under paragraph (1)(b) that one or more of the following requirements are to be met in relation to the report:
  - (a) a requirement that the financial report, or a part of it, be audited;

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- (b) a requirement that the auditor be:
  - (i) an individual auditor who has particular qualifications or experience; or
  - (ii) an audit firm that has a member or members who have particular qualifications or experience; or
  - (iii) an authorised audit company;
- (c) a requirement that a person may only participate in the conduct of the audit in a particular capacity if the person has the qualifications or experience specified in the regulations;
- (d) a requirement that the audit of the report, or a part of it, be conducted in accordance with the auditing standards.

This subsection does not limit paragraph (1)(b).

*Determinations*

- (8) A determination under subsection (1):
  - (a) may be expressed to be subject to conditions; and
  - (b) may be in respect of a past or future period but if it is in respect of a past period, the determination must be made no later than 6 years after the end of that period.
- (9) The Registrar may, in writing, revoke, vary or suspend a determination under subsection (1).

*Notice of determinations*

- (10) Notice of the making, revocation, variation or suspension of a determination under subsection (1) must be published in the *Gazette*.

## **Division 339—Audit of financial reports**

### **Subdivision 339-A—Introduction**

#### **339-1 What this Division is about**

An Aboriginal and Torres Strait Islander corporation may be required to have its financial report for a financial year audited (see subsections 333-15(1), 336-1(7) and 336-5(7)).

This Division deals with the conduct of the audit of the financial report and the preparation of the auditor's report in relation to the financial report.

The auditor's report must cover the matters set out in section 339-40.

Auditors are required to be independent of the corporations that they are auditing (see Subdivision 339-D). Auditors also have certain powers and duties (see Subdivision 339-E).

#### **339-5 Application of Division**

- (1) This Division applies if:
  - (a) an auditor undertakes an audit of a financial report, or a part of a financial report, of an Aboriginal and Torres Strait Islander corporation; and
  - (b) one of the following requires the report, or that part of the report, to be audited:
    - (i) this Act;
    - (ii) regulations made for the purposes of section 333-15;
    - (iii) a determination by the Registrar under section 336-1 or 336-5.
- (2) If only a part of the report is required to be audited, this Division applies as if references to the financial report were references to that part of the financial report.

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**339-10 When financial report required to comply with accounting standards**

A financial report is *required to comply with the accounting standards* if one of the following requires the report to comply with the accounting standards:

- (a) an applied provision of the Corporations Act;
- (b) regulations made for the purposes of section 333-15;
- (c) a determination by the Registrar under section 336-1 or 336-5.

**339-15 When audit required to be conducted in accordance with auditing standards**

An audit is *required to be conducted in accordance with the auditing standards* if one of the following requires the audit to be conducted in accordance with the auditing standards:

- (a) an applied provision of the Corporations Act;
- (b) regulations made for the purposes of section 333-15;
- (c) a determination by the Registrar under section 336-1 or 336-5.

**339-20 Lead and review auditors**

*Lead auditor*

- (1) If an audit firm or audit company conducts an audit of a financial report of an Aboriginal and Torres Strait Islander corporation, the *lead auditor* for the audit is the registered company auditor who is primarily responsible to the audit firm or the audit company for the conduct of the audit.

*Review auditor*

- (2) If an individual auditor, audit firm or audit company conducts an audit of a financial report of an Aboriginal and Torres Strait Islander corporation, the *review auditor* for the audit is the registered company auditor (if any) who is primarily responsible to

the individual auditor, the audit firm or the audit company for reviewing the conduct of the audit.

### **339-25 Professional members of the audit team**

If an individual auditor, audit firm or audit company conducts an audit of a financial report of an Aboriginal and Torres Strait Islander corporation, the *professional members of the audit team* are:

- (a) any registered company auditor who participates in the conduct of the audit; and
- (b) any other person who participates in the conduct of the audit and, in the course of doing so, exercises professional judgment in relation to the application of or compliance with:
  - (i) accounting standards; or
  - (ii) auditing standards; or
  - (iii) the provisions of this Act dealing with financial reporting and the conduct of audits; and
- (c) any other person who is in a position to directly influence the outcome of the audit because of the role they play in the design, planning, management, supervision or oversight of the audit.

### **Subdivision 339-B—Conduct of the audit**

#### **339-30 Auditor to form opinion**

The auditor of a financial report must form an opinion about:

- (a) whether the financial report is in accordance with:
  - (i) this Act; and
  - (ii) any applicable regulations made for the purposes of sections 333-10 and 333-15; and
  - (iii) any applicable determinations made by the Registrar under section 336-1 or 336-5; and
- (b) whether the auditor has been given all information, explanations and assistance necessary for the conduct of the audit; and

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- (c) whether the corporation has kept financial records sufficient to enable the financial report to be prepared and audited; and
- (d) whether the corporation has kept other records and registers as required by this Act; and
- (e) any other matter specified in the regulations.

**339-35 Auditor obligations in relation to auditing standards**

- (1) This section applies if the audit of a financial report is required to be conducted in accordance with the auditing standards.
- (2) If an individual auditor, or an audit company, conducts the audit of the financial report, the individual auditor or audit company must conduct the audit in accordance with the auditing standards.

Penalty: 50 penalty units.

- (3) If an audit firm, or an audit company, conducts the audit of the financial report, the lead auditor for the audit must ensure that the audit is conducted in accordance with the auditing standards.

Penalty: 50 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**339-40 Auditor's report**

- (1) The auditor of a financial report must prepare a report for the corporation's members on whether the auditor is of the opinion that the financial report is in accordance with:
  - (a) this Act; and
  - (b) any applicable regulations made for the purposes of sections 333-10 and 333-15; and
  - (c) any applicable determinations made by the Registrar under section 336-1 or 336-5.

If not of that opinion, the auditor's report must say why.

Penalty: 50 penalty units.

- (2) If:
- (a) the financial report is required to comply with the accounting standards; and
  - (b) the auditor is of the opinion that the financial report does not comply with an accounting standard;
- the auditor's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report. If it is not practicable to quantify the effect fully, the report must say why.
- Penalty: 50 penalty units.
- (3) The auditor's report must describe:
- (a) any defect or irregularity in the financial report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 339-30(b), (c) or (d).
- Penalty: 50 penalty units.
- (4) If the audit of the financial report is required to be conducted in accordance with some or all of the auditing standards, the auditor's report must include any statements or disclosures required by those auditing standards.
- Penalty: 50 penalty units.
- (5) The auditor's report must contain any other information required by the regulations.
- (6) The report must specify the date on which it is made.
- Penalty: 50 penalty units.
- (7) An offence against subsection (1), (3), (4) or (6) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **339-45 Other requirements in relation to auditor's report**

The auditor's report must be prepared in the manner required by the regulations.

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**339-50 Auditor's independence declaration**

*Application of section*

- (1) This section applies if:
- (a) section 339-75 applies in relation to the audit of a financial report of the Aboriginal and Torres Strait Islander corporation; or
  - (b) regulations made for the purposes of section 339-80 provide for auditor independence requirements to be met in relation to the audit of a financial report of the Aboriginal and Torres Strait Islander corporation.

*Contravention by individual auditor*

- (2) If the auditor is an individual auditor, the auditor must give the directors of the corporation either:
- (a) a written declaration that, to the best of the auditor's knowledge and belief, there have been:
    - (i) no contraventions of the auditor independence requirements of this Act in relation to the audit; and
    - (ii) no contraventions of any applicable code of professional conduct in relation to the audit; or
  - (b) a written declaration that, to the best of the individual auditor's knowledge and belief, the only contraventions of:
    - (i) the auditor independence requirements of this Act in relation to the audit; or
    - (ii) any applicable code of professional conduct in relation to the audit;are those contraventions the details of which are set out in the declaration.

Penalty: 10 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



*Contravention by lead auditor*

- (4) If the auditor is an audit firm or audit company, the lead auditor for the audit must give the directors of the corporation:
- (a) a written declaration that, to the best of the lead auditor's knowledge and belief, there have been:
    - (i) no contraventions of the auditor independence requirements of this Act in relation to the audit; and
    - (ii) no contraventions of any applicable code of professional conduct in relation to the audit; or
  - (b) a written declaration that, to the best of the lead auditor's knowledge and belief, the only contraventions of:
    - (i) the auditor independence requirements of this Act in relation to the audit; or
    - (ii) any applicable code of professional conduct in relation to the audit;are those contraventions details of which are set out in the declaration.

Penalty: 10 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) The declaration under subsection (2) or (4):
- (a) must be given when the audit report is given to the directors of the corporation; and
  - (b) must be signed by the person making the declaration.

*Self-incrimination*

- (7) An individual is not excused from giving a declaration under subsection (2) or (4) on the ground that giving the declaration might tend to incriminate the individual or expose the individual to a penalty.

*Use/derivative use indemnity*

- (8) However, neither:
- (a) the information included in the declaration; nor

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- (b) any information, document or thing obtained as a direct or indirect consequence of including the information in the declaration;

is admissible in evidence against the individual in any criminal proceedings, or in any proceedings that would expose the person to a penalty, other than:

- (c) proceedings for an offence against section 561-1 or 561-5 in relation to the declaration; or
- (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to the declaration.

**339-55 Audit working papers to be retained for 7 years**

*Application of section*

- (1) This section applies if the audit is required to be conducted in accordance with the auditing standards.

*Offence by individual auditor or audit company*

- (2) The auditor commits an offence if:
  - (a) the auditor is an individual auditor or an audit company; and
  - (b) the auditor does not retain all audit working papers prepared by or for, or considered or used by, the auditor in accordance with the requirements of the auditing standards until:
    - (i) the end of 7 years after the date of the audit report prepared in relation to the audit to which the audit working papers relate; or
    - (ii) an earlier date determined for the audit working papers by the Registrar under subsection (7).

Penalty: 50 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Offence by member of audit firm*

- (4) A person (the *defendant*) commits an offence if:

- (a) the auditor is an audit firm; and
- (b) the audit firm fails, at a particular time, to retain all audit working papers prepared by or for, or considered or used by, the audit firm in accordance with the requirements of the auditing standards until:
  - (i) the end of 7 years after the date of the audit report prepared in relation to the audit to which the documents relate; or
  - (ii) the earlier date determined by the Registrar for the audit working papers under subsection (7); and
- (c) the defendant is a member of the firm at that time.

Penalty: 50 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (6) provides a defence.

*Defence*

- (6) A member of an audit firm does not commit an offence at a particular time under subsection (4) if the member either:
- (a) does not know at that time of the circumstances that constitute the contravention of subsection (4); or
  - (b) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

*Earlier retention date for audit working papers*

- (7) The Registrar may, on application by a person, determine, in writing, an earlier date for the audit working papers for the purposes of paragraphs (2)(b) and (4)(b) if:
- (a) the auditor is an individual auditor and the auditor:
    - (i) dies; or
    - (ii) ceases to be a registered company auditor; or

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- (b) the auditor is an audit firm and the firm is dissolved (otherwise than simply as part of a reconstitution of the firm because of the death, retirement or withdrawal of a member or members or because of the admission of a new member or members); or
  - (c) the auditor is an audit company and the company:
    - (i) is wound up; or
    - (ii) ceases to be an authorised audit company.
- (8) A determination under subsection (7) is not a legislative instrument.
- (9) In deciding whether to make a determination under subsection (7), the Registrar must have regard to:
- (a) whether the Registrar or ASIC is inquiring into or investigating any matters in respect of:
    - (i) the auditor; or
    - (ii) the audited body for the audit to which the documents relate; and
  - (b) whether the professional accounting bodies have any investigations or disciplinary action pending in relation to the auditor; and
  - (c) whether civil or criminal proceedings in relation to:
    - (i) the conduct of the audit; or
    - (ii) the contents of the financial report to which the audit working papers relate;have been, or are about to be, commenced; and
  - (d) any other relevant matter.

*Audit working papers kept in electronic form*

- (10) For the purposes of this section, if audit working papers are in electronic form they are taken to be retained only if they are convertible into hard copy.

## **Subdivision 339-C—Qualification, experience and registration**

### **339-60 Qualification and experience: individual auditor**

- (1) An individual contravenes this section if:
- (a) one of the following imposes a requirement in relation to the audit of a financial report of an Aboriginal and Torres Strait Islander corporation:
    - (i) an applied provision of the Corporations Act;
    - (ii) regulations made for the purposes of section 333-15;
    - (iii) a determination by the Registrar under section 336-1 or 336-5; and
  - (b) the requirement is that, if the auditor is an individual auditor, the auditor must have particular qualification or experience; and
  - (c) the individual acts as auditor in relation to the financial report or that part of it; and
  - (d) the individual does not have the qualification or experience referred to in paragraph (b).

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (2) An individual contravenes this section if:
- (a) one of the following requires that a person may only participate in a particular capacity in the conduct of the audit of a financial report of an Aboriginal and Torres Strait Islander corporation if the person has particular qualifications or experience:
    - (i) an applied provision of the Corporations Act;
    - (ii) regulations made for the purposes of section 333-15;
    - (iii) a determination by the Registrar under section 336-1 or 336-5; and
  - (b) the individual participates in that capacity in the conduct of the audit of the financial report; and
  - (c) the individual does not have those qualifications or that experience.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

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**339-65 Qualification and experience: audit firm**

- (1) A person (the *defendant*) contravenes this subsection if:
- (a) one of the following imposes a requirement in relation to the audit of a financial report of an Aboriginal and Torres Strait Islander corporation:
    - (i) an applied provision of the Corporations Act;
    - (ii) regulations made for the purposes of section 333-15;
    - (iii) a determination by the Registrar under section 336-1 or 336-5; and
  - (b) the requirement is that, if the auditor is an audit firm, the audit firm must have a member or members who have particular qualifications or experience; and
  - (c) at a particular time, a firm acts as auditor in relation to the financial report or a part of it; and
  - (d) at that time, the firm does not have a member or members who satisfy the requirement referred to in paragraph (b); and
  - (e) the defendant is a member of the firm at that time; and
  - (f) the defendant is aware of the circumstances referred to in paragraphs (c) and (d) at that time.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (2) A person (the *defendant*) contravenes this subsection if:
- (a) one of the following imposes a requirement in relation to the audit of a financial report of an Aboriginal and Torres Strait Islander corporation:
    - (i) an applied provision of the Corporations Act;
    - (ii) regulations made for the purposes of section 333-15;
    - (iii) a determination by the Registrar under section 336-1 or 336-5; and
  - (b) the requirement is that, if the auditor is an audit firm, the audit firm must have a member or members who have particular qualifications or experience; and
  - (c) at a particular time, a firm acts as auditor in relation to the financial report or a part of it; and
  - (d) at that time, the firm does not satisfy the requirement referred to in paragraph (b); and

(e) the defendant is a member of the firm at that time.

Penalty: 10 penalty units.

(3) For the purposes of an offence based on subsection (2), strict liability applies to the physical elements of the offence specified in paragraphs (2)(a) and (b).

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (4) provides a defence.

(4) A member of an audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member either:

- (a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or
- (b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

### **339-70 Registration requirements for appointment of company as auditor**

(1) A company contravenes this subsection if:

- (a) one of the following imposes a requirement in relation to the audit of a financial report of an Aboriginal and Torres Strait Islander corporation:
  - (i) an applied provision of the Corporations Act;
  - (ii) regulations made for the purposes of section 333-15;
  - (iii) a determination by the Registrar under section 336-1 or 336-5; and
- (b) the requirement is that, if the auditor is a company, the company must be an authorised audit company; and
- (c) the company acts as auditor in relation to the report or a part of it; and
- (d) the company is not an authorised audit company.

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Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (2) A person (the *defendant*) contravenes this subsection if:
- (a) one of the following imposes a requirement in relation to the audit of a financial report of an Aboriginal and Torres Strait Islander corporation:
    - (i) an applied provision of the Corporations Act;
    - (ii) regulations made for the purposes of section 333-15;
    - (iii) a determination by the Registrar under section 336-1 or 336-5; and
  - (b) the requirement is that, if the auditor is a company, the company must be an authorised audit company; and
  - (c) at a particular time, a company acts as auditor in relation to the report or a part of it; and
  - (d) at that time, the company is not an authorised audit company; and
  - (e) the defendant is a director of the company at that time; and
  - (f) the defendant is aware of the circumstances referred to in paragraphs (c) and (d) at that time.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (3) A person (the *defendant*) contravenes this subsection if:
- (a) one of the following imposes a requirement in relation to the audit of a financial report of an Aboriginal and Torres Strait Islander corporation:
    - (i) an applied provision of the Corporations Act;
    - (ii) regulations made for the purposes of section 333-15;
    - (iii) a determination by the Registrar under section 336-1 or 336-5; and
  - (b) the requirement is that, if the auditor is a company, the company must be an authorised audit company; and
  - (c) at a particular time, a company acts as auditor in relation to the report or that part of it; and
  - (d) at that time, the company is not an authorised audit company; and
  - (e) the defendant is a director of the company at that time.



Penalty: 10 penalty units.

- (4) For the purposes of an offence based on subsection (3), strict liability applies to the physical elements of the offence specified in paragraphs (3)(c) and (d).

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (5) provides a defence.

- (5) A director of a company does not commit an offence at a particular time because of a contravention of subsection (3) if the director either:

- (a) does not know at that time of the circumstances that constitute the contravention of subsection (3); or
- (b) knows of those circumstances at that time but takes all reasonable steps to correct the contravention of subsection (3) as soon as possible after the director becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

### **Subdivision 339-D—Auditor independence**

#### **339-75 Independence of auditors: application of Corporations Act auditor independence provisions**

##### *Application of section*

- (1) This section applies in relation to the audit of a financial report of an Aboriginal and Torres Strait Islander corporation if:
- (a) one of the following imposes a requirement in relation to the audit:
    - (i) an applied provision of the Corporations Act;
    - (ii) regulations made for the purposes of section 333-15;
    - (iii) a determination by the Registrar under section 336-1 or 336-5; and
  - (b) the requirement is that the auditor be:
    - (i) an individual auditor who is a registered company auditor; or

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- (ii) an audit firm that has at least one member who is a registered company auditor who is ordinarily resident in Australia; or
  - (iii) an authorised audit company.
- (2) The Corporations Act auditor independence provisions apply in relation to the audit as if:
- (a) references in those provisions to an audited body were references to an Aboriginal and Torres Strait Islander corporation; and
  - (b) references in those provisions to a company were references to an Aboriginal and Torres Strait Islander corporation.
- The Corporations Act auditor independence provisions apply with the modifications set out in the regulations.
- (3) Regulations made for the purposes of subsection (2) must not:
- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.
- (4) In this Act:

***Corporations Act auditor independence provisions*** means:

- (a) Division 3 of Part 2M.4 of the Corporations Act; and
- (b) the provisions of that Act (including Parts 1.2 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of Part 2M.4 of that Act; and
- (c) the regulations made under that Act for the purposes of Part 2M.4 of that Act and the provisions referred to in paragraph (b).

**339-80 Independence of auditors: alternative independence requirements**

- (1) This section applies in relation to the audit of a financial report of an Aboriginal and Torres Strait Islander corporation if section 339-75 does not apply to the audit.

- (2) The regulations may provide for auditor independence requirements to be met in relation to the audit.
- (3) Without limiting subsection (2), the regulations may:
  - (a) specify as a requirement that a person comply with any applicable code of professional conduct in relation to the audit; or
  - (b) provide that a person commits an offence in particular circumstances if the auditor independence requirements are not met.
- (4) Regulations made for the purposes of paragraph (3)(b) must not prescribe penalties exceeding 50 penalty units for contraventions of the regulations.

### **Subdivision 339-E—Auditor’s powers and duties**

#### **339-85 Auditor’s power to obtain information**

The auditor:

- (a) has a right of access at all reasonable times to the books of the corporation; and
- (b) may require any officer to give the auditor information, explanations or other assistance for the purposes of the audit.

A request under paragraph (b) must be a reasonable one.

#### **339-90 Reporting to the Registrar**

*Contravention by individual auditor*

- (1) If the auditor is an individual, the auditor commits an offence if:
  - (a) the auditor is aware of circumstances that:
    - (i) the auditor has reasonable grounds to suspect amount to a contravention of this Act; or
    - (ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or

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- (iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and
- (b) if subparagraph (a)(i) applies:
  - (i) the contravention is a significant one; or
  - (ii) the contravention is not a significant one and the auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and
- (c) the auditor does not notify the Registrar in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

Penalty: 50 penalty units or imprisonment for 12 months, or both.

*Contravention by audit company*

- (2) If the auditor is an audit company, the auditor commits an offence if:
  - (a) the lead auditor for the audit is aware of circumstances that:
    - (i) the lead auditor has reasonable grounds to suspect amount to a contravention of this Act; or
    - (ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or
    - (iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and
  - (b) if subparagraph (a)(i) applies:
    - (i) the contravention is a significant one; or
    - (ii) the contravention is not a significant one and the lead auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and
  - (c) the lead auditor does not notify the Registrar in writing of those circumstances as soon as practicable, and in any case

within 28 days, after the lead auditor becomes aware of those circumstances.

Penalty: 50 penalty units or imprisonment for 12 months, or both.

*Contravention by lead auditor*

- (3) A person commits an offence if:
- (a) the person is the lead auditor for the audit; and
  - (b) the person is aware of circumstances that:
    - (i) the person has reasonable grounds to suspect amount to a contravention of this Act; or
    - (ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or
    - (iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and
  - (c) if subparagraph (b)(i) applies:
    - (i) the contravention is a significant one; or
    - (ii) the contravention is not a significant one and the person believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and
  - (d) the person does not notify the Registrar in writing of those circumstances as soon as practicable, and in any case within 28 days, after the person becomes aware of those circumstances.

Penalty: 50 penalty units or imprisonment for 12 months, or both.

*Significant contraventions*

- (4) In determining for the purposes of this section whether a contravention of this Act is a significant one, have regard to:
- (a) the level of penalty provided for in relation to the contravention; and
  - (b) the effect that the contravention has, or may have, on:

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- (i) the overall financial position of the corporation; or
  - (ii) the adequacy of the information available about the overall financial position of the corporation; and
  - (c) any other relevant matter.
- (5) Without limiting paragraph (4)(a), a penalty provided for in relation to a contravention of a provision of Part 7-2 or 7-3, includes a penalty imposed on a director, because of the operation of section 363-1, for failing to take reasonable steps to comply with, or to secure compliance with, that provision.

*Person involved in an audit*

- (6) A **person involved in the conduct of an audit** is:
- (a) the auditor; or
  - (b) the lead auditor for the audit; or
  - (c) the review auditor for the audit; or
  - (d) a professional member of the audit team for the audit; or
  - (e) any other person involved in the conduct of the audit.

**339-95 Assisting auditor**

- (1) An officer of an Aboriginal and Torres Strait Islander corporation must:
- (a) allow the auditor access to the books of the corporation; and
  - (b) give the auditor any information, explanation or assistance required under section 339-85.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Note: **Books** include registers and documents generally (not only the accounting “books”) (see the definition of **books** in section 700-1).

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

**Subdivision 339-F—Appointment and removal of auditors**

**339-100 Appointment and removal of auditors**

- (1) The regulations may make provision in relation to the appointment and removal of auditors for Aboriginal and Torres Strait Islander corporations.
- (2) Without limiting subsection (1), the regulations:
  - (a) may impose an obligation to replace an auditor who ceases to be auditor; and
  - (b) may give the Registrar the power to appoint an auditor in particular circumstances; and
  - (c) may provide for the process by which an auditor is appointed; and
  - (d) may provide for the process by which an auditor's appointment may be terminated; and
  - (e) may provide that an auditor may resign only with the consent of the Registrar.

## Division 342—Financial reporting to members

### 342-1 What this Division is about

An Aboriginal and Torres Strait Islander corporation that is required to produce a financial report and a directors' report for a financial year must give members copies of the reports on request.

The corporation must also give members, on request, a copy of the auditor's report if the corporation has to obtain one.

### 342-5 Annual financial reporting to members

- (1) An Aboriginal and Torres Strait Islander corporation that is required to prepare:
- (a) a financial report for a financial year; or
  - (b) a directors' report for a financial year;
- must give a copy of the report to each member who requests it under subsections (3A) and (3B).

Penalty: 10 penalty units.

- (2) An Aboriginal and Torres Strait Islander corporation that is required to have a financial report, or a part of a financial report, for a financial year audited must give a copy of the auditor's report to each member who requests it under subsections (3A) and (3B).

Penalty: 10 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Request for financial report, directors' report or auditor's report*

- (3A) A member of the Aboriginal and Torres Strait Islander corporation may request the corporation to give the member a copy of:
- (a) a financial report for a financial year; or



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- (b) a directors' report for a financial year; or
  - (c) if the corporation is required to have a financial report, or a part of a financial report, for a financial year audited—the auditor's report in relation to the financial report or that part of a financial report.
- (3B) The request must be made:
- (a) during the financial year; or
  - (b) within 12 months after the end of the financial year.
- (3C) If:
- (a) a member of the Aboriginal and Torres Strait Islander corporation requests the corporation to give the member a copy of a financial report; and
  - (b) the corporation is required to have the financial report, or a part of the financial report, audited;
- the member is taken, for the purposes of this section, to request the corporation also to give the member a copy of the auditor's report in relation to that financial report or that part of that financial report.
- (3D) If a member of the Aboriginal and Torres Strait Islander corporation requests the corporation to give the member a copy of an auditor's report in relation to a financial report, or a part of a financial report, the member is taken, for the purposes of this section to request the corporation also to give the member a copy of the financial report.

*Sending reports*

- (4) An Aboriginal and Torres Strait Islander corporation may send a report referred to in subsection (1) or (2) to a member using an electronic means if the member has nominated that means as one by which the member may be sent reports referred to in that subsection.
- (5) If a member of an Aboriginal and Torres Strait Islander corporation nominates:

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- (a) an electronic means (the *nominated notification means*) by which the member may be notified that reports referred to in subsection (1) or (2) are available; and
  - (b) an electronic means (the *nominated access means*) the member may use to access those reports;
- the corporation may send a report referred to in that subsection to the member by notifying the member (using the nominated notification means):
- (c) that the report is available; and
  - (d) how the member may make use of the nominated access means to access the report.
- (6) Subsections (4) and (5) do not limit subsection (1) or (2).

**342-10 Deadline for giving member copy of report**

If a member of an Aboriginal and Torres Strait Islander corporation requests the corporation under subsections 342-5(3A) and (3B) to give the member a copy of a report in relation to a financial year, the corporation must give the member the copy of the report within 14 days after:

- (a) the lodgment of the report under section 348-1 if the request is made before the report is lodged; and
- (b) the request is made if the request is made on or after the lodgment of the report under section 348-1.

## **Division 345—Consolidated financial report**

### **345-1 Directors and officers of controlled entity to give information**

- (1) If an Aboriginal and Torres Strait Islander corporation has to prepare a consolidated financial report, a director or officer of a controlled entity must give the corporation all information requested that is necessary to prepare the consolidated financial report.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (2) An offence based on subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **345-5 Auditor's power to obtain information from controlled entity**

- (1) An auditor who audits a consolidated financial report:
  - (a) has a right of access at all reasonable times to the books of any controlled entity; and
  - (b) may require any officer of the entity to give the auditor information, explanations or other assistance for the purposes of the audit.

A request under paragraph (b) must be a reasonable one.

- (2) The information, explanations or other assistance required under paragraph (1)(b) is to be given at the expense of the Aboriginal and Torres Strait Islander corporation whose financial report is being audited.

### **345-10 Controlled entity to assist auditor**

- (1) If an Aboriginal and Torres Strait Islander corporation has to prepare a consolidated financial report, an officer or auditor of a controlled entity must:
  - (a) allow the auditor for the corporation access to the controlled entity's books; and

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(b) give the auditor any information, explanation or assistance required under section 345-5.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

(2) An offence based on subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**345-15 Application of sections 345-1 to 345-10 to entity that has ceased to be controlled**

Sections 345-1, 345-5 and 345-10 apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the Aboriginal and Torres Strait Islander corporation whose financial report is being prepared or audited.

## **Division 348—Lodging reports**

### **348-1 Lodging annual reports with the Registrar**

- (1) An Aboriginal and Torres Strait Islander corporation that has to prepare or obtain a report under this Part (other than a general report) must lodge the report with the Registrar.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Note: See also section 265-40 for offences committed by the secretary of an Aboriginal and Torres Strait Islander corporation.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) The time for lodgment is:

- (a) within 3 months after the end of the financial year if the report is:
- (i) a financial report for a financial year; or
  - (ii) a directors' report for a financial year; or
  - (iii) an auditor's report on a financial report for a financial year; or
- (b) the time provided for by:
- (i) the regulations if the report is any other section 333-5 report; or
  - (ii) the determination by the Registrar under section 336-1 or 336-5 if the report is not a section 333-5 report.

### **348-5 Relodgment if report amended after lodgment**

- (1) If a financial report or a directors' report is amended after it is lodged with the Registrar, the corporation must:
- (a) lodge the amended report with the Registrar within 14 days after the amendment; and
  - (b) give a copy of the amended report free of charge to any member who asks for it.

Penalty: 10 penalty units.

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- (2) If the amendment is a material one, the corporation must also notify each member as soon as practicable of:
- (a) the nature of the amendment; and
  - (b) the member's right to obtain a copy of the amended report under subsection (1).

Penalty: 10 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part 7-4—Registrar may exempt from record keeping and reporting requirements**

### **Division 353—Registrar may exempt from record keeping and reporting requirements**

#### **353-1 What this Part is about**

The Registrar may exempt an Aboriginal and Torres Strait Islander corporation from certain provisions of this Chapter and certain regulations. The Registrar may do so on application or on his or her own volition.

#### **353-3 Exemption from the provisions of this Chapter**

- (1) On an application made in accordance with subsection (2) in relation to an Aboriginal and Torres Strait Islander corporation, the Registrar may make a determination in writing exempting any of the following from the provisions of Part 7-2 or 7-3, or of regulations made for the purposes of Part 7-2 or 7-3, that are specified in the Registrar's determination:
  - (a) the directors;
  - (b) the corporation itself;
  - (c) the auditor.

Note: For the criteria for making determinations under this section, see Part 7-5.
- (2) The application must:
  - (a) specify the provisions in relation to which the exemption is being sought; and
  - (b) be authorised by a resolution of the directors; and
  - (c) be in writing and signed by a director; and
  - (d) be lodged with the Registrar.
- (3) The determination may:

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- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (4) The Registrar may, in writing, revoke, vary or suspend the determination.
- (5) The Registrar must give the applicant written notice within 28 days of the making, revocation, variation or suspension of the determination.
- (6) A determination under subsection (1), or a revocation, variation or suspension under subsection (4), is not a legislative instrument.

**353-5 Registrar may make determination even if application is incomplete**

Despite subsection 353-3(2), the Registrar may make a determination even if the application does not specify the provisions in relation to which the exemption is being sought.

**353-10 Registrar's power to make determinations**

- (1) The Registrar may determine in writing that:
- (a) a specified Aboriginal and Torres Strait Islander corporation or a specified class of Aboriginal and Torres Strait Islander corporation; and
  - (b) the directors of a specified Aboriginal and Torres Strait Islander corporation or of a specified class of Aboriginal and Torres Strait Islander corporation (as the case may be);
- are exempted from the provisions of Part 7-2 or 7-3, or of regulations made for the purposes of Part 7-2 or 7-3, that are specified in the Registrar's determination.
- Note: For the criteria for making determinations under this section, see Part 7-5.
- (2) The determination may:
- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.



- (3) The Registrar may, in writing, revoke, vary or suspend the determination.
- (4) Notice of the making, revocation, variation or suspension of a determination in relation to a specified class of Aboriginal and Torres Strait Islander corporation, or the directors of a specified class of Aboriginal and Torres Strait Islander corporation, must be published in the *Gazette*.
- (5) A determination under subsection (1) in relation to:
  - (a) a specified class of Aboriginal and Torres Strait Islander corporation; or
  - (b) the directors of a specified class of Aboriginal and Torres Strait Islander corporation;is a legislative instrument.
- (6) A determination under subsection (1) in relation to:
  - (a) a specified Aboriginal and Torres Strait Islander corporation; or
  - (b) the directors of a specified Aboriginal and Torres Strait Islander corporation;is not a legislative instrument.

## **Part 7-5—Criteria for determining level of reporting requirements**

### **Division 358—Criteria for determining level of reporting requirements**

#### **358-1 What this Part is about**

This Part sets out the criteria that the Registrar must apply in deciding whether to make certain determinations in relation to an Aboriginal and Torres Strait Islander corporation or a class of Aboriginal and Torres Strait Islander corporation.

#### **358-5 Criteria for determinations about level of reporting requirements**

##### *Criteria*

- (1) The Registrar must have regard to:
  - (a) whether the current reporting obligations make a financial report or other report misleading; and
  - (b) whether the current reporting obligations are, or the proposed reporting obligations would be, appropriate in the circumstances (see subsection (2)); and
  - (c) whether the current reporting obligations impose, or the proposed reporting obligations would impose, unreasonable burdens (see subsection (3)).

##### *Appropriateness of obligations in the circumstances*

- (2) In deciding for the purposes of subsection (1) whether the current reporting obligations are, or the proposed reporting requirements would be, appropriate in the circumstances, the Registrar is to have regard to:
  - (a) the services (if any) provided by the corporation or corporations; and

- (b) the consequences if the corporation or corporations stopped providing those services; and
- (c) whether the corporation or corporations are regarded by the Registrar as being of a high risk of becoming insolvent or of failing to comply with the reporting requirements under the Act (because of the corporation's or corporations' purposes, structures, or compliance histories); and
- (d) any other matter the Registrar considers relevant.

*Unreasonable burden*

- (3) In deciding for the purposes of subsection (1) whether the current reporting obligations impose, or the proposed reporting obligations would impose, an unreasonable burden on the corporation or corporations, the Registrar is to have regard to:
  - (a) the expected costs of complying with the obligations; and
  - (b) the expected benefits of having the corporation or corporations comply with the obligations; and
  - (c) any practical difficulties that the corporation or corporations face in complying effectively with the obligations; and
  - (d) any unusual aspects of the operation of the corporation or corporations during the financial year concerned; and
  - (e) any other matters that the Registrar considers relevant.
- (4) In assessing expected benefits under paragraph (3)(b), the Registrar is to take account of:
  - (a) the number of creditors and potential creditors; and
  - (b) the position of creditors and potential creditors (in particular, their ability to independently obtain financial information about the corporation or corporations); and
  - (c) the nature and extent of the liabilities of the corporation or corporations.

### **358-10 Reporting obligations**

- (1) The *current reporting obligations* are the obligations that the corporation or corporations would have under Part 7-2 or 7-3, or under regulations made for the purposes of Part 7-2 or 7-3, if the determination were not to be made.

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**Part 7-5** Criteria for determining level of reporting requirements

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- (2) The *proposed reporting obligations* are the obligations that the corporation or corporations would have under Part 7-2 or 7-3, or under regulations made for the purposes of Part 7-2 or 7-3, if the determination were to be made.

## **Part 7-6—Sanctions for contraventions of record keeping and reporting requirements**

### **Division 363—Sanctions for contraventions of record keeping and reporting requirements**

#### **363-1 Sanctions**

- (1) A director of an Aboriginal and Torres Strait Islander corporation contravenes this section if he or she fails to take all reasonable steps to comply with, or to secure compliance with, Parts 7-2 and 7-3.

Note: This section is a civil penalty provision (see section 386-1).

- (2) A person commits an offence if he or she contravenes subsection (1) and the contravention is dishonest.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

- (3) Subsection (1) does not apply to section 339-85, 339-95, 345-5 or 345-10.
- (4) This section does not affect the application of the provisions of this Chapter to a director as an officer.

**Chapter 7** Record keeping, reporting requirements and books

**Part 7-7** Modifications of record keeping and reporting requirements by regulations

**Division 368** Modifications of record keeping and reporting requirements by regulations

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## **Part 7-7—Modifications of record keeping and reporting requirements by regulations**

### **Division 368—Modifications of record keeping and reporting requirements by regulations**

#### **368-1 Modification by regulations**

The regulations may modify the operation of Parts 7-2 and 7-3 in relation to:

- (a) a specified Aboriginal and Torres Strait Islander corporation;  
or
- (b) all Aboriginal and Torres Strait Islander corporations of a specified class.

## **Part 7-8—Books**

### **Division 373—Introduction**

#### **373-1 What this Part is about**

If an Aboriginal and Torres Strait Islander corporation is required by this Act to keep books, the books must be kept at certain places and made available for inspection by the public (see section 376-1).

Books, and copies of them, have a certain evidentiary value (see section 376-30).

## Division 376—When and where may books be inspected?

### 376-1 Inspection of books

- (1) This section applies if:
  - (a) this Act requires that a book of an Aboriginal and Torres Strait Islander corporation is to be available for inspection generally; or
  - (b) a person has a right under this Act to inspect a book of an Aboriginal and Torres Strait Islander corporation.
- (2) If the book is required to be kept at the corporation's registered office, the corporation must make the book available for inspection at the registered office each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm.

Penalty: 5 penalty units.

- (3) If the book is required to be kept at the corporation's document access address, the corporation must make the book available for inspection at the document access address within 7 days after the person seeking to inspect the book asks the corporation in writing to inspect the book.

Penalty: 10 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) A person permitted by this Act to inspect a book may make copies of, or take extracts from, the book and any person who refuses or fails to allow a person so permitted to make a copy of, or take an extract from, the book commits an offence.

Penalty: 5 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



### **376-5 Translations of instruments and books**

(1) If:

(a) this Act requires a person to lodge an instrument (including any certificate, contract or other document) or a certified copy of such an instrument; and

(b) the instrument is not written in English;

the person must lodge at the same time a certified translation of the instrument into English.

Penalty: 5 penalty units.

(1A) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) If under this Act:

(a) an Aboriginal and Torres Strait Islander corporation is required to make an instrument (including any certificate, contract or other document) available for inspection; and

(b) the instrument is not written in English;

the corporation must keep a certified translation of the instrument into English at:

(c) its registered office if it is registered as a large corporation; or

(d) its document access address if it is registered as a small or medium corporation.

Penalty: 5 penalty units.

(2A) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) If:

(a) a person has a right to inspect a book of an Aboriginal and Torres Strait Islander corporation; and

(b) the book, or a part of the book, is not in English; and

(c) the person asks the corporation to give the person an English translation of the book or that part of the book;

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the corporation must give the person (free of charge) an English translation of the book, or that part of the book, within a reasonable time after the person asks for it.

Penalty: 5 penalty units.

- (4) To avoid doubt, subsection (3) applies even if the book concerned includes minutes that are kept by means of an audio, or audio-visual, recording.
- (5) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**376-10 Court may compel compliance**

- (1) If any person in contravention of this Act refuses to permit the inspection of any book or to supply a copy of any book, the Court may by order compel an immediate inspection of the book or order the copy to be supplied.
- (2) The reference in subsection (1) to a copy of a book includes a reference to an English translation of a book or a part of a book.

**376-15 Admissibility of books in evidence**

- (1) A book kept by an Aboriginal and Torres Strait Islander corporation under a requirement of this Act is:
  - (a) admissible in evidence in any proceeding; and
  - (b) prima facie evidence of any matter stated or recorded in the book.
- (2) A document purporting to be a book kept by an Aboriginal and Torres Strait Islander corporation is, unless the contrary is proved, taken to be a book kept as mentioned in subsection (1).

**376-20 Form of books**

- (1) A book that is required by this Act to be kept or prepared may be kept or prepared:
  - (a) by making entries in a bound or loose-leaf book; or

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- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
  - (c) in any other manner approved by the Registrar.
- (2) Subsection (1) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless:
- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
  - (b) a reproduction of those matters is kept in a written form approved by the Registrar.

**376-25 Protection of books**

- (1) An Aboriginal and Torres Strait Islander corporation must take all reasonable precautions for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Act to be kept or prepared by the corporation.
- (2) The regulations may prescribe further precautions that an Aboriginal and Torres Strait Islander corporation must take for the purposes of subsection (1).
- (3) If an Aboriginal and Torres Strait Islander corporation records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act:
- (a) to make a book containing those matters available for inspection; or
  - (b) to provide copies of the whole or a part of a book containing those matters;
- is to be construed as a duty:
- (c) to make the matters available for inspection in written form; or
  - (d) to provide a document containing a clear reproduction in writing of the whole or part of them.
- (4) The regulations may provide for how up to date the information contained in an instrument prepared for the purposes of subsection (3) must be.

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**376-30 Evidentiary value**

- (1) If:
  - (a) because of this Act, a book that this Act requires to be kept or prepared is prima facie evidence of a matter; and
  - (b) the book, or a part of the book, is kept or prepared by recording or storing matters (including that matter) by means of a mechanical, electronic or other device;  
a written reproduction of that matter as so recorded or stored is prima facie evidence of that matter.
- (2) A writing that purports to reproduce a matter recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, taken to be a reproduction of that matter.

**376-35 Falsification of books**

- (1) A person commits an offence if the person:
  - (a) is an officer, former officer, employee, former employee, member or former member of an Aboriginal and Torres Strait Islander corporation; and
  - (b) engages in conduct that results in the concealment, destruction, mutilation or falsification of any books of or belonging to the corporation.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) If matter that is used or intended to be used in connection with the affairs of an Aboriginal and Torres Strait Islander corporation is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:
  - (a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular; or
  - (b) engages in conduct that results in the destruction, removal or falsification of matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device;  
or

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- (c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:
  - (i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or
  - (ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored;

contravenes this subsection.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (3) It is a defence to a charge arising under subsection (1) or (2) if the defendant proves that the defendant acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

Note: A defendant bears a legal burden in relation to the matter mentioned in subsection (3) (see section 13.4 of the *Criminal Code*).

## Chapter 8—Civil consequences of contravening civil penalty provisions

### Division 386—Civil consequences of contravening civil penalty provisions

#### 386-1 Declarations of contravention

*Meaning of civil penalty provisions and declarations*

- (1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:
- (a) subsections 265-1(1), 265-5(1) and (2), 265-10(1) and (2) and 265-15(1) and (2) (officers' duties);
  - (b) subsection 284-5(2) (related parties rules);
  - (c) subsection 363-1(1) (requirements for record keeping and reports);
  - (d) subsection 588G(2) of the Corporations Act (as applied by section 531-1 of this Act) (insolvent trading).

These provisions are the *civil penalty provisions*.

Note: Once a declaration has been made, the Registrar can then seek a pecuniary penalty order (section 386-10) or a disqualification order (section 279-15).

*Declarations to specify certain matters*

- (2) A declaration of contravention must specify the following:
- (a) the Court that made the declaration;
  - (b) the civil penalty provision that was contravened;
  - (c) the person who contravened the provision;
  - (d) the conduct that constituted the contravention;
  - (e) the Aboriginal and Torres Strait Island corporation affected by the contravention.

**386-5 Declaration of contravention is conclusive evidence**

A declaration of contravention is conclusive evidence of the matters referred to in subsection 386-1(2).

**386-10 Pecuniary penalty orders**

*Pecuniary penalties*

- (1) A Court may order a person to pay the Commonwealth a pecuniary penalty of up to \$200,000 if:
- (a) a declaration of contravention by the person has been made under section 386-1; and
  - (b) the contravention:
    - (i) materially prejudices the interests of the Aboriginal and Torres Strait Islander corporation affected by the contravention or the interests of its members; or
    - (ii) materially prejudices the ability of the Aboriginal and Torres Strait Islander corporation affected by the contravention to pay its creditors; or
    - (iii) is serious.

*Penalty a civil debt etc.*

- (2) The penalty is a civil debt payable to the Commonwealth. The Registrar, or the Commonwealth, may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

**386-15 Compensation orders—civil penalty provisions**

*Compensation for damage suffered*

- (1) A Court may order a person to compensate an Aboriginal and Torres Strait Islander corporation for damage suffered by the corporation if:
- (a) the person has contravened a civil penalty provision in relation to the corporation; and
  - (b) the damage resulted from the contravention.

The order must specify the amount of the compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 386-1.

*Damage includes profits*

- (2) In determining the damage suffered by the corporation for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

*Recovery of damage*

- (3) A compensation order may be enforced as if it were a judgment of the Court.

### **386-20 Who may apply for a declaration or order**

*Application by Registrar*

- (1) The Registrar may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

*Application by corporation*

- (2) The Aboriginal and Torres Strait Islander corporation affected by the contravention of a civil penalty provision may apply for a compensation order.

Note: An application for a compensation order may be made whether or not a declaration of contravention has been made under section 386-1.

- (3) The Aboriginal and Torres Strait Islander corporation affected by the contravention of a civil penalty provision may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation. The corporation is entitled to be heard on all matters other than whether the declaration or order should be made.

*No one else may apply*

- (4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.



Note: In certain circumstances, a person may bring proceedings in the name of an Aboriginal and Torres Strait Islander corporation (see Division 169).

- (5) Subsection (4) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

**386-25 Time limit for application for a declaration or order**

Proceedings for a declaration of contravention, a pecuniary penalty order or a compensation order, may be started no later than 6 years after the contravention.

**386-30 Civil evidence and procedure rules for declarations of contravention and civil penalty orders**

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

**386-35 Civil proceedings after criminal proceedings**

A court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

**386-40 Criminal proceedings during civil proceedings**

- (1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

**386-45 Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person; or
- (c) a compensation order has been made against the person; or
- (d) the person has been disqualified from managing an Aboriginal and Torres Strait Islander corporation under Part 6-5.

**386-50 Evidence given in proceedings for penalty not admissible in criminal proceedings**

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

**386-55 Registrar requiring person to assist**

- (1) The Registrar may require a person to give all reasonable assistance in connection with:
  - (a) an application for a declaration of contravention or a pecuniary penalty order; or
  - (b) criminal proceedings for an offence against this Act.

- (2) A requirement under subsection (1) is not a legislative instrument.
- (3) The Registrar can require the person to assist in connection with an application for a declaration or order if, and only if:
  - (a) it appears to the Registrar that someone other than the person required to assist may have contravened a civil penalty provision; and
  - (b) the Registrar suspects or believes that the person required to assist can give information relevant to the application.
- (4) The Registrar can require the person to assist in connection with criminal proceedings if, and only if:
  - (a) it appears to the Registrar that the person required to assist is unlikely to be a defendant in the proceedings; and
  - (b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings:
    - (i) an employee or agent (including a banker or auditor) of the other person; or
    - (ii) if the other person is a body corporate—an officer or employee of the other person; or
    - (iii) if the other person is an individual—a partner of the other person.
- (5) The Registrar can require the person to assist regardless of whether:
  - (a) an application for the declaration or penalty order has actually been made; or
  - (b) criminal proceedings for the offence have actually begun.
- (6) The person cannot be required to assist if they are or have been a lawyer for:
  - (a) in an application for a declaration or penalty order—the person suspected of the contravention; or
  - (b) in criminal proceedings—a defendant or likely defendant in the proceedings.
- (7) The requirement to assist must be given in writing.

- (8) The Court may order the person to comply with the requirement in a specified way. Only the Registrar may apply to the Court for an order under this subsection.

Note: The person must comply with the requirement and may commit an offence if they do not, even if there is no order under this subsection (see section 694-100).

**386-60 Relief from liability for contravention of civil penalty provision**

- (1) This section:
- (a) applies to proceedings for a contravention of a civil penalty provision, including proceedings under:
    - (i) section 386-15; or
    - (ii) section 588M or 588W of the Corporations Act (as applied by section 531-1 of this Act); and
  - (b) does not apply to proceedings for an offence, except so far as the proceedings relate to the question whether the court should make an order under section 588K of the Corporations Act (as applied by section 531-1 of this Act).
- (2) If:
- (a) proceedings to which this section applies are brought against a person; and
  - (b) in the proceedings it appears to the court that the person has, or may have, contravened a civil penalty provision but that:
    - (i) the person has acted honestly; and
    - (ii) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer, or employment as an employee, of an Aboriginal and Torres Strait Islander corporation), the person ought fairly to be excused for the contravention;

the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

- (3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of section 588G of the Corporations Act (as applied by section 531-1 of this Act), the matters to which regard is to be had include, but are not limited to:
  - (a) any action the person took with a view to:
    - (i) appointing an administrator of the Aboriginal and Torres Strait Islander corporation; or
    - (ii) having a special administrator for the Aboriginal and Torres Strait Islander corporation appointed; and
  - (b) when that action was taken; and
  - (c) the results of that action.
- (4) If a person thinks that proceedings to which this section applies will or may be begun against them, they may apply to the Court for relief.
- (5) On an application under subsection (4), the Court may grant relief under subsection (2) as if the proceedings had been begun in the Court.
- (6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:
  - (a) a reference in that subsection to the court is a reference to the judge; and
  - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.
- (7) Nothing in this section limits, or is limited by, section 576-1.

## **Chapter 9—Lodgments and registers**

### **Part 9-1—Introduction**

#### **Division 396—Introduction**

##### **396-1 What this Chapter is about**

This Chapter provides for the lodging of documents with the Registrar and the registers kept by the Registrar.

Part 9-2 deals with lodging of documents and the powers that the Registrar and the court have in relation to lodging documents.

Part 9-3 deals with the registers that the Registrar is required to maintain. The 2 most important registers are the Register of Aboriginal and Torres Strait Islander Corporations and the Register of Disqualified Officers. This Part also deals with the obtaining of information from the Registrar and the use and validity of such information.

## **Part 9-2—Lodgments with the Registrar**

### **Division 401—Introduction**

#### **401-1 What this Part is about**

This Part deals with:

- the form in which documents may be lodged with the Registrar (see Division 404);
- the Registrar's powers in relation to lodgments (see Division 407);
- the court's powers if documents are not lodged (see Division 410).

## **Division 404—What is the form in which documents may be lodged?**

### **404-1 Forms for documents to be lodged with the Registrar**

#### *Documents in approved form*

- (1) A document that this Act requires to be lodged with the Registrar in the approved form must:
  - (a) be in the approved form; and
  - (b) include the information, statements, explanations or other matters required by the form; and
  - (c) be accompanied by any other material required by the form.

#### *Meaning of document that has been lodged*

- (2) A reference in this Act to a *document that has been lodged* (being a document to which subsection (1) applies), includes a reference to any other material lodged with the document as required by the relevant approved form.

### **404-5 Signing documents lodged with the Registrar**

- (1) A document lodged with the Registrar in writing by, or on behalf of, a body must be signed by a director or secretary of the body.
- (2) An individual who lodges a document with the Registrar in writing must sign it.
- (3) The person's name must be printed next to the signature.

### **404-10 Documents lodged with the Registrar electronically**

#### *This section sets out the only circumstances in which a document may be lodged electronically*

- (1) This section sets out the only circumstances in which a document may be lodged electronically with the Registrar.



*If there is an agreement*

- (2) A document may be lodged with the Registrar electronically if the Registrar and the person seeking to lodge it (either on his or her own behalf or as agent) have agreed, in writing, that it may be lodged electronically.

*Document of a kind approved for electronic lodgment*

- (3) A document may also be lodged with the Registrar electronically if the Registrar has approved, in writing, the electronic lodgment of documents of that kind.

*Document of a kind by particular class of Aboriginal and Torres Strait Islander corporation*

- (4) A document may also be lodged with the Registrar electronically if:
- (a) the Registrar has approved, in writing, the electronic lodgment of documents of that kind by, or in respect of, a particular class of Aboriginal and Torres Strait Islander corporation; and
  - (b) the document is lodged by or in respect of an Aboriginal and Torres Strait Islander corporation in that class.
- (5) The document is taken to be lodged with the Registrar if it is lodged in accordance with the agreement or approval (including any requirements of the agreement or approval as to authentication).

**404-15 Relodging of lost registered documents**

- (1) If:
- (a) a document forming part of the constitution of an Aboriginal and Torres Strait Islander corporation; or
  - (b) any other document relating to an Aboriginal and Torres Strait Islander corporation;
- has, since being lodged, been lost or destroyed, a person may apply to the Registrar for leave to lodge a copy of the document as originally lodged.

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- (2) The Registrar may direct that notice of the application be given to such persons and in such manner as the Registrar thinks fit.
- (3) A direction under subsection (2) is not a legislative instrument.
- (4) If the Registrar is satisfied:
  - (a) that a document (the *original*) that was lodged has been lost or destroyed; and
  - (b) of the date of the lodging of the original; and
  - (c) that a copy of the original produced to the Registrar is a correct copy;the Registrar may:
  - (d) certify on the copy that he or she is so satisfied; and
  - (e) grant leave for the copy to be lodged in the manner required by law in respect of the original.
- (5) Subsection (4) operates whether or not an application has been made under subsection (1).
- (6) Upon the lodgment, the copy has, and is taken to have had from the date specified in the certificate as the date of the lodging of the original, the same force and effect for all purposes as the original.
- (7) A decision of the AAT varying or setting aside a decision of the Registrar to certify and grant leave under subsection (4) may be lodged with the Registrar and is to be registered by the Registrar. However, no payments, contracts, dealings, acts or things made, had or done in good faith before the registration of the AAT's decision, and upon the faith of and in reliance upon the certificate, are to be invalidated or affected by the AAT's decision.
- (8) A certification under subsection (4) is not a legislative instrument.

## **Division 407—Registrar's powers**

### **407-1 Registrar may refuse to receive or register documents**

- (1) If the Registrar is of the opinion that a document submitted for lodgment:
  - (a) contains matter contrary to law; or
  - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or
  - (c) because of an omission or misdescription has not been duly completed; or
  - (d) contravenes this Act; or
  - (e) contains an error, alteration or erasure;the Registrar may refuse to receive or register the document and may request:
  - (f) that the document be appropriately amended or completed and resubmitted; or
  - (g) that a fresh document be submitted in its place; or
  - (h) if the document has not been duly completed—that a supplementary document in the approved form be lodged.
- (2) A request under subsection (1) is not a legislative instrument.

### **407-5 Registrar may require additional information**

- (1) The Registrar may require a person who submits a document for lodgment to:
  - (a) produce to the Registrar such other document; or
  - (b) give the Registrar such information;as the Registrar thinks necessary in order to form an opinion whether he or she may refuse to receive or register the submitted document.
- (2) A person must comply with a requirement under subsection (1).
- (3) A person commits an offence if the person contravenes subsection (2).

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Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**407-10 Registrar may require information from persons on a register**

- (1) If information about a person is included on a register kept by the Registrar, the Registrar may at any time, in writing, require that person to give the Registrar specified information about the person if information of that kind is included on that register in relation to the person.

- (2) The person must provide the information within such reasonable period, and in such form, as is specified by the Registrar.

- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**407-15 Telephone or email notice of certain changes**

- (1) The Registrar may, in his or her discretion, accept telephone or email notice of a change to a detail in relation to an Aboriginal and Torres Strait Islander corporation if:

- (a) either:

(i) the change relates to a misspelling or other minor typographical error; or

(ii) the change is to a detail included on a list published by the Registrar on the Internet for the purposes of this section; and

- (b) the notice satisfies the authentication requirements published by the Registrar on the Internet for the purposes of this section.

- (2) If the Registrar accepts telephone or email notice of a change to a detail, any obligation elsewhere in this Act to lodge an approved form in relation to the change is satisfied by the telephone or email notice, as the case may be. However, this does not affect the corporation's liability for late lodgment fees incurred before the notice is given or that corporation's continuing offences committed before that time.
- (3) The requirements referred to in paragraph (1)(b) are not legislative instruments.

**407-20 Registrar may destroy or dispose of lodged documents**

- (1) The Registrar may destroy or dispose of any document relating to an Aboriginal and Torres Strait Islander corporation (other than the constitution or a document affecting the corporation's constitution) if:
  - (a) the Registrar is of the opinion that it is no longer necessary or desirable to retain the document; and
  - (b) the document was lodged more than 15 years before or has been registered for 15 years or longer.
- (2) The Registrar may also destroy or dispose of a document if:
  - (a) the Registrar is of the opinion that it is no longer necessary or desirable to retain the document; and
  - (b) an image of the document has been incorporated with a register kept by the Registrar.

## **Division 410—Courts power if documents not lodged**

### **410-1 Court may make certain orders**

- (1) If:
  - (a) an individual fails to comply with a requirement to which subsection (7) applies; and
  - (b) the individual does not comply within 14 days after the service on the person of a notice requiring the requirement to be done; and
  - (c) the Registrar applies to a court;the court may make an order directing the individual to comply with the requirement within the time specified in the order.
- (2) If:
  - (a) a body corporate fails to comply with a requirement to which subsection (7) applies; and
  - (b) the body corporate does not comply within 14 days after the service on the body, or any officer of the body, of a notice requiring the requirement to be done; and
  - (c) the Registrar or any member or creditor of the body applies to a court;the court may make an order directing the body, or any officer of the body, to comply with the requirement within the time specified in the order.
- (3) An order under subsection (1) or (2) may provide that all costs of and incidental to the application are to be borne by the individual or the body or by any officers of the body responsible for the non-compliance (as the case may be).
- (4) A person commits an offence if the person contravenes an order made under subsection (1) or (2).  
  
Penalty: 50 penalty units or imprisonment for 12 months, or both.
- (5) An offence against subsection (1) or (2) is an offence of strict liability.

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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) Nothing in this Part or Part 9-3 (dealing with registers) prejudices the operation of any law imposing penalties on an individual or a body or its officers in respect of a failure to comply with a relevant requirement.
- (7) This subsection applies to the following:
  - (a) a requirement under any provision of this Act or other law that requires the lodging in any manner of any return, account, report or other document with, or the giving of notice to, the Registrar of any matter;
  - (b) a requirement to comply with any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document.

## **Part 9-3—Registers**

### **Division 415—Introduction**

#### **415-1 What this Part is about**

This Part deals with:

- the registers that the Registrar must keep. These include the Register of Aboriginal and Torres Strait Islander Corporations and the Register of Disqualified Officers (see Division 418);
- the information that may be obtained from the Registrar (see Division 421);
- the validity and use of information so obtained (see Division 424).



## **Division 418—Registers to be kept**

### **418-1 Registers**

The Registrar must keep the following registers:

- (a) the Register of Aboriginal and Torres Strait Islander Corporations;
- (b) the Register of Disqualified Officers;
- (c) such other registers as the Registrar considers necessary.

### **418-5 Form of registers**

A register may be kept in such form as the Registrar thinks fit.

### **418-10 Register of Aboriginal and Torres Strait Islander Corporations**

The Register of Aboriginal and Torres Strait Islander Corporations is to include the information or documents specified in the regulations in relation to each Aboriginal and Torres Strait Islander corporation.

### **418-15 Register of Disqualified Officers**

- (1) The Register of Disqualified Officers is a register of persons who have been disqualified from managing Aboriginal and Torres Strait Islander corporations under section 279-15, 279-20, 279-25 or 279-30.
- (2) The register must contain a copy of:
  - (a) every notice that was served under section 279-30; and
  - (b) every order made by the court under section 279-15, 279-20 or 279-25; and
  - (c) every order lodged under section 279-35; and
  - (d) every permission given under subsection 279-30(7); and
  - (e) any other document set out in the regulations.

## **Division 421—What information may a person obtain from the Registrar?**

### **421-1 Inspection and production of records**

- (1) Subject to subsection (1A), a person:
- (a) may inspect any document lodged with the Registrar except an exempt document (see subsection (4)); and
  - (b) may inspect or search a prescribed register kept by the Registrar for prescribed information; and
  - (c) may require a copy of, or extract from, any document that the person is permitted to inspect under paragraph (a).

- (1A) The Registrar may arrange for a person to:

- (a) inspect a document; or
- (b) inspect or search a register; or
- (c) be given a copy of, or extract from, a document;

under subsection (1) in such a way that the person does not have access to personal information, or personal information generally, contained in the document or register.

- (1B) A person:

- (a) may inspect a notice, order or permission set out in subsection 418-15(2); and
- (b) may require a certificate of the registration of an Aboriginal and Torres Strait Islander corporation or any other certificate authorised by this Act to be given by the Registrar; and
- (c) may require a copy of, or extract from:
  - (i) any document that the person is entitled to inspect under paragraph (a); or
  - (ii) any certificate referred to in paragraph (b) to be given, or given and certified, by the Registrar.

*Registrar not required to use originals*

- (2) If a reproduction or an image of a document or certificate is produced for inspection, a person is not entitled under

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subsection (1) or (1B) to require the production of the original of the document or certificate.

- (3) For the purposes of paragraph (1)(c) or (1B)(c), the Registrar is not required to take the copy or extract from the original of the lodged document but may take the copy or extract from an image of the original.

*Meaning of exempt document*

- (4) In subsection (1):

*exempt document* means:

- (a) a notice lodged under subsection 304-15(4); or
- (b) a report made or lodged under:
  - (i) section 422 of the Corporations Act (as applied by section 516-1 of this Act); or
  - (ii) section 438D of the Corporations Act (as applied by section 521-1 of this Act); or
  - (iii) section 533 of the Corporations Act (as applied by section 526-35 of this Act); or
- (c) a report by a special administrator under section 502-1 into an Aboriginal and Torres Strait Islander corporation, if the corporation has not agreed to allow the inspection of the report; or
- (d) a report by an examiner under section 453-1 into an Aboriginal and Torres Strait Islander corporation, if the corporation has not agreed to allow the inspection of the report; or
- (e) a document that has been destroyed or otherwise disposed of; or
- (f) any other document specified in the regulations.

**421-5 Requests and certification of copy or extract etc.**

- (1) If:
- (a) a person makes, under paragraph 421-1(1)(c) or (1B)(c), a requirement that relates to a document or certificate; and

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- (b) the Registrar keeps, by means of a computer, a record of information set out in the document or certificate; and
- (c) in meeting that requirement, the Registrar gives a writing or document that sets out what purports to be the contents of:
  - (i) the whole of the document or certificate; or
  - (ii) a part of the document or certificate;

then, for the purposes of paragraph 421-1(1)(c) or (1B)(c), the Registrar is taken to have given:

- (d) if subparagraph (c)(i) applies—a copy of the document or certificate; or
- (e) if subparagraph (c)(ii) applies—an extract from the document or certificate setting out that part of it.

*Certification by Registrar*

(2) If:

- (a) the requirement referred to in paragraph (1)(a) includes a requirement that the copy or extract be certified; and
- (b) in meeting that requirement, the Registrar gives a writing or document as mentioned in paragraph (1)(c);

then:

- (c) the Registrar may certify that the writing or document sets out the contents of the whole or part of the document or certificate, as the case requires; and
- (d) the writing or document is, in a proceeding in a court, admissible as prima facie evidence of the information contained in it.

(3) A certification under subsection (2) is not a legislative instrument.

**Division 424—Validity and use of information etc. obtained from a register****424-1 Validity of copy or extract**

A copy or an extract derived from a document lodged with the Registrar, and certified by the Registrar, is, in any proceeding, admissible in evidence as of equal validity with the original document.

**424-5 Use in court proceedings etc. of documents issued by Registrar**

(1) If:

- (a) the Registrar gives a certificate; and
- (b) the certificate states that, at a date or during a period specified in the certificate, no Aboriginal and Torres Strait Islander corporation was registered under this Act by a name specified in the certificate;

then, in any proceeding, the certificate is to be received as prima facie evidence that at that date or during that period, as the case may be, no Aboriginal and Torres Strait Islander corporation was registered by that name under this Act.

(2) If:

- (a) the Registrar gives a certificate; and
- (b) the certificate states that a requirement of this Act specified in the certificate:
  - (i) had or had not been complied with at a date or within a period specified in the certificate; or
  - (ii) had been complied with at a date specified in the certificate but not before that date;

then in any proceeding, the certificate is to be received as prima facie evidence of matters specified in the certificate.

(3) If:

- (a) the Registrar gives a certificate; and

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- (b) the certificate states that, during a period specified in the certificate, a particular Aboriginal and Torres Strait Islander corporation was registered, or taken to be registered, under this Act;

then, in any proceedings, the certificate is to be received as prima facie evidence that, during that period, that corporation was registered under this Act.

*Certificates issued are prima facie evidence*

- (4) A certificate given by the Registrar stating that an Aboriginal and Torres Strait Islander corporation has been registered under this Act is prima facie evidence that:
  - (a) all requirements of this Act for its registration have been complied with; and
  - (b) the corporation was duly registered as an Aboriginal and Torres Strait Islander corporation under this Act on the date specified in the certificate.

*Writing prepared by the Registrar*

- (5) If:
  - (a) a writing purports to have been prepared by the Registrar; and
  - (b) the writing sets out information that purports to relate to an Aboriginal and Torres Strait Islander corporation; and
  - (c) the information relating to the corporation was derived from information obtained by the Registrar in the administration of this Act; and
  - (d) the information was obtained by the Registrar using a computer;then the writing is prima facie evidence of the matters stated in the writing. In other words, the writing is proof of such a matter in the absence of evidence to the contrary.
- (6) The writing referred to in subsection (5) need not bear a certificate or signature in order to be taken to purport to have been prepared by the Registrar.

- (7) Nothing in this section limits, or is limited by, any other provision of this Part.

**424-10 Registrar's certificate that person was a director etc.**

The Registrar may certify that a person was a director, secretary or contact person of an Aboriginal and Torres Strait Islander corporation at a particular time or during a particular period. In the absence of evidence to the contrary, a certificate is proof of the matters stated in it.

## **Chapter 10—Regulation and enforcement**

### **Part 10-1—Introduction**

#### **Division 434—Introduction**

##### **434-1 What this Chapter is about**

This Chapter deals with the regulation of Aboriginal and Torres Strait Islander corporations and enforcement.

Part 10-2 of this Chapter deals with the regulation of Aboriginal and Torres Strait Islander corporations by the Registrar.

Part 10-3 deals with the enforcement powers available to ensure compliance with the Act etc.

Part 10-4 deals with offences relating to the regulatory and enforcement powers.

Part 10-5 deals with protection for whistleblowers.

Note: Other regulatory powers that the Registrar has include:

- (a) putting an Aboriginal and Torres Strait Islander corporation under special administration (see section 487-1);
- (b) disqualifying a person from managing an Aboriginal and Torres Strait Islander corporation (see 279-30);
- (c) changing an Aboriginal and Torres Strait Islander corporation's constitution (see section 69-35).



## **Part 10-2—Regulation of Aboriginal and Torres Strait Islander corporations**

### **Division 439—Regulation of Aboriginal and Torres Strait Islander corporations**

#### **439-1 What this Part is about**

This Part deals with the Registrar's regulatory powers (section 658-10 also deals with the Registrar's powers generally).

The Registrar may convene meetings of interested persons to deal with matters affecting one or more Aboriginal and Torres Strait Islander corporations (see section 439-5).

The Registrar may also call a general meeting of an Aboriginal and Torres Strait Islander corporation or an AGM (see sections 439-10 and 439-15).

The Registrar may also issue notices to an Aboriginal and Torres Strait Islander corporation requiring the corporation to comply with the Act or to do a thing specified in the notice.

#### **439-5 Registrar may convene meetings of interested persons**

- (1) If the Registrar is of the opinion that there is a matter that affects an Aboriginal and Torres Strait Islander corporation, the Registrar may convene a meeting for the purpose of discussing the matter.
- (2) The Registrar may inform the Minister of the following matters in respect of the meeting:
  - (a) the reason for the meeting;
  - (b) the persons who were given notice of the convening of the meeting;
  - (c) the names of the notified persons who did not attend the meeting;

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- (d) any other matter arising from the meeting.
- (3) The notice of the convening of the meeting is not a legislative instrument.
- (4) Some or all of the information provided to the Minister under subsection (2) may be included in the Agency's report on the Agency's activities during a financial year.
- (5) In subsection (4):

*Agency* means the Agency (within the meaning of the *Public Service Act 1999*) of which the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations is a part.

**439-10 Registrar may call a general meeting (other than an AGM)**

- (1) The Registrar may call and arrange to hold a general meeting (other than an AGM) of an Aboriginal and Torres Strait Islander corporation if:
  - (a) the corporation has called the meeting for a particular day but it has not been held for 14 days after that day; or
  - (b) the Registrar has been requested to do so in writing by at least the required number of members of the corporation under subsection (9); or
  - (c) the corporation has not held a general meeting within 3 months after the corporation is registered; or
  - (d) the Registrar is satisfied that, in the circumstances of the corporation, there is a need to do so.

*Meeting may be held for any purpose*

- (2) The Registrar may call and arrange to hold the meeting for any purpose relevant to the corporation that the Registrar thinks appropriate and, in the case of a meeting called under paragraph (1)(a), the Registrar may include in the notice of the meeting a matter that was not in the original notice of meeting.
- (3) The notice of the convening of the meeting is not a legislative instrument.

*Rules for meeting*

- (4) A meeting called by the Registrar under this section is to be chaired by:
  - (a) the Registrar; or
  - (b) another individual authorised by the Registrar.
- (5) The rules in Chapter 5 (meetings) (except section 201-75) apply to a meeting called under this section unless the Registrar determines in writing that some or all of those rules do not apply. The determination must:
  - (a) specify the rules that do not apply; and
  - (b) specify such other rules (if any) as the Registrar thinks appropriate to apply to the meeting.
- (6) A determination under subsection (5) is not a legislative instrument.

*Meeting may be called even if no resolutions to be put to it*

- (7) The Registrar may call and hold a meeting under this section even if the notice of meeting indicates that no resolutions are to be put at the meeting.

*Observers*

- (8) The Registrar may authorise a person to attend a meeting called under this section as an observer. A person so authorised is entitled to attend the meeting.
- (9) The required number of members for an Aboriginal and Torres Strait Islander corporation is the greater of:
  - (a) 5 members of the corporation; or
  - (b) 10% of the members of the corporation.
- (10) The regulations may prescribe a different number of members for the purposes of applying paragraph (9)(a) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation; or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.

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Without limiting this, the regulations may specify the number as a percentage of the number of members of the corporation.

- (11) The regulations may prescribe a different percentage for the purposes of applying paragraph (9)(b) to:
- (a) a particular Aboriginal and Torres Strait Islander corporation; or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.

**439-15 Registrar may call an AGM**

*Registrar may call an AGM*

- (1) The Registrar may call and arrange to hold an AGM of an Aboriginal and Torres Strait Islander corporation if the corporation has not held the meeting as required by section 201-150 or 201-155.

*Rules for meeting*

- (2) A meeting called by the Registrar under this section is to be chaired by:
- (a) the Registrar; or
  - (b) another individual authorised by the Registrar.
- (3) The rules in Chapter 5 (meetings) (except section 201-75) apply to an AGM called under this section unless the Registrar determines in writing that some or all of those rules do not apply. The determination must:
- (a) specify the rules that do not apply; and
  - (b) specify such other rules (if any) as the Registrar thinks appropriate to apply to the meeting.
- (4) A determination under subsection (3) is not a legislative instrument.

*Observers*

- (5) The Registrar may authorise a person to attend a meeting called under this section as an observer. A person so authorised is entitled to attend the meeting.

**439-20 Registrar may require compliance with Act etc.**

*Suspicion of non-compliance with the Act or financial irregularity*

- (1) If the Registrar suspects on reasonable grounds that:
- (a) an Aboriginal and Torres Strait Islander corporation has failed to comply with a provision of this Act or the corporation's constitution; or
  - (b) there has been an irregularity in the affairs of an Aboriginal and Torres Strait Islander corporation;
- the Registrar may, by notice in writing to the corporation or to each director, require the directors to take the action specified in the notice, within the period specified in the notice, for the purpose of complying with the Act or the constitution or remedying the irregularity, as the case may be.
- (2) A notice under subsection (1) is not a legislative instrument.

*Suspicion that there may be grounds to appoint a special administrator*

- (3) If the Registrar suspects on reasonable grounds that:
- (a) circumstances exist in relation to an Aboriginal and Torres Strait Islander corporation; and
  - (b) those circumstances constitute, or may constitute, grounds for determining that an Aboriginal and Torres Strait Islander corporation is to be under special administration;
- the Registrar may, by notice in writing, require the directors of the corporation to take the action specified in the notice, within the period specified in the notice, for the purpose of causing those circumstances to cease to exist.
- (4) A notice under subsection (3) is not a legislative instrument.

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*Suspicion that circumstances may occur or develop that would constitute grounds to appoint a special administrator*

- (5) If the Registrar suspects on reasonable grounds that:
- (a) circumstances are likely to occur or develop in relation to an Aboriginal and Torres Strait Islander corporation; and
  - (b) if those circumstances were to occur or develop, they would constitute, or may constitute, grounds for determining that an Aboriginal and Torres Strait Islander corporation is to be under special administration;
- the Registrar may, by notice in writing, require the directors of the corporation to take the action specified in the notice, within the period specified in the notice, for the purpose of preventing those circumstances from occurring or developing.
- (6) A notice under subsection (5) is not a legislative instrument.

*Issue of notice does not preclude Registrar taking other action under this Act*

- (7) If a notice has been issued by the Registrar under this section then, regardless of whether the period specified in the notice has expired or not, the Registrar may take any other action under this Act in relation to the corporation that the Registrar thinks appropriate.

## **Part 10-3—Enforcement**

### **Division 444—Introduction**

#### **444-1 What this Part is about**

This Part deals with enforcement powers.

Division 447 deals with the appointment of authorised officers.

Division 450 deals with the purposes for which the powers under this Part may be exercised.

Division 453 deals with the powers to examine books and ask people questions.

Division 456 deals with warrants which may be sought if books asked for have not been produced. Warrants may be applied for in person or by telephone.

## Division 447—Authorised officers

### 447-1 Appointment of authorised officers

- (1) The Registrar may, in writing, appoint:
  - (a) an officer or employee of the Department; or
  - (b) any other suitably qualified person;to be an authorised officer for the purposes of this Part.
- (2) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Registrar.

### 447-5 Identity cards

- (1) The Registrar must issue an identity card to an authorised officer in the form prescribed by the regulations. The identity card must contain a recent photograph of the authorised officer.
- (2) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised officer; and
  - (c) the person does not, within 7 days after so ceasing, return the identity card to the Registrar.

Penalty: 1 penalty unit.

- (3) However, the person does not commit the offence if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.
- (5) An identity card is not a legislative instrument.



**Division 450—Purposes for which powers under this Part  
may be exercised**

**450-1 Purposes for which power under this Part may be exercised**

A power conferred by this Part may only be exercised:

- (a) for the purposes of the performance or exercise of any of the Registrar's functions and powers under this Act; or
- (b) for the purpose of ensuring compliance with this Act; or
- (c) in relation to:
  - (i) an alleged or suspected contravention of this Act; or
  - (ii) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory, being a contravention that concerns the management or examinable affairs of an Aboriginal and Torres Strait Islander corporation or a related body corporate; or
  - (iii) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory, being a contravention that involves fraud or dishonesty and relates to an Aboriginal and Torres Strait Islander corporation or a related body corporate.

## **Division 453—Examination of books and persons**

### **453-1 Examination of books**

- (1) The Registrar may, at any time, cause an authorised officer to examine the books of an Aboriginal and Torres Strait Islander corporation, or a related body corporate, and to report to the Registrar on the results of that examination, drawing attention to any or all of the following matters:
  - (a) if the corporation has failed to comply with a provision of this Act or the corporation's constitution;
  - (b) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory, being a contravention that concerns the management or examinable affairs of an Aboriginal and Torres Strait Islander corporation or a related body corporate, or involves fraud or dishonesty and relates to an Aboriginal and Torres Strait Islander corporation or a related body corporate;
  - (c) if there has been an irregularity in the operations or examinable affairs of the corporation;
  - (d) if circumstances exist that constitute, or may constitute, grounds for appointing a special administrator for the corporation;
  - (e) if circumstances are likely to occur or develop and that, if they were to occur or develop, may constitute grounds for appointing a special administrator for the corporation.
- (2) The authorised officer is entitled, at all reasonable times, to full and free access to the books of the corporation and any related body corporate.
- (3) The authorised officer may make copies, or take extracts from, any such books.
- (4) The authorised officer may require any person to produce such books of the corporation, or a related body corporate, in the possession of the person, or to which the person has access, as the

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authorised officer considers necessary for the purposes of this section.

- (5) A person who fails to comply with a requirement under subsection (4) commits an offence.

Penalty: 10 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7) A report under subsection (1) is not a legislative instrument.

**453-5 Production of books or attendance to answer questions**

- (1) The Registrar may, by notice given to a person whom the Registrar, on reasonable grounds, believes to have some knowledge of the examinable affairs of an Aboriginal and Torres Strait Islander corporation, require the person:
- (a) to provide the Registrar or an authorised officer with information concerning the corporation or its examinable affairs; or
  - (b) to produce to the Registrar or an authorised officer books of the corporation, or a related body corporate or connected entity, in the custody or under the control of the person; or
  - (c) to appear before the Registrar or an authorised officer to answer questions about the corporation or its examinable affairs.
- (2) Subject to subsection (3), the notice:
- (a) must be in writing; and
  - (b) may be given personally or by post; and
  - (c) must specify:
    - (i) when and how the person is to provide the information or produce the documents; or
    - (ii) when and where the person is to appear before the Registrar or an authorised officer.

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- (3) The person must not be required to provide the information, produce the documents or appear to answer questions within a period of less than 14 days after the notice is given.
- (4) The Registrar may require the person to give or verify the information or answers:
- (a) on oath or affirmation; and
  - (b) either orally or in writing.
- The Registrar, or an authorised officer to whom the information or answers are given, may administer such an oath or affirmation to the person.
- (5) A person must not fail to comply with a notice under subsection (1).
- Penalty: 30 penalty units or imprisonment for 6 months, or both.
- (6) An offence against subsection (5) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (7) A person does not commit an offence against subsection (5) to the extent to which the person is not capable of complying with the notice.
- Note: The defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

**453-10 Remuneration of authorised officer**

- (1) An authorised officer who examines the books of an Aboriginal and Torres Strait Islander corporation, or a related body corporate, and reports to the Registrar on the results of that examination is to receive such remuneration (if any) as the Registrar determines in writing.
- (2) A determination under subsection (1) is not a legislative instrument.
- (3) Subject to subsection (4), the authorised officer's remuneration, charges and expenses are to be borne by the Commonwealth.

- (4) The Registrar:
- (a) may determine, in writing, that some or all of the authorised officer's remuneration, charges or expenses are to be borne by the corporation or a related body corporate; and
  - (b) may charge some or all of the remuneration, charges or expenses referred to in paragraph (a) on the property of the corporation or a related body corporate in such order of priority in relation to any existing charges on that property as the Registrar thinks fit.
- (5) This section does not apply to an authorised officer who is an APS employee or a Commonwealth officer.
- (6) In this section:
- Commonwealth officer*** includes a person who:
- (a) is in the service or employment of the Commonwealth or an authority of the Commonwealth; or
  - (b) holds or performs the duties of any office or position under a law of the Commonwealth; or
  - (c) is a member of the Australian Defence Force.

## **Division 456—Warrants for books not produced**

### **Subdivision 456-A—Warrants applied for in person**

#### **456-1 Application for warrant to seize books not produced**

- (1) If the Registrar or an authorised officer has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises in Australia, books:
  - (a) whose production has been required under section 453-1 or 453-5; and
  - (b) that have not been produced in compliance with that requirement;the Registrar or authorised officer may:
  - (c) lay before a magistrate an information on oath or affirmation setting out those grounds; and
  - (d) apply for the issue of a warrant to search the premises for those books.
- (2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

#### **456-5 Grant of warrant**

- (1) This section applies if, on an application under section 456-1, the magistrate is satisfied that there are reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, particular books:
  - (a) whose production has been required under section 453-1 or 453-5; and
  - (b) that have not been produced in compliance with that requirement.
- (2) The magistrate may issue a warrant authorising an authorised officer, whether or not named in the warrant, together with any person named in the warrant, with such assistance, and by such force, as is necessary and reasonable:

- (a) to enter on or into the premises; and
  - (b) to search the premises; and
  - (c) to break open and search anything, whether a fixture or not, in or on the premises; and
  - (d) to take possession of, or secure against interference, books that appear to be any or all of those books.
- (3) If the magistrate issues such a warrant, he or she must set out on the information laid before him or her under subsection 456-1(1) for the purposes of the application:
- (a) which of the grounds set out in the information; and
  - (b) particulars of any other grounds;
- he or she has relied on to justify the issue of the warrant.
- (4) A warrant under this section must:
- (a) specify the premises and books referred to in subsection (1); and
  - (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
  - (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.
- (5) The function of issuing a warrant is conferred on the magistrate in a personal capacity and not as a court or a member of a court. The magistrate need not accept the function conferred.

#### **456-10 Powers where books produced or seized**

- (1) This section applies if:
- (a) books of an Aboriginal and Torres Strait Islander corporation are produced to an authorised officer under section 453-1 or section or 453-5; or
  - (b) under a warrant issued under this Division, an authorised officer:
    - (i) takes possession of books of an Aboriginal and Torres Strait Islander corporation; or
    - (ii) secures books of an Aboriginal and Torres Strait Islander corporation against interference; or

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- (c) by virtue of a previous application of subsection (8) of this section, books are delivered into a person's possession.
- (2) If paragraph (1)(a) applies, the authorised officer may take possession of any of the books.
- (3) The authorised officer may inspect, and may make copies of, or take extracts from, any of the books.
- (4) The authorised officer may use, or permit the use of, any of the books for the purposes of a proceeding (including a proceeding under a law of the Commonwealth, or of a State or Territory).
- (5) The authorised officer may retain possession of any of the books for so long as is necessary:
  - (a) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (7)); or
  - (b) for any of the purposes referred to in paragraphs 450-1(a), (b) or (c); or
  - (c) to determine if there is a matter in relation to the corporation that is specified in subsection 453-1(1) as a matter that should be drawn attention to; or
  - (d) for a decision to be made about whether or not a proceeding (including a proceeding under a law of the Commonwealth, or of a State or Territory) to which the books concerned would be relevant should be begun; or
  - (e) for such a proceeding to be begun and carried on.
- (6) No-one is entitled, as against the authorised officer, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.
- (7) While the books are in the authorised officer's possession, the officer:
  - (a) must permit another person to inspect, at all reasonable times, such (if any) of the books as the other person would be entitled to inspect if they were not in the authorised officer's possession; and
  - (b) may permit another person to inspect any of the books.



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- (8) Unless subparagraph (1)(b)(ii) applies, the authorised officer may deliver any of the books into the possession of the Registrar or a person approved by the Registrar to receive them.
- (9) If paragraph (1)(a) or (b) applies, the authorised officer, the Registrar or an approved person into whose possession the authorised officer delivers any of the books under subsection (8), may require:
- (a) if paragraph (1)(a) applies—a person who so produced any of the books; or
  - (b) in any case—a person who was a party to the compilation of any of the books;
- to explain any matter about the compilation of any of the books or to which any of the books relate.
- (10) Subsection (9) does not apply to the extent that the person has explained the matter to the best of his or her knowledge or belief.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).
- (11) A person must not intentionally or recklessly fail to comply with a requirement under subsection (9).
- Penalty: 100 penalty units or imprisonment for 2 years, or both.
- (12) Subsection (11) does not apply to the extent to which the person has a reasonable excuse.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (12) (see subsection 13.3(3) of the *Criminal Code*).

**Subdivision 456-B—Warrants by telephone or other electronic means**

**456-15 Applying for warrants by telephone or other electronic means**

- (1) The Registrar or an authorised officer may apply to a magistrate for a warrant by telephone, fax or other electronic means:
- (a) in an urgent case; or

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- (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) An application under subsection (1):
  - (a) must include all information that would be required in an ordinary application for a warrant; and
  - (b) if necessary, may be made before the information is sworn or affirmed.
- (3) The magistrate may require:
  - (a) communication by voice to the extent that it is practicable in the circumstances; and
  - (b) any further information.
- (4) The function of issuing a warrant is conferred on the magistrate in a personal capacity and not as a court or a member of a court. The magistrate need not accept the function conferred.

**456-20 Issuing warrants by telephone etc.**

- (1) The magistrate may complete and sign the same form of warrant that would be issued under section 456-5 if satisfied that:
  - (a) a warrant in the terms of the application should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) If the magistrate issues the warrant, he or she must inform the applicant, by telephone, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (3) The applicant must then:
  - (a) complete a form of warrant in terms substantially corresponding to those given by the magistrate; and
  - (b) state on the form:
    - (i) the name of the magistrate; and
    - (ii) the day on which the warrant was signed; and
    - (iii) the time at which the warrant was signed.

- (4) The applicant must give the magistrate:
- (a) the form of warrant completed by the applicant; and
  - (b) if the information was unsworn under paragraph 456-15(2)(b)—the sworn information;
- by the end of the day after whichever first occurs:
- (c) the warrant expires; or
  - (d) the warrant is executed.
- (5) The magistrate must attach the form of warrant completed by the magistrate to the documents provided under subsection (4).

**456-25 Unsigned warrants by telephone etc. in court proceedings**

If:

- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this Division was duly authorised; and
- (b) the form of warrant signed by the magistrate is not produced in evidence;

the court must assume that the exercise of the power was not duly authorised unless the contrary is proved.

**Subdivision 456-C—Offences relating to warrants by telephone or other electronic means**

**456-30 Offence for stating incorrect names in warrants by telephone etc.**

A person commits an offence if:

- (a) the person states a name of a magistrate in a document; and
- (b) the document purports to be a form of warrant under section 456-20; and
- (c) the name is not the name of the magistrate who issued the warrant.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

Section 456-35

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**456-35 Offence for unauthorised form of warrant**

A person commits an offence if:

- (a) the person states a matter in a form of warrant under section 456-20; and
- (b) the matter departs in a material particular from the form authorised by the magistrate.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

**456-40 Offence for execution etc. of unauthorised form of warrant**

A person commits an offence if:

- (a) the person executes a document or presents a document to a person; and
- (b) the document purports to be a form of warrant under section 456-20; and
- (c) the document:
  - (i) has not been approved by a magistrate under that section; or
  - (ii) departs in a material particular from the terms authorised by the magistrate under that section.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

**456-45 Offence for giving unexecuted form of warrant**

A person commits an offence if:

- (a) the person gives a magistrate a form of warrant under section 456-20; and
- (b) the document is not the form of warrant that the person executed.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

**Subdivision 456-D—Warrant details to be given to occupier**

**456-50 Details of warrant to be given to occupier etc.**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the authorised officer executing the warrant must make available to that person a copy of the warrant.
- (3) The authorised officer must identify himself or herself to the person at the premises.
- (4) The copy of the warrant referred to in subsection (1) need not include the signature of the issuing magistrate or the seal of the relevant court.

## **Part 10-4—Offences relating to regulatory and enforcement powers of Registrar**

### **Division 461—Offences relating to regulatory and enforcement powers of Registrar**

#### **461-1 Obstructing Registrar or interfering with meeting called by Registrar etc.**

- (1) A person must not:
- (a) engage in conduct that results in the obstruction or hindering of an authorised officer in the performance of the officer's powers under Part 10-3; or
  - (b) engage in conduct that results in the obstruction or hindering of a person who is executing a warrant under Division 456.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) Subsection (1) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) The occupier, or person in charge, of premises that a person enters under a warrant issued under Division 456 must not intentionally or recklessly fail to provide to that person all reasonable facilities and assistance for the effective exercise of his or her powers under the warrant.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (4) A person must not:
- (a) engage in conduct that results in the obstruction or hindering of the Registrar or the Registrar's delegate in the performance or exercise of any of the Registrar's functions and powers; or
  - (b) engage in conduct that results in the disruption of a meeting called under section 439-10 or 439-15.

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Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (5) An offence constituted by a contravention of subsection (4) is punishable on summary conviction.

**461-5 False information**

- (1) A person must not, in purported compliance with a requirement made under Part 10-3, give information, or make a statement, that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved that the defendant, when giving the information or evidence or making the statement, believed on reasonable grounds that it was true and not misleading.

Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4 of the *Criminal Code*).

**461-10 Concealing books relevant to investigation**

- (1) If a requirement under section 453-1 or 453-5 has been made to produce a book, a person must not:
- (a) in any case—engage in conduct that results in the concealment, destruction, mutilation or alteration of the book; or
  - (b) if a book is in a particular State or Territory—engage in conduct that results in the taking or sending of the book out of that State or Territory or out of Australia.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved that the defendant did not intend to defeat the purposes of this Act.

Note: A defendant bears a legal burden in relation to a matter mentioned in subsection (2) (see section 13.4 of the *Criminal Code*).

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**461-15 Self-incrimination**

- (1) For the purposes of Part 10-3, it is not a reasonable excuse for a person to refuse or fail:
  - (a) to give information; or
  - (b) to produce a book;in accordance with a requirement made of the person, that the information or production of the book, as the case may be, might tend to incriminate the person or make the person liable to a penalty.
- (2) Subsection (3) applies if:
  - (a) before making an oral statement giving information in compliance with a requirement made under this Part or Part 10-3, a person (other than a body corporate) claims that the statement might tend to incriminate the person or make the person liable to a penalty; and
  - (b) the statement might in fact tend to incriminate the person or make the person so liable.
- (3) The statement is not admissible in evidence against the person in:
  - (a) a criminal proceeding; or
  - (b) a proceeding for the imposition of a penalty;other than a proceeding in respect of the falsity of the statement.



## **Part 10-5—Protection for whistleblowers**

### **Division 466—Which disclosures qualify for protection under this Part?**

#### **466-1 Disclosures qualifying for protection**

- (1) A disclosure of information by a person (the *discloser*) qualifies for protection under this Part if:
  - (a) the discloser is:
    - (i) an officer or contact person of an Aboriginal and Torres Strait Islander corporation; or
    - (ii) an employee of an Aboriginal and Torres Strait Islander corporation; or
    - (iii) a person who has a contract for the supply of services or goods to an Aboriginal and Torres Strait Islander corporation; or
    - (iv) an employee of a person who has a contract for the supply of services or goods to an Aboriginal and Torres Strait Islander corporation; and
  - (b) the disclosure is made to:
    - (i) the Registrar; or
    - (ii) the corporation's auditor or a member of an audit team conducting an audit of the corporation; or
    - (iii) a director, secretary or senior manager of the corporation; or
    - (iv) a person authorised by the corporation to receive disclosures of that kind; and
  - (c) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
  - (d) the discloser has reasonable grounds to suspect that the information indicates that:
    - (i) the corporation has, or may have, contravened a provision of this Act; or

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- (ii) an officer or employee of the corporation has, or may have, contravened a provision of this Act; and
  - (e) the discloser makes the disclosure in good faith.
- (2) A reference in subsection (1) to a person contravening a provision of this Act includes a reference to a person committing an offence against, or based on, a provision of this Act.

Note: This subsection causes section 11.6 of the *Criminal Code* to operate in relation to such references.

## **Division 469—Effects of disclosure**

### **469-1 Disclosure that qualifies for protection not actionable etc.**

- (1) If a person makes a disclosure that qualifies for protection under this Part:
- (a) the person is not subject to any civil or criminal liability for making the disclosure; and
  - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

Note: This subsection does not provide that the person is not subject to any civil or criminal liability for conduct of the person that is revealed by the disclosure.

- (2) Without limiting subsection (1):
- (a) the person has qualified privilege in respect of the disclosure; and
  - (b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:
- (a) a person (the *employee*) is employed in a particular position under a contract of employment with another person (the *employer*); and
  - (b) the employee makes a disclosure that qualifies for protection under this Part; and
  - (c) the employer purports to terminate the contract of employment on the basis of the disclosure;
- the court may order that the employee be reinstated in that position or a position at a comparable level.

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**469-5 Victimisation prohibited**

*Actually causing detriment to another person*

- (1) A person (the **first person**) contravenes this subsection if:
- (a) the first person engages in conduct; and
  - (b) the first person's conduct causes any detriment to another person (the **second person**); and
  - (c) the first person intends that his or her conduct cause detriment to the second person; and
  - (d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Part.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Threatening to cause detriment to another person*

- (2) A person (the **first person**) contravenes this subsection if:
- (a) the first person makes to another person (the **second person**) a threat to cause any detriment to the second person or to a third person; and
  - (b) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or
    - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  - (c) the first person makes the threat because a person:
    - (i) makes a disclosure that qualifies for protection under this Part; or
    - (ii) may make a disclosure that would qualify for protection under this Part.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Officers and employees involved in contravention*

- (3) If an Aboriginal and Torres Strait Islander corporation contravenes subsection (1) or (2), any officer or employee of the corporation who is involved in that contravention contravenes this subsection.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Threats*

- (4) For the purposes of subsection (2), a threat may be:
  - (a) express or implied; or
  - (b) conditional or unconditional.
- (5) In a prosecution for an offence against subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

**469-10 Right to compensation**

If:

- (a) a person (the *person in contravention*) contravenes subsection 469-5(1), (2) or (3); and
- (b) a person (the *victim*) suffers damage because of the contravention;

the person in contravention is liable to compensate the victim for the damage.

## Division 472—Confidentiality requirement

### 472-1 Confidentiality requirements for corporations, corporation officers and employees and auditors

- (1) A person (the *offender*) commits an offence against this subsection if:
- (a) a person (the *discloser*) makes a disclosure of information (the *qualifying disclosure*) that qualifies for protection under this Part; and
  - (b) the qualifying disclosure relates to a contravention or possible contravention of a provision of this Act by:
    - (i) an Aboriginal and Torres Strait Islander corporation; or
    - (ii) an officer or employee of the corporation; and
  - (c) the qualifying disclosure is made to:
    - (i) the corporation's auditor or a member of an audit team conducting an audit of the corporation; or
    - (ii) a director, secretary or senior manager of the corporation; or
    - (iii) a person authorised by the corporation to receive disclosures of that kind; and
  - (d) the offender is:
    - (i) the corporation's auditor or a member of an audit team conducting an audit of the corporation; or
    - (ii) a director, secretary or senior manager of the corporation; or
    - (iii) a person authorised by the corporation to receive disclosures of that kind; or
    - (iv) the corporation; or
    - (v) any officer or employee of the corporation; and
  - (e) the offender discloses one of the following (the *confidential information*):
    - (i) the information disclosed in the qualifying disclosure;
    - (ii) the identity of the discloser;

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- (iii) information that is likely to lead to the identification of the discloser; and
- (f) the confidential information is information that the offender obtained directly or indirectly because of the qualifying disclosure; and
- (g) either:
  - (i) the offender is the person to whom the qualifying disclosure is made; or
  - (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
- (h) the disclosure referred to in paragraph (e) is not authorised under subsection (2).

Penalty: 25 penalty units.

- (2) The disclosure referred to in paragraph (1)(e) is authorised under this subsection if it:
  - (a) is made to:
    - (i) the Registrar; or
    - (ii) ASIC; or
    - (iii) the Australian Prudential Regulation Authority; or
  - (b) is made to a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  - (c) is made to a member (however described) of a police force of a State or Territory; or
  - (d) is made to someone else with the consent of the discloser.

## **Chapter 11—External administration**

### **Part 11-1—Introduction**

#### **Division 482—Introduction**

##### **482-1 What this Chapter is about**

This Chapter deals with the various ways in which the management of some or all of the affairs of an Aboriginal and Torres Strait Islander corporation may be assumed by someone other than the directors of the corporation.

There are basically 4 ways in which this can happen:

- (a) The Registrar may appoint a special administrator for the corporation under Part 11-2.
- (b) A receiver, or another controller, of the corporation's property may be appointed under the provisions of Part 5.2 of the Corporations Act (as applied by Part 11-3 of this Act).
- (c) An administrator for the corporation may be appointed under Part 5.3A of the Corporations Act (as applied by Part 11-4 of this Act).
- (d) The corporation may be wound up on the grounds set out in Part 11-5 of this Act (with the winding up being carried out under Chapter 5 of the Corporations Act as applied by Part 11-5 of this Act).

The following Parts of this Chapter also apply some other provisions of the Corporations Act to an Aboriginal and Torres Strait Islander corporation:



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| <p>(a) Part 11-6 applies Divisions 3, 4, 5 and 6 of Part 5.7B of the Corporations Act (which deal with insolvent trading);</p> <p>(b) Part 11-7 applies Part 5.8A of the Corporations Act (which deals with employee entitlements).</p> |
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## **Part 11-2—Special administration**

### **Division 487—Special administration of Aboriginal and Torres Strait Islander corporation**

#### **487-1 Registrar may put Aboriginal and Torres Strait Islander corporation under special administration**

- (1) The Registrar may determine, in writing, that an Aboriginal and Torres Strait Islander corporation is to be under special administration for the period specified in the determination.
- (2) A determination under subsection (1) is not a legislative instrument.
- (3) The Registrar:
  - (a) must not make a determination under subsection (1) if:
    - (i) the corporation is being wound up; or
    - (ii) a liquidator of the corporation has been appointed; and
  - (b) may make a determination under subsection (1) even if the corporation is being administered under Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act).
- (4) The Registrar may make a determination under subsection (1) only if the Registrar is satisfied that at least one of the grounds set out in section 487-5 is satisfied.
- (5) The Registrar must make a determination under subsection (1) in accordance with section 487-10.

#### **487-5 Grounds for special administration**

- (1) The following are the grounds for determining that an Aboriginal and Torres Strait Islander corporation is to be under special administration:
  - (a) the corporation has traded at a loss for at least 6 months during the period of 12 months before the determination is made;

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- (b) the corporation or the officers of the corporation have failed to comply with, or to ensure that the corporation complies with, one or more of the following:
- (i) a provision of this Act;
  - (ii) an internal governance rule of the corporation;
  - (iii) a notice that the Registrar has given the directors under section 439-20;
- and the corporation has, or the officers have, failed to give the Registrar a satisfactory explanation for the failure;
- (c) the corporation has failed to comply with an obligation under Part 7-3;
- (d) the officers of the corporation have acted in the affairs of the corporation:
- (i) in their own interests rather than in the interests of the members of the corporation as a whole; or
  - (ii) in a way that appears to be unfair or unjust to members of the corporation;
- (e) the affairs of the corporation are being conducted in a way that is:
- (i) oppressive; or
  - (ii) unfairly prejudicial to, or unfairly discriminatory against, a member or members of the corporation; or
  - (iii) contrary to the interests of the members of the corporation as a whole;
- (f) disputes between:
- (i) the corporation's members; or
  - (ii) the corporation's members and the corporation's officers;
- are interfering with the proper conduct of the corporation's affairs;
- (g) disputes between the corporation's officers are interfering with the proper conduct of the corporation's affairs;
- (h) a majority of the corporation's directors have requested the Registrar in writing to appoint a special administrator;
- (i) at least the required number of members under subsection (4) request the Registrar, in writing, to appoint a special administrator;

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**Division 487** Special administration of Aboriginal and Torres Strait Islander corporation

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- (j) the appointment of the special administrator is otherwise required:
  - (i) in the interests of the members of the corporation; or
  - (ii) in the interest of the corporation's creditors; or
  - (iii) in the public interest.

Paragraph (j) does not limit any of the other paragraphs in this subsection.

- (2) Paragraph (1)(d) or (e) does not apply to an officer of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate merely because of doing (or refraining from doing) a particular act if the officer does (or refrains from doing) the act:
  - (a) in good faith; and
  - (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.
- (3) Separate copies of a document setting out a request under paragraph (1)(i) may be used for signing by members if the wording of the request is identical in each copy.
- (4) The required number of members for an Aboriginal and Torres Strait Islander corporation is the greater of:
  - (a) 5 members of the corporation; or
  - (b) 10% of the members of the corporation.
- (5) The regulations may prescribe a different number of members for the purposes of applying paragraph (4)(a) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation; or
  - (b) a particular class of Aboriginal and Torres Strait Islander corporation.
- (6) The regulations may prescribe a different percentage for the purposes of applying paragraph (4)(b) to:
  - (a) a particular Aboriginal and Torres Strait Islander corporation; or

- (b) a particular class of Aboriginal and Torres Strait Islander corporation.

**487-10 Show cause notice procedure**

- (1) Subject to subsection (2), the Registrar must, before determining that an Aboriginal and Torres Strait Islander corporation is to be under special administration:
  - (a) give the corporation notice in writing inviting the corporation to show cause, within a reasonable period specified in the notice, why the determination should not be made; and
  - (b) consider any representations the corporation makes to the Registrar within that period.
- (2) Subsection (1) does not apply if the Registrar is satisfied that the determination needs to be made as a matter of urgency to prevent:
  - (a) a likely loss of property of the corporation; or
  - (b) a likely loss of public money held or administered by the corporation; or
  - (c) conduct that would contravene:
    - (i) a provision of this Act or the regulations; or
    - (ii) a law of the Commonwealth or a State or Territory; or
  - (d) the corporation ceasing to provide, or suspending the provision of, services that are essential to, or very significant for, a particular community or group.
- (3) **Public money** includes money that:
  - (a) has been granted to the corporation by:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) a public authority; and
  - (b) has been granted to the corporation on conditions.
- (4) Without limiting paragraph (2)(c), the conduct referred to in that paragraph may be conduct of:
  - (a) the corporation; or
  - (b) an officer of the corporation; or
  - (c) a body corporate related to the corporation; or
  - (d) an officer of a body corporate related to the corporation.

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(5) If the Registrar:

- (a) gives an Aboriginal and Torres Strait Islander corporation notice under subsection (1); and
- (b) decides not to proceed to determine that the corporation is to be under special administration;

the Registrar must give the corporation notice in writing, as soon as practicable after the decision is made, that the Registrar does not propose to determine that the corporation is to be under special administration.

**487-15 Extension of period of special administration**

- (1) The Registrar may extend the period for which an Aboriginal and Torres Strait Islander corporation is to be under special administration.
- (2) An extension under subsection (1) must:
  - (a) be made in writing; and
  - (b) be made before the period to be extended ends.

**487-20 Registrar may terminate special administration**

- (1) The Registrar may determine in writing that an Aboriginal and Torres Strait Islander corporation is to cease to be under special administration on the date specified in the determination.
- (2) A determination under subsection (1) is not a legislative instrument.
- (3) Without limiting subsection (1), the Registrar may determine that the corporation is to cease to be under special administration if the Registrar is satisfied that it is no longer necessary for the corporation to be under special administration.

**487-25 References to corporation under special administration**

If the Registrar determines under subsection 487-1(1) in relation to an Aboriginal and Torres Strait Islander corporation, the corporation:

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- (a) starts being *under special administration* when the period specified in the determination under subsection 487-1(1) starts; and
- (b) ceases being *under special administration*:
  - (i) when the period specified in the determination under subsection 487-1(1), or that period as extended under section 487-15, ends; or
  - (ii) if, before the end of the period referred to in subparagraph (i), a liquidator for the corporation is appointed, or the winding up of the corporation starts, as a result of an application made by the Registrar or the special administrator—when the liquidator is appointed or the winding up starts; or
  - (iii) if, before the end of the period referred to in subparagraph (i), the Registrar makes a determination under section 487-20—on the date specified in the determination under section 487-20.

Note: Subparagraph (b)(ii)—once the corporation is under special administration only the Registrar or the special administrator can apply for the winding up of the corporation (see subsection 526-15(3)).

## **Division 490—Appointment of special administrator**

### **490-1 Registrar may appoint special administrator**

- (1) The Registrar may appoint a special administrator for an Aboriginal and Torres Strait Islander corporation that is under special administration.

Note: The special administrator may be appointed either as the initial special administrator for the special administration of the corporation or to replace a special administrator who was appointed earlier.

- (2) The appointment must be made in writing.

### **490-5 Period of appointment**

- (1) The appointment must specify the period for which the special administrator is appointed.
- (2) The Registrar may extend the period for which a special administrator is appointed.
- (3) An extension under subsection (2) must:
  - (a) be made in writing; and
  - (b) be made before the period to be extended ends.
- (4) An appointment:
  - (a) has effect, subject to paragraph (b), until the end of the period of the appointment; and
  - (b) ceases to have effect if it is terminated under section 505-1 before the end of that period.



## **Division 493—Notice requirements**

### **493-1 Notice of special administration determination or appointment of special administrator**

- (1) This section applies if the Registrar makes any of the following decisions:
  - (a) a determination under section 487-1 that an Aboriginal and Torres Strait Islander corporation is to be under special administration;
  - (b) an appointment under section 490-1 of a special administrator for an Aboriginal and Torres Strait Islander corporation;
  - (c) an extension under section 487-15 of the period for which an Aboriginal and Torres Strait Islander corporation is to be under special administration;
  - (d) an extension under section 490-5 of the period for which a special administrator for an Aboriginal and Torres Strait Islander corporation is appointed;
  - (e) a determination under section 487-20 that an Aboriginal and Torres Strait Islander corporation is to cease to be under special administration.
- (2) The Registrar must, as soon as practicable, give notice of the decision to:
  - (a) the corporation; and
  - (b) any receiver, or receiver and manager, of property of the corporation of whom the Registrar is aware.
- (3) A notice under subsection (2) is not a legislative instrument.
- (4) The Registrar must, as soon as practicable, publish a notice of the decision:
  - (a) in the *Gazette*; and
  - (b) either:
    - (i) in a national newspaper; or

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- (ii) for each State or Territory in which the corporation has its registered office (if any) or carries on business or other operations—in a daily newspaper that circulates generally in that State or Territory.
- (5) The notice under subsection (2) or (4) must specify:
- (a) the period for which the corporation is to be under special administration; or
  - (b) the period for which the special administrator is appointed; or
  - (c) the period for which the special administration is extended; or
  - (d) the period for which the appointment of the special administrator is extended; or
  - (e) the date on which the corporation is to cease to be under special administration.

## **Division 496—Effect of appointment of special administrator on officers of the corporation**

### **496-1 General rule that offices of directors and secretary vacated when special administrator appointed**

- (1) Subject to section 496-5, the following offices become vacant on the appointment of a special administrator for an Aboriginal and Torres Strait Islander corporation:
  - (a) the office of each director of the corporation;
  - (b) the office of each secretary (if any) of the corporation.
- (2) Subsection (1) applies even if the special administrator is appointed to replace another special administrator for the corporation.

Note: This subsection has the effect that if a special administrator is appointed and the Registrar determines, as part of that appointment, that the offices of the corporation's officers are not to be vacated, the subsequent appointment of a replacement special administrator will automatically vacate those offices unless a fresh determination is made under section 496-5 in relation to the new appointment.

### **496-5 Registrar may determine that offices not vacated in certain circumstances**

- (1) The Registrar:
  - (a) may determine that the offices of the corporation's directors are not vacated on the appointment of a special administrator; and
  - (b) may determine that the office of the corporation's secretary is not vacated, or the offices of each of the corporation's secretaries are not vacated, on the appointment of the special administrator.
- (2) A determination under subsection (1) is not a legislative instrument.

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- (3) The Registrar may make a determination under subsection (1) only if the Registrar is satisfied that making the determination is in the best interests of the corporation.
- (4) A determination under subsection (1) must be included in the special administrator's appointment.

**496-10 Powers of officers can only be exercised by, or with the consent of, special administrator**

- (1) While an Aboriginal and Torres Strait Islander corporation is under special administration, a person (other than the special administrator) cannot perform or exercise, and must not purport to perform or exercise, a function or power as an officer of the corporation.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (2) Subsection (1) does not apply to the extent to which the performance or exercise, or purported performance or exercise, is with the special administrator's written approval.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subsection (1) does not remove an officer of an Aboriginal and Torres Strait Islander corporation from his or her office.

- (5) Section 496-15 does not limit the generality of subsection (1) of this section.

- (6) This section has effect despite:

- (a) Part 5.2 of the Corporations Act (as applied by section 516-1 of this Act); and

- (b) Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act).

Note: This means that a receiver, or an administrator appointed under Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act), cannot exercise any powers without the approval of the special administrator.

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- (7) Despite subsection (6), this section does not affect the validity of anything that a person who is:
- (a) a receiver, or a receiver and manager, of property of the corporation; or
  - (b) an administrator of the corporation appointed under Part 5.3A of the Corporations Act;
- does after the special administration begins and on or before the day on which the Registrar complies with subsection 493-1(4) in relation to the special administration.

**496-15 Only special administrator can deal with corporation's property**

- (1) This section applies if:
- (a) an Aboriginal and Torres Strait Islander corporation that is under special administration purports to enter into; or
  - (b) a person purports to enter into, on behalf of an Aboriginal and Torres Strait Islander corporation that is under special administration;
- a transaction or dealing affecting property of the corporation.
- (2) The transaction or dealing is void unless:
- (a) the special administrator entered into it on the corporation's behalf; or
  - (b) the special administrator consented to it in writing before it was entered into; or
  - (c) it was entered into under an order of the Court.
- (3) Subsection (2) does not apply to a payment made:
- (a) by an Australian ADI out of an account kept by the corporation with the ADI; and
  - (b) in good faith and in the ordinary course of the ADI's banking business; and
  - (c) after the special administration begins and on or before the day on which the Registrar complies with subsection 493-1(4) in relation to the special administration.
- (4) Subsection (2) has effect subject to an order that the Court makes after the purported transaction or dealing.

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**Part 11-2** Special administration

**Division 496** Effect of appointment of special administrator on officers of the corporation

**Section 496-20**

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- (5) If, because of subsection (2), the transaction or dealing is void, or would be void apart from subsection (4), an officer or employee of the corporation who:
- (a) purported to enter into the transaction or dealing on the corporation's behalf; or
  - (b) was in any other way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the transaction or dealing;
- contravenes this subsection.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (6) This section has effect despite:
- (a) Part 5.2 of the Corporations Act (as applied by section 516-1 of this Act); and
  - (b) Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act).

Note: This means that a receiver, or an administrator appointed under Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act), cannot exercise any powers without the approval of the special administrator.

- (7) Despite subsection (6), this section does not affect the validity of anything that a person who is:
- (a) a receiver, or a receiver and manager, of property of the corporation; or
  - (b) an administrator of the corporation appointed under Part 5.3A of the Corporations Act;
- does after the special administration begins and on or before the day on which the Registrar complies with subsection 493-1(4) in relation to the special administration.

**496-20 Order for compensation where officer involved in void transaction**

- (1) If:
- (a) a court finds that a person committed an offence constituted by a contravention of subsection 496-15(5) (including such an offence that is taken to have been committed because of section 11.2 of the *Criminal Code*); and

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- (b) the court is satisfied that the Aboriginal and Torres Strait Islander corporation or another person has suffered loss or damage because of the act or omission constituting the offence;
- the court may (whether or not it imposes a penalty) order the first-mentioned person to pay compensation to the corporation or other person, as the case may be, of such amount as the order specifies.
- (2) An order under subsection (1) may be enforced as if it were a judgment of the court.
- (3) The power of a court under section 576-1 to relieve a person from liability as mentioned in that section extends to relieving a person from liability to be ordered under this section to pay compensation.

## **Division 499—Function, duties and powers of special administrator**

### **499-1 Function of special administrator**

While an Aboriginal and Torres Strait Islander corporation is under special administration, the special administrator is responsible for the conduct of the affairs of the corporation.

### **499-5 Powers of special administrator**

- (1) While an Aboriginal and Torres Strait Islander corporation is under special administration, the special administrator:
  - (a) has control of the corporation's business, property and affairs; and
  - (b) may carry on that business and manage that property and those affairs; and
  - (c) may terminate or dispose of all or part of that business, and may dispose of any of that property; and
  - (d) may engage or discharge employees on behalf of the corporation; and
  - (e) may perform any function, and exercise any power, that:
    - (i) the corporation; or
    - (ii) any of the corporation's officers; or
    - (iii) the corporation's members;could perform or exercise if the corporation were not under special administration.

This subsection has effect even if the offices of the corporation's officers are not vacated on the appointment of the special administrator.

- (2) To avoid doubt and without limiting paragraph (1)(e), the special administrator may perform any function and exercise any power that the corporation has as trustee.
- (3) Without limiting subsection (1), the special administrator may do the following:



- (a) change the corporation's constitution;
  - (b) admit a person as a member of the corporation;
  - (c) remove a person as a member of the corporation;
  - (d) appoint a person as a director or secretary of the corporation;
  - (e) terminate a person's appointment as a director or secretary of the corporation;
  - (f) terminate a person's appointment as contact person for the corporation.
- (4) In changing the corporation's constitution, the special administrator does not have to comply with paragraph 69-5(1)(a) (special resolution), section 69-15 (satisfying extra requirements in constitution) or section 69-20 (corporation to lodge copy of changes).

Note: The special administrator must still lodge a copy of the change under section 69-25.

#### **499-10 Applying Corporations Act provisions to Aboriginal and Torres Strait Islander corporation that is under special administration**

- (1) The following provisions of the Corporations Act apply to an Aboriginal and Torres Strait Islander corporation that is under special administration:
- (a) Division 6 of Part 5.3A (other than section 440A);
  - (b) Division 7 of Part 5.3A;
  - (c) Division 8 (other than section 442A) of Part 5.3A;
  - (d) Division 9 of Part 5.3A;
  - (e) the other provisions of that Act (including Parts 1.2 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of the provisions referred to in paragraphs (a) to (d);
  - (f) the regulations made under that Act for the purposes of the provisions of that Act referred to in paragraphs (a) to (e).
- (2) Those provisions apply to an Aboriginal and Torres Strait Islander corporation that is under special administration as if the following substitutions were made:

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**Part 11-2** Special administration

**Division 499** Function, duties and powers of special administrator

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<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to...</b>	<b>substitute a reference to...</b>
1	a company	an Aboriginal and Torres Strait Islander corporation
2	administrator	special administrator
3	administration	special administration

- (3) The provisions of the Corporations Act mentioned in subsection (1) apply to an Aboriginal and Torres Strait Islander corporation that is under special administration:
- (a) only to the extent to which they are capable of applying to an Aboriginal and Torres Strait Islander corporation; and
  - (b) with the modifications specified in the regulations.
- (4) Regulations made for the purposes of paragraph (3)(b) must not:
- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.

## **Division 502—Special administrator to report to Registrar**

### **502-1 Report to Registrar**

A special administrator for an Aboriginal and Torres Strait Islander corporation must give the Registrar such information as the Registrar requires from time to time.

## **Division 505—Termination of special administrator's appointment**

### **505-1 Termination of appointment of special administrator**

- (1) The appointment of a special administrator for an Aboriginal and Torres Strait Islander corporation terminates if:
  - (a) the period for which the special administrator is appointed ends; or
  - (b) the special administrator dies; or
  - (c) a liquidator for the corporation is appointed; or
  - (d) the corporation is being wound up; or
  - (e) the special administrator resigns the appointment by notice in writing to the Registrar; or
  - (f) the Registrar terminates the special administrator's appointment under subsection (4); or
  - (g) the Registrar terminates the special administration under section 487-20.

Note: The termination of the appointment of the special administrator does not necessarily terminate the special administration. For when the special administration ceases, see section 487-25.

- (2) Subject to subsection (3), the special administrator's resignation under paragraph (1)(e) takes effect at the end of the period of 28 days after the day on which the special administrator gives the notice to the Registrar.
- (3) The Registrar may, on application by the special administrator, determine in writing that the special administrator's resignation is to take effect before the end of the period of 28 days referred to in subsection (2).
- (4) The Registrar may, by notice in writing to the special administrator for an Aboriginal and Torres Strait Islander corporation, terminate the special administrator's appointment if satisfied that it is appropriate to do so.

### **505-5 Grounds for terminating appointment**

Without limiting subsection 505-1(4), the Registrar may be satisfied that it is appropriate to terminate the special administrator's appointment if the Registrar is satisfied that:

- (a) it is no longer necessary for the corporation to be under special administration; or
- (b) the special administrator has a material personal interest in a matter related to the special administration of the corporation; or
- (c) the special administrator's performance is not satisfactory; or
- (d) the special administrator has contravened a provision of this Act; or
- (e) it would be appropriate in the circumstances to replace the special administrator with another special administrator with different skills, experience or qualifications.

### **505-10 Registrar to appoint new special administrator in certain circumstances**

- (1) If the appointment of a special administrator for an Aboriginal and Torres Strait Islander corporation terminates, the Registrar must, as soon as practicable after the termination of the appointment, appoint another person as special administrator for the corporation.
- (2) Subsection (1) does not apply if the Registrar is satisfied that it is no longer necessary for the corporation to be under special administration.

## **Division 508—Transition to normal control of the corporation's affairs at end of special administration**

### **508-1 Special administrator to ensure that there will be directors when corporation ceases to be under special administration**

- (1) The special administrator for an Aboriginal and Torres Strait Islander corporation must ensure that, immediately after the special administration of the corporation ends, there will be:
  - (a) directors of the corporation who can assume control of the corporation's affairs; and
  - (b) a secretary for the corporation if it is registered as a large corporation; and
  - (c) a contact person for the corporation if it is registered as a small or medium corporation.

Note: There are a number of different ways in which there can be directors who can assume control of the corporation's affairs when the special administration ends. For example:

- (a) the offices of the directors may not have been vacated when the special administrator was appointed and some or all of those directors may remain in office at the end of the special administration; or
  - (b) the special administrator may have exercised his or her power to appoint directors under subsection 499-5(3) and some or all of the appointees may remain in office at the end of the special administration; or
  - (c) persons may, at a general meeting of the members of the corporation called by the special administrator under section 508-5, have been elected as directors to assume control of the corporation's affairs when the special administration ends.
- (2) Subsection (1) does not apply if:
    - (a) the corporation is to cease to be under special administration because a liquidator for the corporation is appointed; or
    - (b) the corporation is to cease to be under special administration so that an administrator may be appointed, or may resume exercising powers, under the Corporations Act administration provisions (as applied by section 521-1 of this Act).

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**508-5 Election of directors to take over affairs of corporation when corporation ceases to be under special administration**

- (1) The special administrator for an Aboriginal and Torres Strait Islander corporation may conduct an election to elect directors to assume control of the corporation's affairs immediately after the corporation ceases to be under special administration.
- (2) Without limiting subsection (1), the election may be conducted:
  - (a) at a general meeting of the members of the corporation; or
  - (b) by postal ballot.
- (3) A person may be elected as a director under this section if the person gives the corporation a signed consent to act as a director of the corporation before being elected.
- (4) The persons elected:
  - (a) become the directors of the corporation immediately after the corporation ceases to be under special administration; and
  - (b) continue to hold office until the end of the next AGM of the corporation unless removed from office before then.

## Division 511—Miscellaneous

### 511-1 Remuneration of special administrator

- (1) The special administrator for an Aboriginal and Torres Strait Islander corporation is to receive such remuneration (if any) as the Registrar determines in writing.
- (2) A determination under subsection (1) is not a legislative instrument.
- (3) Subject to subsection (4), the special administrator's remuneration, charges and expenses are to be borne by the Commonwealth.
- (4) The Registrar:
  - (a) may determine, in writing, that some or all of the special administrator's remuneration, charges or expenses are to be borne by the corporation or a related body corporate; and
  - (b) may charge some or all of the remuneration, charges or expenses referred to in paragraph (a) on the property of the corporation or a related body corporate in such order of priority in relation to any existing charges on that property as the Registrar thinks fit.
- (5) This section does not apply to a special administrator who is an APS employee or a Commonwealth officer.
- (6) In this section:

**Commonwealth officer** includes a person who:

  - (a) is in the service or employment of the Commonwealth or an authority of the Commonwealth; or
  - (b) holds or performs the duties of any office or position under a law of the Commonwealth; or
  - (c) is a member of the Australian Defence Force.



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## **Part 11-3—Receivers, and other controllers, of property of corporations**

### **Division 516—Receivers, and other controllers, of property of corporations**

#### **516-1 Applying Corporations Act receiver provisions to Aboriginal and Torres Strait Islander corporations**

- (1) The Corporations Act receiver provisions apply to an Aboriginal and Torres Strait Islander corporation as if the following substitutions were made:

<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to...</b>	<b>substitute a reference to...</b>
1	a corporation	an Aboriginal and Torres Strait Islander corporation
2	a company	an Aboriginal and Torres Strait Islander corporation
3	ASIC	the Registrar
4	a deed of company arrangement	a deed of corporation arrangement

- (2) The Corporations Act receiver provisions apply to an Aboriginal and Torres Strait Islander corporation:
- (a) only to the extent to which they are capable of applying to an Aboriginal and Torres Strait Islander corporation; and
  - (b) with the modifications specified in the regulations.
- (2A) Regulations made for the purposes of paragraph (2)(b) must not:
- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.
- (3) In this Act:

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**Part 11-3** Receivers, and other controllers, of property of corporations

**Division 516** Receivers, and other controllers, of property of corporations

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*Corporations Act receiver provisions* means:

- (a) Part 5.2 of the Corporations Act; and
- (b) the other provisions of that Act (including Parts 1.2, 5.8, 5.9 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of Part 5.2 of that Act; and
- (c) the regulations made under that Act for the purposes of Part 5.2 of that Act and the provisions referred to in paragraph (b).

## **Part 11-4—Administration of an Aboriginal and Torres Strait Islander corporation's affairs with a view to executing a deed of corporation arrangement**

### **Division 521—Administration of an Aboriginal and Torres Strait Islander corporation's affairs with a view to executing a deed of corporation arrangement**

#### **521-1 Applying Corporations Act administration provisions to Aboriginal and Torres Strait Islander corporations**

- (1) The Corporations Act administration provisions apply to an Aboriginal and Torres Strait Islander corporation as if the following substitutions were made:

<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to...</b>	<b>substitute a reference to...</b>
1	a company	an Aboriginal and Torres Strait Islander corporation
2	ASIC	the Registrar
3	a deed of company arrangement	a deed of corporation arrangement
4	registered office	registered office or document access address

- (2) The Corporations Act administration provisions apply to an Aboriginal and Torres Strait Islander corporation:
- (a) only to the extent to which they are capable of applying to an Aboriginal and Torres Strait Islander corporation; and
  - (b) with the modifications specified in the regulations.
- (3) Regulations made for the purposes of paragraph (2)(b) must not:

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**Part 11-4** Administration of an Aboriginal and Torres Strait Islander corporation's affairs with a view to executing a deed of corporation arrangement

**Division 521** Administration of an Aboriginal and Torres Strait Islander corporation's affairs with a view to executing a deed of corporation arrangement

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- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.
- (4) In this Act:

*Corporations Act administration provisions* means:

- (a) Part 5.3A of the Corporations Act; and
- (b) the other provisions of that Act (including Parts 1.2, 5.8, 5.9 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of Part 5.3A of that Act; and
- (c) the regulations made under that Act for the purposes of Part 5.3A of that Act and the provisions referred to in paragraph (b).

**521-5 Administrator's capacity to act as trustee**

To avoid doubt, an administrator appointed under the Corporations Act administration provisions (as applied by section 521-1 of this Act) may, under those provisions as applied, perform any function and exercise any power that the corporation has as trustee.

**521-10 Corporations Act administrator cannot be appointed if special administrator appointed**

- (1) An administrator of an Aboriginal and Torres Strait Islander corporation cannot be appointed under section 436A, 436B or 436C of the Corporations Act (as applied by section 521-1) if:
  - (a) the corporation is under special administration under Part 11-2; or
  - (b) the Registrar:
    - (i) has given the corporation a notice under subsection 487-10(1); and
    - (ii) has not given the corporation a notice under subsection 487-10(5).

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- (2) Paragraph (1)(b) does not apply if the Registrar has consented in writing to the appointment of the administrator under that section of the Corporations Act (as applied by section 521-1 of this Act).
- (3) A consent under subsection (2) to the appointment of an administrator is not a legislative instrument.

**521-15 Effect of appointment of special administrator on Corporations Act administrator**

- (1) This section deals with the situation in which:
  - (a) an administrator of an Aboriginal and Torres Strait Islander corporation (the *Corporations Act administrator*) is appointed under section 436A, 436B or 436C of the Corporations Act (as applied by section 521-1 of this Act); and
  - (b) while that appointment continues, a special administrator for the corporation is appointed under Part 11-2.

Note: Section 496-10 deals with the effect of the special administrator's appointment on the Corporations Act administrator's powers.

- (2) The Court may order that the administration of the corporation under Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act) is to end.
- (3) The order may be made on the application of:
  - (a) the Registrar; or
  - (b) the special administrator for the corporation; or
  - (c) any other interested person.
- (4) The order may be made subject to conditions.

## **Part 11-5—Winding up**

### **Division 526—Winding up**

#### **526-1 Court may order winding up**

- (1) The Court may order that an Aboriginal and Torres Strait Islander corporation be wound up.
- (2) The order may only be made on the grounds set out in section 526-5.
- (3) The order may only be made on an application made in accordance with section 526-15.

#### **526-5 Grounds for Court ordered winding up**

The following are the grounds on which an Aboriginal and Torres Strait Islander corporation may be wound up:

- (a) the corporation has by special resolution resolved that it be wound up by the Court;
- (b) the business or operations of the corporation were not commenced within 1 year after its registration or have been suspended for a continuous period of 1 year;
- (c) the corporation has ceased to satisfy a requirement for registration imposed by section 141-5, 141-10 or 141-15;
- (d) section 26-15 precludes the continued registration of the corporation;
- (e) the officers of the corporation have acted in the affairs of the corporation:
  - (i) in their own interests rather than in the interests of the members of the corporation as a whole; or
  - (ii) in a way that appears to be unfair or unjust to the members of the corporation;
- (f) the affairs of the corporation are being conducted in a way that is:
  - (i) oppressive; or

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- (ii) unfairly prejudicial to, or unfairly discriminatory against, a member or members of the corporation; or
- (iii) contrary to the interests of the members of the corporation as a whole;
- (g) an act or omission, or a proposed act or omission, by or on behalf of the corporation was or would be:
  - (i) oppressive; or
  - (ii) unfairly prejudicial to, or unfairly discriminatory against, a member or members of the corporation; or
  - (iii) contrary to the interests of the members as a whole;
- (h) a resolution, or a proposed resolution, of a class of members of the corporation, was or would be:
  - (i) oppressive; or
  - (ii) unfairly prejudicial to, or unfairly discriminatory against, a member or members of the corporation; or
  - (iii) contrary to the interests of the members of the corporation as a whole;
- (i) the corporation is insolvent;
- (j) the directors of the corporation have failed to comply with a notice that the Registrar has given the directors under section 439-20;
- (k) the corporation has failed, for a prescribed period, to lodge any financial or other reports required to be lodged by Part 7-3;
- (l) by reason of the complexity or magnitude of the activities of the corporation, it is inappropriate that it continue to be registered under this Act;
- (m) the Court is satisfied that it is in the interests of:
  - (i) the public; or
  - (ii) the corporation's members; or
  - (iii) the corporation's creditors;that the corporation should be wound up;
- (n) the Court is satisfied that it is just and equitable that the corporation be wound up.

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**526-10 Acts etc. done to comply with Native Title legislation requirement**

- (1) Paragraph 526-5(e) or (f) does not apply to an officer of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate merely because of doing (or refraining from doing) a particular act if the officer does (or refrains from doing) the act:
  - (a) in good faith; and
  - (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.
- (2) Paragraph 526-5(g) does not apply to an act or omission, or a proposed act or omission, by or on behalf of a corporation that is a registered native title body corporate, if the act or omission, or the proposed act or omission, was done:
  - (a) in good faith; and
  - (b) with the belief that the doing of the act or omission, or the proposed act or omission, is necessary to ensure that the corporation complies with a Native Title legislation obligation.
- (3) Paragraph 526-5(h) does not apply to a resolution, or a proposed resolution, of a class of members of a corporation that is a registered native title body corporate, if the resolution, or proposed resolution, was made:
  - (a) in good faith; and
  - (b) with the belief that the making of the resolution, or proposed resolution, is necessary to ensure that the corporation complies with a Native Title legislation obligation.

**526-15 Who may apply to court for winding up order**

- (1) Any one or more of the following may apply to the Court for an order that an Aboriginal and Torres Strait Islander corporation be wound up:
  - (a) the corporation;



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- (b) a creditor of the corporation (even if the creditor is a secured creditor or is only a contingent or prospective creditor);
- (c) a member of the corporation;
- (d) a director of the corporation;
- (e) a contributory of the corporation;
- (f) a liquidator, or a provisional liquidator, of the corporation;
- (g) a special administrator of the corporation;
- (h) the Registrar.

This subsection has effect subject to subsections (2), (3), (4) and (5).

- (2) The Registrar is the only person who may apply for an order that the corporation be wound up if the grounds on which the winding up is applied for are, or include, grounds referred to in any of the following:
  - (a) paragraph 526-5(j) (failure to comply with a section 439-20 notice);
  - (b) paragraph 526-5(k) (failure to lodge reports);
  - (c) paragraph 526-5(l) (complexity or magnitude of corporation's activities).
- (3) If the corporation is under special administration only the Registrar or the special administrator may apply for an order that the corporation be wound up.
- (4) An application by any of the following, or by persons including any of the following, for an order that the corporation be wound up because it is insolvent may only be made with the leave of the Court:
  - (a) a person who is a creditor only because of a contingent or prospective debt;
  - (b) a contributory;
  - (c) a director;
  - (d) the Registrar.
- (5) The court must not hear an application by a person being, or persons including, a contingent or prospective creditor of the corporation for an order to wind up the corporation unless and until:

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- (a) such security for costs has been given as the Court thinks reasonable; and
  - (b) a prima facie case for winding up the corporation has been established to the Court's satisfaction.
- (6) Except as permitted by this section, a person is not entitled to apply for an order to wind up an Aboriginal and Torres Strait Islander corporation.

**526-20 Voluntary winding up**

- (1) Subject to subsection (5), an Aboriginal and Torres Strait Islander corporation may be wound up voluntarily if the members of the corporation in general meeting so resolve by special resolution.
- (2) An Aboriginal and Torres Strait Islander corporation cannot resolve that it be wound up voluntarily if:
- (a) the corporation is under special administration under Part 11-2; or
  - (b) the Registrar:
    - (i) has given the corporation a notice under subsection 487-10(1); and
    - (ii) has not given the corporation a notice under subsection 487-10(5).
- (3) Paragraph (2)(b) does not apply if the Registrar has consented in writing to the voluntary winding up of the corporation.
- (4) A consent given by the Registrar under subsection (3) is not a legislative instrument
- (5) Except with the leave of the Court, an Aboriginal and Torres Strait Islander corporation cannot resolve that it be wound up voluntarily if:
- (a) an application has been made to the Court for the corporation to be wound up on the ground that it is insolvent; or
  - (b) the Court has ordered that the corporation be wound up on the ground that it is insolvent (whether or not the order was made on such an application).

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- (6) If an Aboriginal and Torres Strait Islander corporation passes a resolution for the voluntary winding up of the corporation, the corporation must, within 28 days after the passing of a resolution, lodge with the Registrar:
- (a) a notice in the approved form of the passing of the resolution; and
  - (b) a copy of the resolution.

Penalty: 5 penalty units.

- (7) Subsection (6) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) The Registrar must, within 21 days after the lodging of a notice under subsection (6), publish in the *Gazette* a notice of the passing of the resolution to which the notice relates.

**526-25 Distribution of surplus assets in winding up by Court**

- (1) This section applies if:
- (a) surplus assets remain on the winding up of an Aboriginal and Torres Strait Islander corporation; and
  - (b) the winding up is a winding up by the Court.
- (2) If the corporation's constitution includes provisions for the distribution of the surplus assets of the corporation in the event of the corporation's being wound up, the Court or the liquidator must distribute those assets in accordance with those provisions. This subsection has effect subject to subsection (4).

Note: The liquidator may have powers in relation to the distribution of the surplus under section 488 of the Corporations Act (as applied by section 526-35 of this Act).

- (3) If:
- (a) the corporation's constitution does not include provisions for the distribution of the surplus assets of the corporation in the event of the corporation's being wound up; and
  - (b) the members of the corporation pass a special resolution relating to the distribution of the surplus assets of the corporation;

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the Court or the liquidator must distribute those assets in accordance with that special resolution. This subsection has effect subject to subsection (4).

Note: The liquidator may have powers in relation to the distribution of the surplus under section 488 of the Corporations Act (as applied by section 526-35 of this Act).

(4) If:

- (a) a Judge of the Court considers that a distribution of the surplus assets of the corporation in accordance with:
  - (i) the provisions of the corporation's constitution in accordance with subsection (2); or
  - (ii) a special resolution in accordance with subsection (3);would not be just; or
- (b) no such provisions exist and such a special resolution has not been passed;

the Judge must make such orders for the distribution of those assets as, having regard to the objects of the corporation, he or she considers just.

**526-30 Distribution of surplus assets in voluntary winding up**

(1) This section applies if:

- (a) surplus assets remain on the winding up of an Aboriginal and Torres Strait Islander corporation; and
- (b) the winding up is a voluntary winding up.

(2) If the corporation's constitution includes provisions for the distribution of the surplus assets of the corporation in the event of the corporation's being wound up, the liquidator must distribute those assets in accordance with those provisions. This subsection has effect subject to subsection (5).

(3) If:

- (a) the corporation's constitution does not include provisions for the distribution of the surplus assets of the corporation in the event of the corporation's being wound up; and

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- (b) the members of the corporation pass a special resolution relating to the distribution of the surplus assets of the corporation;

the liquidator must distribute those assets in accordance with that special resolution. This subsection has effect subject to subsection (5).

(4) If:

- (a) the liquidator considers that a distribution of the surplus assets of the corporation in accordance with:

- (i) the provisions of the corporation's constitution in accordance with subsection (2); or

- (ii) a special resolution in accordance with subsection (3);

would not be just; or

- (b) no such provisions exist and such a special resolution has not been passed;

the liquidator must apply to a Judge of the Court for an order under subsection (5).

(5) If:

- (a) the Judge considers that a distribution of the surplus assets of the corporation in accordance with:

- (i) the provisions of the corporation's constitution in accordance with subsection (1); or

- (ii) a special resolution in accordance with subsection (2);

would not be just; or

- (b) no such provisions exist and such a special resolution has not been passed;

the Judge must make such orders for the distribution of those assets as, having regard to the objects of the corporation, he or she considers just.

### **526-35 Applying Corporations Act winding up provisions to Aboriginal and Torres Strait Islander corporations**

- (1) The Corporations Act winding up provisions apply to the winding up of an Aboriginal and Torres Strait Islander corporation as if the following substitutions were made:

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<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to...</b>	<b>substitute a reference to...</b>
1	a company	an Aboriginal and Torres Strait Islander corporation
2	ASIC	the Registrar
3	section 459P	section 526-15 of this Act
4	a dividend	any distribution by the corporation to its members (whether of capital or income)
5	civil penalty order	civil penalty order (within the meaning of this Act)
6	civil penalty provision	civil penalty provision (within the meaning of this Act)

Note: Item 4 is relevant to the operation of subsection 588G(1A) of the Corporations Act.

- (2) The Corporations Act winding up provisions apply to the winding up of an Aboriginal and Torres Strait Islander corporation:
- (a) only to the extent to which they are capable of applying to the winding up of an Aboriginal and Torres Strait Islander corporation; and
  - (b) with the modifications specified in the regulations.
- (2A) Regulations made for the purposes of paragraph (2)(b) must not:
- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.
- (3) In this Act:
- Corporations Act winding up provisions** means:
- (a) Parts 5.4, 5.4B, 5.5, 5.6, 5.7B, 5.8, 5.8A and 5.9 of the Corporations Act; and
  - (b) the other provisions of that Act (including Parts 1.2 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to

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the extent to which they relate to the operation of the Parts referred to in paragraph (a); and

- (c) the regulations made under that Act for the purposes of the Parts of that Act referred to in paragraph (a) and the provisions referred to in paragraph (b);

but does not include the excluded winding up provisions of that Act.

*excluded winding up provisions* of the Corporations Act means:

- (a) section 459A of that Act (which deals with the court's power to order a winding up); and  
(b) section 459B of that Act (which deals with insolvency as a ground for winding up); and  
(c) section 459P of that Act (which deals with who may apply for a winding up on the grounds of insolvency); and  
(d) section 490 of that Act (which deals with when a resolution for voluntary winding up may be passed); and  
(e) section 491 of that Act (which deal with the resolution for a voluntary winding up).

**526-40 Application of Corporations Act pre-winding up provisions**

- (1) The Corporations Act pre-winding up provisions apply to an Aboriginal and Torres Strait Islander corporation as if the following substitutions were made:

<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to...</b>	<b>substitute a reference to...</b>
1	a company	an Aboriginal and Torres Strait Islander corporation
2	section 459P	section 526-15 of this Act
3	ASIC	the Registrar
4	lodged	lodged with the Registrar

Note: This section is intended to apply to Aboriginal and Torres Strait Islander corporations some provisions of the Corporations Act that are capable of operating before a winding up commences (or even whether or not a winding up ever occurs). Section 526-35 only applies

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provisions of the Corporations Act to a winding up of an Aboriginal and Torres Strait Islander corporation.

- (2) This section has effect without limiting section 526-35.
- (3) In this Act:

***Corporations Act pre-winding up provisions*** means:

- (a) section 459C, Divisions 2 and 3 of Part 5.4 and section 459Q of the Corporations Act; and
- (b) section 487 of that Act; and
- (c) section 494 of that Act; and
- (d) section 570 of that Act; and
- (e) Division 9 of Part 5.6 of that Act; and
- (f) the other provisions of that Act (including Parts 1.2, 5.8 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of the provisions referred to in paragraphs (a) to (e); and
- (g) the regulations made under that Act for the purposes of the provisions of that Act referred to in paragraphs (a) to (e) and the provisions referred to in paragraph (f).



## **Part 11-6—Insolvent trading**

### **Division 531—Insolvent trading**

#### **531-1 Applying Corporations Act insolvent trading provisions to Aboriginal and Torres Strait Islander corporations**

- (1) The Corporations Act insolvent trading provisions apply to an Aboriginal and Torres Strait Islander corporation as if the following substitutions were made:

<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to...</b>	<b>substitute a reference to...</b>
1	a company	an Aboriginal and Torres Strait Islander corporation
2	a dividend	any distribution by the corporation to its members (whether of capital or income)
3	civil penalty order	civil penalty order (within the meaning of this Act)
4	civil penalty provision	civil penalty provision (within the meaning of this Act)

Note: Although section 526-35 applies the provisions of Part 5.7B to the winding up of an Aboriginal and Torres Strait Islander corporation, the insolvent trading provisions are capable of applying independently of there being a winding up. This section ensures, for example, that a director of an Aboriginal and Torres Strait Islander corporation commits an offence if the corporation trades while insolvent (regardless of whether winding up proceedings are ever commenced).

- (2) This section has effect without limiting section 526-35.
- (3) In this Act:

***Corporations Act insolvent trading provisions*** means:

- (a) Divisions 3, 4, 5 and 6 of Part 5.7B of the Corporations Act;  
and

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- (b) the other provisions of that Act (including Parts 1.2 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of the Divisions referred to in paragraph (a); and
- (c) the regulations made under that Act for the purposes of the Divisions of that Act referred to in paragraph (a) and the provisions referred to in paragraph (b).

**531-5 Section 588G of Corporations Act prevails over conflicting Native Title legislation obligations**

- (1) In the event of a conflict between:
  - (a) the duty of a director of an Aboriginal and Torres Strait Islander corporation to ensure that the corporation comply with its Native Title legislation obligations; and
  - (b) the director's duty in relation to the corporation under section 588G of the Corporations Act as applied by section 531-1 of this Act;the director's duty under section 588G of the Corporations Act as so applied prevails, and the director is released from the first-mentioned duty, to the extent of the conflict.
- (2) The corporation is released from the duty to comply with its Native Title legislation obligations to the extent that complying with them would place a director of the corporation in breach of his or her duty in relation to the corporation under section 588G of the Corporations Act as so applied.

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## Part 11-7—Employees' entitlements

### Division 536—Employees' entitlements

#### 536-1 Applying Corporations Act employees' entitlements provisions to Aboriginal and Torres Strait Islander corporations

- (1) The Corporations Act employees' entitlements provisions apply to an Aboriginal and Torres Strait Islander corporation as if the following substitutions were made:

Substitutions to be made		
Item	For a reference to...	substitute a reference to...
1	a company	an Aboriginal and Torres Strait Islander corporation
2	civil penalty order	civil penalty order (within the meaning of this Act)

Note: Although section 526-35 applies the provisions of Part 5.8A to the winding up of an Aboriginal and Torres Strait Islander corporation, the employees' entitlements provisions are capable of applying independently of there being a winding up. This section ensures, for example, that a person will commit an offence (under the applied section 596AB) if the person enters into an agreement to defeat the entitlements of employees of an Aboriginal and Torres Strait Islander corporation (regardless of whether winding up proceedings are ever commenced).

- (2) This section has effect without limiting section 526-35.
- (3) In this Act:

***Corporations Act employees' entitlements provisions*** means:

- (a) Part 5.8A of the Corporations Act; and
- (b) the other provisions of that Act (including Parts 1.2 and 9.4 and Schedule 3, but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of the Part referred to in paragraph (a); and

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- (c) the regulations made under that Act for the purposes of Part 5.8A of that Act and the provisions referred to in paragraph (b).

## **Chapter 12—Transfer of registration, deregistration and unclaimed property**

### **Part 12-1—Transfer of registration to another system**

#### **Division 540—Transfer of registration**

##### **540-1 Transferring registration**

An Aboriginal and Torres Strait Islander corporation may transfer its registration to registration under a law of the Commonwealth, a State or a Territory by:

- (a) passing a special resolution resolving to transfer its registration to registration under that law; and
- (b) complying with sections 540-5 and 540-10.

##### **540-5 Applying to transfer registration**

To transfer its registration, an Aboriginal and Torres Strait Islander corporation must lodge an application with the Registrar together with:

- (a) a copy of the special resolution that resolves to change the corporation's registration to a registration under the law of the Commonwealth, the State or the Territory concerned; and
- (b) a statement signed by the directors of the corporation that in their opinion the corporation's creditors are not likely to be materially prejudiced by the change and that sets out their reasons for that opinion.

##### **540-10 Registrar makes transfer of registration declaration**

The Registrar may make a transfer of registration declaration in relation to the Aboriginal and Torres Strait Islander corporation under this section if the Registrar is satisfied that:

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- (a) the application complies with section 540-5; and
- (b) the corporation's creditors are not likely to be materially prejudiced by the transfer of the corporation's registration; and
- (c) the law of the Commonwealth, the State or the Territory concerned adequately provides for:
  - (i) the continuation of the corporation's legal personality after the transfer; and
  - (ii) the preservation of any rights or claims against the corporation (other than the right of a member as a member) that accrued while the corporation was registered under this Act.

**540-15 Registrar to deregister corporation**

- (1) The Registrar must deregister the Aboriginal and Torres Strait Islander corporation if:
  - (a) the Registrar makes a transfer of registration declaration in relation to the corporation; and
  - (b) the corporation is registered under the law of the Commonwealth, the State or the Territory concerned.

Note: Despite the deregistration, officers of the corporation may still be liable for things done before the corporation was deregistered.
- (2) Sections 546-20, 546-25, 546-30 and 546-35 do not apply to the deregistration of an Aboriginal and Torres Strait Islander corporation under this section.

## **Part 12-2—Deregistration**

### **Division 546—Deregistration**

#### **546-1 Deregistration—voluntary**

*Who may apply for deregistration*

- (1) An application to deregister an Aboriginal and Torres Strait Islander corporation may be lodged with the Registrar by:
  - (a) the corporation; or
  - (b) a director or member of the corporation; or
  - (c) a liquidator of the corporation.

If the corporation lodges the application, it must nominate a person to be given notice of the deregistration.

*Circumstances in which application can be made*

- (2) A person may apply only if:
  - (a) all the members of the corporation agree to the deregistration; and
  - (b) the corporation is not carrying on business; and
  - (c) the corporation's assets are worth less than \$1,000; and
  - (d) the corporation has paid all fees and penalties payable under this Act; and
  - (e) the corporation has no outstanding liabilities; and
  - (f) the corporation is not a party to any legal proceedings.

*Registrar may ask for information about officers*

- (3) The applicant must give the Registrar any information that the Registrar requests about the current and former officers of the corporation.

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*Deregistration procedure*

- (4) If the Registrar is not aware of any failure to comply with subsections (1) to (3), the Registrar must give notice of the proposed deregistration in the *Gazette*.
- (5) A notice in the *Gazette* is not a legislative instrument.
- (6) When 2 months have passed since the *Gazette* notice, the Registrar may deregister the corporation.
- (7) The Registrar must give notice of the deregistration to:
  - (a) the applicant; or
  - (b) the person nominated in the application to be given the notice.

**546-5 Deregistration—Registrar initiated**

*Circumstances in which the Registrar may deregister*

- (1) The Registrar may decide to deregister an Aboriginal and Torres Strait Islander corporation if:
  - (a) the corporation has not lodged a general return within 6 months after the day on which the return is required to be lodged; and
  - (b) the corporation has not lodged any other documents under this Act in the last 18 months; and
  - (c) the Registrar has no reason to believe that the corporation is carrying on business.
- (2) The Registrar may also decide to deregister an Aboriginal and Torres Strait Islander corporation if the corporation is being wound up and the Registrar has reason to believe that:
  - (a) the liquidator is no longer acting; or
  - (b) the corporation's affairs have been fully wound up and a return that the liquidator should have lodged is at least 6 months late; or
  - (c) the corporation's affairs have been fully wound up under Part 5.4 of the Corporations Act (as applied by section 526-35 of this Act) and the corporation has no



property or not enough property to cover the costs of obtaining a Court order for the corporation's deregistration.

*Deregistration procedure*

- (3) If the Registrar decides to deregister an Aboriginal and Torres Strait Islander corporation under this section, the Registrar must give notice of the proposed deregistration:
- (a) to the corporation; and
  - (b) to the corporation's liquidator (if any); and
  - (c) to the corporation's directors; and
  - (d) in the *Gazette*.

When 2 months have passed since the *Gazette* notice, the Registrar may deregister the corporation.

- (4) The Registrar does not have to give a person notice under subsection (3) if the Registrar does not have the necessary information about the person's identity or address.
- (5) The Registrar must give notice of the deregistration to everyone who was notified of the proposed deregistration under paragraph (3)(b) or (c).

**546-10 Deregistration—following amalgamation or winding up**

- (1) The Registrar must deregister an Aboriginal and Torres Strait Islander corporation if the Court orders the deregistration of the corporation under:
- (a) paragraph 413(1)(d) of the Corporations Act (as applied by section 45-1 of this Act) (reconstruction and amalgamations); or
  - (b) paragraph 481(5)(b) of the Corporations Act (as applied by section 526-35 of this Act) (release of liquidator); or
  - (c) subsection 509(6) of the Corporations Act (as applied by section 526-35 of this Act) (liquidator's return following winding up).
- (2) The Registrar must deregister an Aboriginal and Torres Strait Islander corporation if:

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- (a) 3 months have passed since the corporation's liquidator lodged a return under section 509 of the Corporations Act (as applied by section 526-35 of this Act); and
  - (b) no order under subsection 509(6) of the Corporations Act (as applied by section 526-35 of this Act) has been made during that period.
- (3) If:
- (a) an application is made under section 23-1 to register an Aboriginal and Torres Strait Islander corporation (the *amalgamated corporation*) under Part 2-3 to replace 2 or more existing Aboriginal and Torres Strait Islander corporations (the *amalgamating corporations*); and
  - (b) the Registrar registers the amalgamated corporation as a result of the application;
- the Registrar must deregister the amalgamating corporations.
- (4) Subsections 546-20(2) to (7) and sections 546-25 to 546-40 do not apply to the deregistration of an Aboriginal and Torres Strait Islander corporation under subsection (3) of this section.

**546-15 Registered native title body corporate**

The Registrar must not deregister an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate under section 546-1, 546-5 or 546-10.

**546-20 Effect of deregistration**

*Aboriginal and Torres Strait Islander corporation ceases to exist*

- (1) An Aboriginal and Torres Strait Islander corporation ceases to exist on deregistration.

Note: Despite the deregistration, officers of the corporation may still be liable for things done before the corporation was deregistered.

*Corporation's property vests in Registrar*

- (2) On deregistration, all the corporation's property vests in the Registrar. If corporation property is vested in a liquidator

immediately before deregistration, that property vests in the Registrar. This subsection extends to property situated outside Australia.

- (3) Under subsection (2), the Registrar takes only the same property rights that the corporation itself held. If the corporation held particular property subject to a security or other interest or claim, the Registrar takes the property subject to that interest or claim.

Note: See also subsection 546-25(3), which deals with liabilities that a law imposes on the property (particularly liabilities such as rates, taxes and other charges).

- (4) The Registrar has all the powers of an owner over property vested in the Registrar under subsection (2).

Note: Section 546-30 confers additional powers on the Registrar to fulfil outstanding obligations of the deregistered corporation.

*Corporation's books to be kept by former directors*

- (5) A person commits an offence if:
- (a) an Aboriginal and Torres Strait Islander corporation is deregistered; and
  - (b) the person is a director of the corporation immediately before deregistration; and
  - (c) the person does not keep the corporation's books for 3 years after the deregistration.

Penalty: 5 penalty units.

- (6) Subsection (5) does not apply to books that a liquidator has to keep under subsection 542(2) of the Corporations Act (as applied by section 526-35 of this Act).

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

*Strict liability offences*

- (7) An offence based on subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**546-25 What the Registrar does with the property**

- (1) If property vested in the Registrar under subsection 546-20(2) was held by the corporation on trust, the Registrar may:
- (a) continue to act as trustee; or
  - (b) apply to a court for the appointment of a new trustee.

Note: Under paragraph (a), the Registrar may be able to transfer the property to a new trustee chosen in accordance with the trust instrument.

- (2) If the corporation did not hold the property on trust, the Registrar may:
- (a) dispose of or deal with the property as he or she sees fit; and
  - (b) apply any money he or she receives to:
    - (i) defray expenses incurred by the Registrar in exercising his or her powers in relation to the corporation under this Chapter; and
    - (ii) make payments authorised by subsection (3).

The Registrar must deal with the rest of the property (if any) under Part 12-3.

*Obligations attaching to property*

- (3) The property remains subject to all liabilities imposed on the property under a law and does not have the benefit of any exemption that the property might otherwise have because it is vested in the Registrar. These liabilities include a liability that:
- (a) is a charge or claim on the property; and
  - (b) arises under a law that imposes rates, taxes or other charges.
- (4) The Registrar's obligation under subsection (3) is limited to satisfying the liabilities out of the corporation's property to the extent that the property is properly available to satisfy those liabilities.

*Accounts*

- (5) The Registrar must keep:
- (a) a record of property that he or she knows is vested in the Registrar under this Part; and
  - (b) a record of his or her dealings with that property; and

- (c) accounts of all money received from those dealings; and
- (d) all accounts, vouchers, receipts and papers relating to the property and that money.

### **546-30 Registrar's power to fulfil outstanding obligations of deregistered corporation**

The Registrar may do an act on behalf of the corporation or its liquidator if the Registrar is satisfied that the corporation or liquidator would be bound to do the act if the corporation still existed.

Note: This power is a general one and is not limited to acts in relation to property vested in the Registrar under subsection 546-20(2). The Registrar has all the powers that automatically flow from the vesting of property in the Registrar under that subsection (see subsection 546-20(4)) and may exercise those powers whether or not the corporation was bound to do so.

### **546-35 Claims against insurers of deregistered corporation**

A person may recover from the insurer of an Aboriginal and Torres Strait Islander corporation that is deregistered an amount that was payable to the corporation under the insurance contract if:

- (a) the corporation had a liability to the person; and
- (b) the insurance contract covered that liability immediately before deregistration.

### **546-40 Reinstatement**

#### *Reinstatement by the Registrar*

- (1) The Registrar may reinstate the registration of an Aboriginal and Torres Strait Islander corporation if the Registrar is satisfied that the corporation should not have been deregistered.

#### *Reinstatement by Court*

- (2) The Court may make an order that the Registrar reinstate the registration of an Aboriginal and Torres Strait Islander corporation if:
  - (a) an application for reinstatement is made to the Court by:

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- (i) a person aggrieved by the deregistration; or
  - (ii) a former liquidator of the corporation; and
  - (b) the Court is satisfied that it is just that the corporation's registration be reinstated.
- (3) If the Court makes an order under subsection (2), it may:
- (a) validate anything done between the deregistration of the corporation and its reinstatement; and
  - (b) make any other order it considers appropriate.

Note: For example, the Court may direct the Registrar to transfer to another person property vested in the Registrar under subsection 546-20(2).

*Registrar to give notice of reinstatement*

- (4) The Registrar must give notice of a reinstatement in the *Gazette*. If the Registrar exercises his or her power under subsection (1) in response to an application by a person, the Registrar must also give notice of the reinstatement to the applicant.

*Effect of reinstatement*

- (5) If an Aboriginal and Torres Strait Islander corporation is reinstated:
- (a) the corporation is taken to have continued in existence as if it had not been deregistered; and
  - (b) a person who was a director of the corporation immediately before deregistration becomes a director again as from the time when the Registrar or the Court reinstates the corporation; and
  - (c) any property of the corporation that is still vested in the Registrar reverts in the corporation; and
  - (d) if the corporation held particular property subject to a security or other interest or claim—the corporation takes the property subject to that interest or claim.

**546-45 Regulations may modify Division in relation to statutory  
Indigenous land trusts**

- (1) The regulations may modify any of the provisions of this Division (other than section 546-15 and subsection (2) of this section) as they relate to an Aboriginal and Torres Strait Islander corporation that holds land for the benefit of Aboriginal persons or Torres Strait Islanders under:
  - (a) the *Aboriginal Land Act 1991* of Queensland; or
  - (b) any other law prescribed by the regulations for the purposes of this paragraph.
- (2) Regulations made for the purposes of subsection (1) must not:
  - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.
- (3) This section does not limit section 633-5 (which deals with regulations in relation to registered native title bodies corporate).

## **Part 12-3—Unclaimed property**

### **Division 551—Unclaimed property**

#### **551-1 Unclaimed property**

Property is *unclaimed property* if it is property that subsection 546-25(2) provides for the Registrar to deal with under this Part.

#### **551-5 Registrar to deal with unclaimed property**

- (1) The Registrar, on behalf of the Commonwealth, holds unclaimed property that is money at the time when it becomes unclaimed property on trust in accordance with, and for the purposes of, this Part.
- (2) If unclaimed property is not money at the time when it becomes unclaimed property, the Registrar must:
  - (a) on behalf of the Commonwealth, hold the property on trust in accordance with, and for the purposes of, this Part until it is dealt with under paragraph (b); and
  - (b) sell or dispose of the property as the Registrar thinks fit and hold the proceeds, on behalf of the Commonwealth, on trust in accordance with, and for the purposes of, this Part.

#### **551-10 Registrar and Commonwealth not liable to pay calls on shares etc.**

If unclaimed property is or includes shares in a body corporate, the Registrar and the Commonwealth are not subject to any obligation:

- (a) to pay any calls; or
- (b) to make any contribution to the debts and liabilities of the body corporate; or
- (c) to discharge any other liability; or
- (d) to do any other act or thing;



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in respect of the shares, whether the obligation arises before or after the shares become unclaimed property, but this section does not affect the right of a body corporate to forfeit a share.

**551-15 Disposition of money that is unclaimed property etc.**

- (1) This section applies to money that:
  - (a) is unclaimed property; or
  - (b) represents the proceeds of unclaimed property.
- (2) If:
  - (a) a person claims to be entitled to the money; and
  - (b) the Registrar is satisfied that the person is entitled to the money;the Registrar must pay the money to the person in accordance with section 551-30.

**551-20 Establishment of the Aboriginal and Torres Strait Islander Corporations Unclaimed Money Account**

- (1) The Aboriginal and Torres Strait Islander Corporations Unclaimed Money Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

**551-25 Credits of amounts to Account**

There must be credited to the Account amounts equal to:

- (a) money that is unclaimed property; and
- (b) money that represents the proceeds of unclaimed property.

**551-30 Purposes of Account**

- (1) The purposes of the Account, in relation to which amounts may be debited from the Account, are:
  - (a) to pay persons whom the Registrar is satisfied under paragraph 551-15(2)(b) are entitled to the money; and

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- (b) to reduce the balance of the Account (and therefore the available appropriation for the Account) without making a payment to any person if 6 years have elapsed since the unclaimed property was first held by the Registrar.
- (2) If the money is not paid out in accordance with this section within 6 years after the unclaimed property was first held by the Registrar as unclaimed property, the Account must be debited by an amount equivalent to the money.
- (3) If:
  - (a) a person makes a claim under paragraph 551-15(2)(a) to money that is unclaimed property, or to money that represents the proceeds of unclaimed property, after 6 years have elapsed since the property was first held by the Registrar as unclaimed property; and
  - (b) the Registrar is satisfied that the person is entitled to the money;the Registrar must pay the money to the person out of money that is appropriated by the Parliament for the purpose.

**551-35 Claims of disposition of money to incorrect payee**

- (1) If:
  - (a) a person (the *claimant*) claims to be entitled to money; and
  - (b) the money has been paid to another person (the *payee*) in accordance with paragraph 551-30(1)(a) or subsection 551-30(3);the Registrar is not under any liability to the claimant in respect of that money, but, if the claimant is entitled to that money, the claimant may recover that money from the payee.
- (2) If:
  - (a) a person (the *claimant*) claims to be entitled to money; and
  - (b) an amount equivalent to that money has been paid to another person (the *payee*) in accordance with paragraph 551-30(1)(a) or subsection 551-30(3);

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the Registrar is not under any liability to the claimant in respect of that money, but, if the claimant is entitled to that money, the claimant may recover that equivalent amount from the payee.

**551-40 Commonwealth or Registrar not liable for loss or damage**

Neither the Commonwealth nor the Registrar is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers which are conferred on the Registrar under this Part or which the Registrar has in relation to unclaimed property.

## **Chapter 13—Offences**

### **Part 13-1—Offences about false or misleading statements etc.**

#### **Division 561—Offences about false or misleading statements etc.**

##### **561-1 False or misleading statements**

- (1) A person commits an offence if the person, in a document required by or for the purposes of this Act or lodged with or submitted to the Registrar:
  - (a) makes or authorises the making of a statement that, to the person's knowledge, is false or misleading in a material particular; or
  - (b) omits or authorises the omission of any matter or thing without which the document is, to the person's knowledge, misleading in a material respect.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) A person who makes or authorises the making of a statement that is based on information that, to the person's knowledge:
  - (a) is false or misleading in a material particular; or
  - (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;is, for the purposes of subsection (1), taken to have made or authorised the making of a statement that, to the person's knowledge, was false or misleading in a material particular.
- (3) A person is not liable to be prosecuted for an offence in consequence of a regulation made under section 633-1 as well as for an offence against subsection (1) of this section.
- (4) A person commits an offence if the person, in a document required by or for the purposes of this Act or lodged with the Registrar:

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- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
- (b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect;

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

- (5) A person who makes or authorises the making of a statement without having taken reasonable steps to ensure that the information on which the statement was based:
  - (a) was not false or misleading in a material particular; and
  - (b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect;

is, for the purposes of subsection (4), taken to have made or authorised the making of a statement without having taken reasonable steps to ensure that the statement was not false or misleading.

- (6) For the purposes of subsections (1) and (4), if:
  - (a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be lodged; and
  - (b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect;the person is taken to have authorised the making of the statement or the omission of the matter or thing.
- (7) For the purposes of this section, a statement, report or other document that:
  - (a) relates to affairs of an Aboriginal and Torres Strait Islander corporation or of a subsidiary of an Aboriginal and Torres Strait Islander corporation; and

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- (b) is not itself required by this Act to be laid before the corporation in general meeting; and
  - (c) is attached to or included with a report of the directors sent under Division 342 to members of the corporation or laid before the corporation at an AGM of the corporation;
- is taken to be part of the report referred to in paragraph (c).

**561-5 False information etc.**

- (1) An officer or employee of an Aboriginal and Torres Strait Islander corporation commits an offence if:
  - (a) the officer or employee makes available or gives information, or authorises or permits the making available or giving of information, to:
    - (i) a director, auditor or member of the corporation; or
    - (ii) if the corporation is taken for the purposes of this Act to be controlled by another Aboriginal and Torres Strait Islander corporation—an auditor of the other corporation; and
  - (b) the information (whether in documentary or any other form) relates to the affairs of the corporation; and
  - (c) the information, to the knowledge of the officer or employee:
    - (i) is false or misleading in a material particular; or
    - (ii) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) An officer or employee of an Aboriginal and Torres Strait Islander corporation commits an offence if:
  - (a) the officer or employee makes available or gives information, or authorises or permits the making available or giving of information, to:
    - (i) a director, auditor or member of the corporation; or
    - (ii) if the corporation is taken for the purposes of this Act to be controlled by another Aboriginal and Torres Strait Islander corporation—an auditor of the other corporation; and

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- (b) the information (whether in documentary or any other form) related to the affairs of the corporation; and
- (c) the information:
  - (i) is false or misleading in a material particular; or
  - (ii) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect; and
- (d) the officer or employee does not take reasonable steps to ensure that the information:
  - (i) was not false or misleading in a material particular; and
  - (ii) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (3) The references in subsections (1) and (2) to a person making available or giving, or authorising or permitting the making available or giving of, information relating to the affairs of a corporation include references to a person making available or giving, or authorising or permitting the making available or giving of, information as to the state of knowledge of that person with respect to the affairs of the corporation.
- (4) If information is made available or given to a person referred to in subparagraph (1)(a)(i) or (ii) or (2)(a)(i) or (ii) in response to a question asked by that person, the question and the information are to be considered together in determining whether the information was false or misleading.

## **Part 13-2—General matters relating to offences**

### **Division 566—General matters relating to offences**

#### **566-1 Penalties for bodies corporate**

If a body corporate is convicted of an offence against this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

#### **566-5 Penalty notices**

- (1) If the Registrar has reason to believe that a person has committed a prescribed offence, the Registrar may, subject to subsection (3), give the person a written notice:
  - (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence; and
  - (b) setting out the prescribed penalty in respect of the prescribed offence; and
  - (c) in the case of a prescribed offence constituted by a failure to do a particular act or thing—stating:
    - (i) that the obligation to do the act or thing continues despite the service of the notice or the payment of the prescribed penalty; and
    - (ii) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the Registrar and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and
    - (iii) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar or has not done the act or thing, proceedings may be instituted against the person; and
  - (d) in the case of a prescribed offence that is not constituted by a failure to do a particular act or thing—stating:



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- (i) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the Registrar, no further action will be taken against the person in relation to the prescribed offence; and
  - (ii) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar, proceedings may be instituted against the person.
- (2) A notice under subsection (1) is not a legislative instrument.
- (3) Subsection (1) does not empower the Registrar:
- (a) to give a person more than one notice under that subsection in relation to an alleged commission by that person of a particular prescribed offence; or
  - (b) to give a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 566-15.
- (4) A notice under subsection (1) may be given to a natural person either personally or by post.
- (5) If a notice under subsection (1) is given to a person in relation to a prescribed offence constituted by a failure to do a particular act or thing:
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the Registrar, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence; or
  - (b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the Registrar but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 566-10 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do that act or thing; or

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- (c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar but had done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or
  - (d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.
- (6) If a notice under subsection (1) is given to a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the Registrar—no proceedings may be instituted against the person in respect of the prescribed offence; or
  - (b) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the Registrar—proceedings may be instituted against the person in respect of the prescribed offence.
- (7) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence is not taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.
- (8) Except as provided by paragraphs (5)(a) and (b) and (6)(a), this section does not affect the operation of any provision of this Act, of the regulations, of the rules or of any other Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.
- (9) In this section:

***prescribed offence*** means an offence against this Act that the regulations prescribe for the purposes of this section.

***prescribed penalty***, in relation to a prescribed offence in relation to which the Registrar may give, or has given, to a person a notice

under subsection (1), means a penalty of the amount that the regulations prescribe in relation to the offence.

**566-10 Continuing offences**

(1) If:

- (a) by or under a provision, an act is or was required to be done within a particular period or before a particular time; and
- (b) failure to do the act within that period or before that time constitutes an offence; and
- (c) the act is not done within that period or before that time;

then:

- (d) the obligation to do the act continues, after that period has ended or that time has passed, and whether or not a person is or has been convicted of a primary substantive offence in relation to failure to do the act, until the act is done; and
- (e) subsections (3) and (4) apply.

(2) If:

- (a) by or under a provision, an act is or was required to be done but neither a period nor a time for the doing of the act is or was specified; and
- (b) failure to do the act constitutes an offence; and
- (c) a person is or has been convicted of a primary substantive offence in relation to failure to do the act;

then:

- (d) the obligation to do the act continues, despite the conviction, until the act is done; and
- (e) subsections (3) and (4) apply.

(3) If:

- (a) at a particular time, a person is or was first convicted of a substantive offence, or is or was convicted of a second or subsequent substantive offence, in relation to failure to do the act; and

- (b) the failure to do the act continued after that time;

then:

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- (c) the person, in relation to failure to do the act, commits a further offence in respect of so much of the period throughout which the failure to do the act continued or elapsed after that time and before the relevant day in relation to the further offence; and
  - (d) for the purposes of this Act and of the *Crimes Act 1914*, the further offence is taken to be constituted by failure to do the act during so much of that period as so elapsed.
- (4) If:
- (a) the provision referred to in paragraph (1)(a) or (2)(a), as the case may be, provides or provided that:
    - (i) an officer or employee of a body corporate; or
    - (ii) a person;who is or was in default, or is or was involved in a contravention constituted by the failure to do the act, commits or committed an offence or contravenes or contravened a provision of this Act; and
  - (b) throughout a particular period (the ***relevant period***):
    - (i) the failure to do the act continued; and
    - (ii) a person (the ***derivative offender***) is or was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure to do the act; and
    - (iii) if subparagraph (a)(i) applies—the derivative offender is or was an officer or employee of the body;
- then:
- (c) if either or both of the following events occurs or occur:
    - (i) a person is or was convicted, before or during the relevant period, of a primary substantive offence in relation to failure to do the act;
    - (ii) the derivative offender is or was convicted, before or during the relevant period, of a primary derivative offence in relation to failure to do the act;the derivative offender, in relation to failure to do the act, commits an offence (the ***relevant offence***) in respect of so much (if any) of the relevant period as elapsed:

- (iii) after the conviction referred to in subparagraph (i) or (ii), or after the earlier of the convictions referred to in subparagraphs (i) and (ii), as the case may be; and
  - (iv) before the relevant day in relation to the relevant offence; and
- (d) if, at a particular time during the relevant period, the derivative offender is or was first convicted of a secondary derivative offence, or is or was convicted of a second or subsequent secondary derivative offence, in relation to failure to do the act—the derivative offender, in relation to failure to do the act, commits a further offence in respect of so much of the relevant period as elapsed after that time and before the relevant day in relation to the further offence.
- (5) If a person, by virtue of subsection (3) or (4), commits an offence in respect of the whole or a part of a particular period, the penalty applicable to the offence is a fine of the amount obtained by multiplying half a penalty unit by the number of days in that period, or in that part of that period, as the case may be.

- (6) In this section:

***in default***, in relation to a contravention and to an officer or employee of a body corporate, or to a person, means an officer or employee of the body (including a person who later ceases to be such an officer or employee), or a person, as the case may be, who is involved in the contravention.

***primary derivative offence***, in relation to failure to do an act, means an offence (other than an offence a person commits by virtue of this section) that a person commits or committed by virtue of being an officer of an Aboriginal and Torres Strait Islander corporation, or a person, who is or was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to failure to do the act.

***primary substantive offence***, in relation to a failure to do an act, means an offence (other than an offence that a person commits or committed by virtue of this section) constituted by failure to do the act, or by failure to do the act within a particular period or before a particular time.

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*provision* means a section, or a subsection of a section, of this Act.

*relevant day*, in relation to an offence that a person commits by virtue of this section, means:

- (a) if the information relating to the offence specifies a day in relation to the offence for the purposes of this section, being a day not later than the day on which the information is laid—the day the information so specifies; or
- (b) in any other case—the day on which the information relating to the offence is laid.

*required* includes directed.

*secondary derivative offence*, in relation to failure to do an act, means an offence or further offence that a person, in relation to failure to do the act, commits by virtue of paragraph (4)(c) or (d).

*substantive offence*, in relation to failure to do an act, means:

- (a) a primary substantive offence in relation to failure to do the act; or
  - (b) a further offence that a person, in relation to failure to do the act, commits by virtue of subsection (3).
- (7) For the purposes of subsection (4), a provision of this Act is, whether or not it expressly provides as mentioned in paragraph (4)(a), taken to provide that a person who is or was involved in a contravention constituted by a failure to do an act required by the provision contravenes or contravened that provision.

**566-15 Time for instituting criminal proceedings**

Despite anything in any other law, proceedings for an offence against this Act may be instituted:

- (a) within the period of 5 years after the act or omission alleged to constitute the offence; or
- (b) with the Minister's consent, at any later time.

**566-20 Privilege against self-incrimination not available to bodies corporate in certain proceedings**

- (1) This section applies to a proceeding in a court when exercising jurisdiction in respect of a criminal matter arising under this Act.
- (2) In the proceeding, a body corporate is not entitled to refuse or fail to comply with a requirement:
  - (a) to answer a question or give information; or
  - (b) to produce a book or any other thing; or
  - (c) to do any other act whatever;on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend:
  - (d) to incriminate the body (whether in respect of an offence to which the proceeding relates or otherwise); or
  - (e) to make the body liable to a penalty (whether in respect of anything to which the proceeding relates or otherwise).
- (3) Subsection (2) applies whether or not the body concerned is a defendant in the proceeding or in any other proceeding.

**566-25 Certain persons to assist in prosecutions**

- (1) If a prosecution in respect of an offence against this Act has been instituted, or the Registrar is of the opinion that a prosecution in respect of an offence against this Act ought to be instituted, against a person (the *defendant*), the Registrar may:
  - (a) if the defendant is a natural person—require any person who is or was a partner, employee or agent of the defendant; or
  - (b) if the defendant is a body corporate—require any person who is or was an officer, employee or agent of the defendant;to assist in the prosecution, and the person who is so required must give all assistance in connection with the prosecution that the person is reasonably able to give.
- (2) The Registrar must not make such a requirement as is mentioned in subsection (1) of a person who, in the opinion of the Registrar, is

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or is likely to be a defendant in the proceedings or is or has been such a person's lawyer.

- (3) If a person to whom paragraph (1)(a) or (b) relates fails to give assistance as required by subsection (1), the person contravenes this section and, without affecting any penalty to which the person may be liable for the contravention, the Court may, on the application of the Registrar, order the person to comply with the requirement within such time, and in such manner, as the Court orders.
- (4) In this section:
- agent*, in relation to the defendant, includes:
- (a) a banker of the defendant; and
  - (b) a person engaged as an auditor by the defendant;
- whether that person is an employee or an officer of the defendant or not.
- (5) A requirement by the Registrar under subsection (1) is not a legislative instrument.



## **Chapter 14—Courts and proceedings**

### **Part 14-1—Powers of courts**

#### **Division 576—Powers of courts**

##### **576-1 Power to grant relief**

- (1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the court before which the proceedings are taken:
  - (a) that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly; and
  - (b) that, having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach;the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.
- (2) If a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty in a capacity as such a person:
  - (a) the person may apply to the Court for relief; and
  - (b) the Court has the same power to relieve the person as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.
- (3) If a case to which subsection (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the defendant ought, pursuant to that subsection, to be relieved either wholly or partly from the liability sought to be enforced against the person:
  - (a) withdraw the case in whole or in part from the jury; and

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- (b) forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.
- (4) This section applies to a person who is:
  - (a) an officer or employee of an Aboriginal and Torres Strait Islander corporation; or
  - (b) an auditor of an Aboriginal and Torres Strait Islander corporation (whether or not the person is an officer or employee of the corporation); or
  - (c) an expert in relation to a matter:
    - (i) relating to an Aboriginal and Torres Strait Islander corporation; and
    - (ii) in relation to which the civil proceeding has been taken or the claim will or might arise; or
  - (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Act in relation to an Aboriginal and Torres Strait Islander corporation; or
  - (e) a special administrator for an Aboriginal and Torres Strait Islander corporation.

**576-5 Power of Court to give directions with respect to meetings ordered by the Court**

If, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to:

- (a) the convening, holding or conduct of the meeting; and
- (b) such ancillary or consequential directions in relation to the meeting as it thinks fit.

**576-10 Appeals from decisions of receivers, liquidators etc.**

- (1) A person aggrieved by any act, omission or decision of:
  - (a) a special administrator for an Aboriginal and Torres Strait Islander corporation; or
  - (b) a receiver, or a receiver and manager, of property of an Aboriginal and Torres Strait Islander corporation; or

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- (c) an administrator of an Aboriginal and Torres Strait Islander corporation; or
  - (d) an administrator of a deed of corporation arrangement executed by an Aboriginal and Torres Strait Islander corporation; or
  - (e) a liquidator or provisional liquidator of an Aboriginal and Torres Strait Islander corporation;
- may appeal to the Court in respect of the act, omission or decision.
- (2) The Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks fit.

**576-15 Irregularities**

- (1) In this section:
  - (a) a reference to a proceeding under this Act is a reference to any proceeding whether a legal proceeding or not; and
  - (b) a reference to a procedural irregularity includes a reference to:
    - (i) the absence of a quorum at a meeting of an Aboriginal and Torres Strait Islander corporation, at a meeting of directors or creditors of an Aboriginal and Torres Strait Islander corporation, or at a joint meeting of creditors and members of an Aboriginal and Torres Strait Islander corporation; and
    - (ii) a defect, irregularity or deficiency of notice or time.
- (2) A proceeding under this Act is not invalidated because of any procedural irregularity unless the Court:
  - (a) is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court; and
  - (b) by order declares the proceeding to be invalid.
- (3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated merely because of:

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- (a) the accidental omission to give notice of the meeting; or
  - (b) the non-receipt by any person of notice of the meeting;
- unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

- (4) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated merely because of the inability of a person to access the notice of meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

Note: Under paragraph 201-25(3)(e), an Aboriginal and Torres Strait Islander corporation may, in certain circumstances, give a member notice of a meeting by notifying the member that the notice of meeting is available and how the member may access the notice of meeting.

- (5) If a member does not have a reasonable opportunity to participate in a meeting of members, or part of a meeting of members, held at 2 or more venues, the meeting will only be invalid on that ground if:
- (a) the Court is of the opinion that:
    - (i) a substantial injustice has been caused or may be caused; and
    - (ii) the injustice cannot be remedied by any order of the Court; and
  - (b) the Court declares the meeting or proceeding (or that part of it) invalid.
- (6) Subject to the following provisions of this section but without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:
- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to an Aboriginal and Torres Strait Islander corporation is not invalid by reason of any contravention of a provision of this

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- Act or a provision of the constitution of an Aboriginal and Torres Strait Islander corporation;
- (b) an order directing the rectification of any register kept by the Registrar under this Act;
  - (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);
  - (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to an Aboriginal and Torres Strait Islander corporation (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding;
- and may make such consequential or ancillary orders as the Court thinks fit.
- (7) An order may be made under paragraph (6)(a) or (c) despite that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.
  - (8) The Court must not make an order under this section unless it is satisfied:
    - (a) in the case of an order referred to in paragraph (6)(a):
      - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature; or
      - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
      - (iii) that it is just and equitable that the order be made; and
    - (b) in the case of an order referred to in paragraph (6)(c)—that the person subject to the civil liability concerned acted honestly; and
    - (c) in every case—that no substantial injustice has been or is likely to be caused to any person.

**576-20 Power of Court to prohibit payment or transfer of money, financial products or other property**

(1) If:

- (a) an investigation is being carried out under this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or
- (b) a prosecution has been begun against a person for a contravention of this Act; or
- (c) a civil proceeding has been begun against a person under this Act;

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (an *aggrieved person*) to whom the person referred to in paragraph (a), (b) or (c), as the case may be, (the *relevant person*), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for financial products or other property, the Court may, on application by the Registrar or by an aggrieved person, make one or more of the following orders:

- (d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (e) an order prohibiting a person holding money, financial products or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the financial products or other property, to, or to another person at the direction or request of, the person on whose behalf the money, financial products or other property, is or are held;
- (f) an order prohibiting the taking or sending out of this jurisdiction, or out of Australia, by a person of money of the relevant person or of an associate of the relevant person;

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- (g) an order prohibiting the taking, sending or transfer by a person of financial products or other property of the relevant person, or of an associate of the relevant person:
  - (i) from a place in this jurisdiction to a place outside this jurisdiction (including the transfer of financial products from a register in this jurisdiction to a register outside this jurisdiction); or
  - (ii) from a place in Australia to a place outside Australia (including the transfer of financial products from a register in Australia to a register outside Australia);
- (h) an order appointing:
  - (i) if the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or
  - (ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;
  - (i) if the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;
  - (j) if the relevant person is a natural person—an order prohibiting that person from leaving this jurisdiction, or Australia, without the consent of the Court.
- (2) A reference in paragraph (1)(g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:
  - (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
  - (b) in a fiduciary capacity.
- (3) Subsection (2) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Act.
- (4) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

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- (5) If an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (6) On an application under subsection (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (5), to give an undertaking as to damages.
- (7) If the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.
- (8) An order made under subsection (1) or (5) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.
- (9) Nothing in this section affects the powers that the Court has apart from this section.
- (10) This section has effect subject to the *Bankruptcy Act 1966*.
- (11) A person must not contravene an order by the Court under this section that is applicable to the person.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

- (12) An offence against subsection (11) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**576-25 Injunctions**

- (1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
  - (a) a contravention of this Act; or
  - (b) attempting to contravene this Act; or
  - (c) aiding, abetting, counselling or procuring a person to contravene this Act; or



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- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
  - (f) conspiring with others to contravene this Act;
- the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (2) If a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of:
    - (a) the Registrar; or
    - (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.
  - (3) If an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.
  - (4) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
  - (5) The Court may discharge or vary an injunction granted under subsection (1), (2) or (4).
  - (6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
    - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
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- (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (8) If the Registrar applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (9) In proceedings under this section against a person the Court may make an order under section 576-20 in respect of the person.
- (10) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

**576-30 Effect of sections 576-20 and 576-25**

Nothing in either of sections 576-20 or 576-25 limits the generality of anything else in either of those sections.

**576-35 Power of Court to punish for contempt of Court**

Nothing in a provision of this Act that provides:

- (a) that a person must not contravene an order of the Court; or

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(b) that a person who contravenes an order of the Court  
contravenes a provision of this Act or commits an offence;  
affects the powers of the Court in relation to the punishment of  
contempts of the Court.

## **Part 14-2—Proceedings**

### **Division 581—Proceedings**

#### **581-1 The Registrar’s power to intervene in proceedings**

- (1) The Registrar may intervene in any proceeding relating to a matter arising under this Act.
- (2) If the Registrar intervenes in a proceeding referred to in subsection (1), the Registrar is taken to be a party to the proceeding and, subject to this Act, has all the rights, duties and liabilities of such a party.
- (3) Without limiting subsection (2), the Registrar may appear and be represented in any proceeding in which the Registrar wishes to intervene pursuant to subsection (1):
  - (a) by a natural person to whom, or by an officer or employee of a person or body to whom or to which, the Registrar has delegated its functions and powers under this Act or such of those functions and powers as relate to a matter to which the proceeding relates; or
  - (b) by solicitor or counsel.

#### **581-5 Civil proceedings not to be stayed**

No civil proceedings under this Act are to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

#### **581-10 Standard of proof**

If, in proceedings other than proceedings for an offence, it is necessary to establish, or for the Court to be satisfied, for any purpose relating to a matter arising under this Act, that:

- (a) a person has contravened a provision of this Act; or
- (b) default has been made in complying with a provision of this Act; or

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- (c) an act or omission was unlawful because a provision of this Act; or
- (d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention, or a default in complying with, a provision of this Act;

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established, or the Court is so satisfied, as the case may be, on the balance of probabilities.

**581-15 Evidence of contravention**

For the purposes of this Act, a certificate that:

- (a) purports to be signed by the Registrar of an Australian court or other proper officer of an Australian court; and
- (b) states:
  - (i) that a person was convicted by that court on a specified day of a specified offence; or
  - (ii) that a person charged before that court with a specified offence was, on a specified day, found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence:

- (c) if subparagraph (b)(i) applies—that the person was convicted of the offence on that day; and
- (d) if the offence was constituted by a contravention of a provision of a law—that the person contravened that provision.

**581-20 Costs**

- (1) If an Aboriginal and Torres Strait Islander corporation is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in his, her or its

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defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

- (2) The costs of any proceeding before a court under this Act are to be borne by such party to the proceeding as the court, in its discretion, directs.

**581-25 Vesting of property**

- (1) If an order is made by a court under this Act vesting property in a person:
- (a) subject to subsection (2), the property forthwith vests in the person named in the order without any conveyance, transfer or assignment; and
  - (b) the person who applied for the order must, within 7 days after the passing and entering of the order, lodge an office copy of the order with such person (if any) as is specified for the purpose in the order.
- (2) If:
- (a) the property to which an order referred to in subsection (1) relates is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and
  - (b) that law enables the registration of such an order;
- the property, despite that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.
- (3) If:
- (a) property vests in a person by force of this Act; and
  - (b) the property is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and
  - (c) that law enables the person to be registered as the owner of that property;
- the property, despite that it vests in equity in that person by force of this Act, does not vest in that person at law until the

requirements of the law referred to in paragraph (b) have been complied with.

## **Part 14-3—Jurisdiction and procedure of courts**

### **Division 586—Civil jurisdiction**

#### **Subdivision 586-A—Introduction**

##### **586-1 Operation of Division**

- (1) This Division deals with:
  - (a) the jurisdiction of courts in respect of civil matters arising under the Aboriginal and Torres Strait Islander Corporations legislation; and
  - (b) the jurisdiction of courts in respect of matters arising under the *Administrative Decisions (Judicial Review) Act 1977* involving or related to decisions made under the Aboriginal and Torres Strait Islander Corporations legislation by Commonwealth authorities and officers of the Commonwealth; and
  - (c) the jurisdiction of courts in civil matters in respect of decisions made by officers of the Commonwealth to prosecute persons for offences against the Aboriginal and Torres Strait Islander Corporations legislation and related criminal justice process decisions.
- (2) This Division operates to the exclusion of:
  - (a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and
  - (b) section 39B of the *Judiciary Act 1903*.
- (3) This Division does not limit the operation of the provisions of the *Judiciary Act 1903* other than section 39B.
- (4) Without limiting subsection (3), this Division does not limit the operation of subsection 39(2) of the *Judiciary Act 1903* in relation to civil matters arising under the Aboriginal and Torres Strait Islander Corporations legislation.
- (5) Nothing in this Division affects any other jurisdiction of any court.



## **Subdivision 586-B—Conferral of jurisdiction**

### **586-5 Jurisdiction of Federal Court and State and Territory Supreme Courts**

- (1) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Aboriginal and Torres Strait Islander Corporations legislation.
- (2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the Supreme Court of:
  - (a) each State; and
  - (b) the Australian Capital Territory; and
  - (c) the Northern Territory;with respect to civil matters arising under the Aboriginal and Torres Strait Islander Corporations legislation.
- (3) Despite section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the Supreme Court of:
  - (a) each State; and
  - (b) the Australian Capital Territory; and
  - (c) the Northern Territory;with respect to matters arising under that Act involving or related to decisions made, or proposed or required to be made, under the Aboriginal and Torres Strait Islander Corporations legislation by a Commonwealth authority or an officer of the Commonwealth.

Note 1: The Federal Court also has jurisdiction with respect to these matters under that Act.

Note 2: A Supreme Court may be required to transfer a proceeding with respect to such a matter to the Federal Court (see subsection 586-35(3)).
- (4) Subsection (3) applies to a decision made, or proposed or required to be made:
  - (a) whether or not in the exercise of a discretion; and
  - (b) whether before or after that subsection commences.

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- (5) The jurisdiction conferred on a Supreme Court by subsection (2) or (3) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.
- (6) This section has effect subject to section 586-15.

**586-10 Jurisdiction of Family Court and State Family Courts**

- (1) Jurisdiction is conferred on the Family Court with respect to civil matters arising under the Aboriginal and Torres Strait Islander Corporations legislation.
- (2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on each State Family Court with respect to civil matters arising under the Aboriginal and Torres Strait Islander Corporations legislation.
- (3) The jurisdiction conferred on a State Family Court by subsection (2) is not limited by any limits to which any other jurisdiction of the State Family Court may be subject.
- (4) This section has effect subject to section 586-15.

**586-15 Jurisdiction of courts (decisions to prosecute and related criminal justice process decisions made by Commonwealth officers)**

- (1) If a decision to prosecute a person for an offence against the Aboriginal and Torres Strait Islander Corporations legislation has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a State or Territory court:
  - (a) neither the Federal Court nor the Family Court has jurisdiction with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision; and
  - (b) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution is proposed to be commenced.
- (2) Subject to subsection (3), at any time when:

- (a) a prosecution for an offence against the Aboriginal and Torres Strait Islander Corporations legislation is before a State or Territory court; or
  - (b) an appeal arising out of such a prosecution is before a State or Territory court;
- the following apply:
- (c) neither the Federal Court nor the Family Court has jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision;
  - (d) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution or appeal is before a court.
- (3) Subsection (2) does not apply where a person has applied for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth in relation to a related criminal justice process decision before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.
- (4) If subsection (3) applies, the prosecutor may apply to the court for a permanent stay of the proceedings referred to in that subsection and the court may grant such a stay if the court determines that:
- (a) the matters that are the subject of the proceedings are more appropriately dealt with in the criminal justice process; and
  - (b) a stay of proceedings will not substantially prejudice the person.
- (5) Subsections (1), (2), (3) and (4) have effect despite anything in this Act or in any other law. In particular:
- (a) neither this Act, nor any other law, has the effect of giving the Federal Court or the Family Court jurisdiction contrary to subsection (1) or (2); and
  - (b) neither section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, nor any other law, has the effect of removing from the Supreme Court of a State, the Australian

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Capital Territory or the Northern Territory the jurisdiction given to that Court by subsection (1) or (2).

(6) In this section:

*appeal* includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

*related criminal justice process decision*, in relation to an offence, means a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

- (a) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and
- (b) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and
- (c) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and
- (d) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and
- (e) a decision in connection with an appeal arising out of the prosecution.

**586-20 Jurisdiction of lower courts**

(1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the lower courts of:

- (a) each State; and
- (b) the Australian Capital Territory; and
- (c) the Northern Territory;

with respect to civil matters (other than superior court matters) arising under the Aboriginal and Torres Strait Islander Corporations legislation.

(2) The jurisdiction conferred on a lower court by subsection (1):

- (a) is subject to the court's general jurisdictional limits, so far as they relate to:

- (i) the amounts; or
- (ii) the value of property;  
with which the court may deal; but
- (b) is not subject to the court's other jurisdictional limits.

### **586-25 Appeals**

- (1) An appeal may not be instituted from a decision of the Federal Court to:
  - (a) a State or Territory court; or
  - (b) the Family Court.
- (2) An appeal may not be instituted from a decision of a court of the Australian Capital Territory to:
  - (a) a court of a State or the Northern Territory; or
  - (b) the Family Court.
- (3) An appeal may not be instituted from a decision of a court (not being a State Family Court) of a State or the Northern Territory to:
  - (a) the Federal Court; or
  - (b) a court of another State or Territory; or
  - (c) the Family Court; or
  - (d) a State Family Court of that State.
- (4) An appeal may not be instituted from a decision of the Family Court to:
  - (a) the Federal Court; or
  - (b) a State or Territory court.
- (5) An appeal may not be instituted from a decision of a State Family Court of a State to:
  - (a) the Federal Court; or
  - (b) a court of another State or Territory; or
  - (c) except in accordance with the law of the State under which the State Family Court is constituted—the Supreme Court of that State.

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**586-30 Courts to act in aid of each other**

All courts having jurisdiction in:

- (a) civil matters arising under the Aboriginal and Torres Strait Islander Corporations legislation; or
  - (b) matters referred to in subsection 586-5(3);
- and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all those matters.

**Subdivision 586-C—Transfer of proceedings**

**586-35 Transfer of proceedings by the Federal Court and State and Territory Supreme Courts**

- (1) This section applies to a proceeding (the *relevant proceeding*) in a court (the *transferor court*) if:
  - (a) the relevant proceeding is:
    - (i) a proceeding with respect to a civil matter arising under the Aboriginal and Torres Strait Islander Corporations legislation; or
    - (ii) a subsection 586-5(3) proceeding; and
  - (b) the transferor court is:
    - (i) the Federal court; or
    - (ii) a State or Territory Supreme Court.
- (2) Subject to subsections (3), (4) and (5), if it appears to the transferor court that, having regard to the interests of justice, it is more appropriate for:
  - (a) the relevant proceeding; or
  - (b) an application in the relevant proceeding;to be determined by another court that has jurisdiction in the matters for determination in the relevant proceeding or application, the transferor court may transfer the relevant proceeding or application to that other court.
- (3) If:
  - (a) the relevant proceeding is a subsection 586-5(3) proceeding; and

- (b) the transferor court is a State or Territory Supreme Court; the transferor court must transfer the relevant proceeding to the Federal Court unless the matter for determination in it arises out of, or relates to, another proceeding pending in any court of that State or Territory that:
  - (c) arises, or a substantial part of which arises, under the Aboriginal and Torres Strait Islander Corporations legislation; and
  - (d) is not a subsection 586-5(3) proceeding; regardless of which proceeding was commenced first.
- (4) Even if subsection (3) does not require a State or Territory Supreme Court to transfer a subsection 586-5(3) proceeding to the Federal Court, it may nevertheless do so if it considers that to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same State or Territory.
- (5) If:
  - (a) the relevant proceeding is a subsection 586-5(3) proceeding in relation to a matter; and
  - (b) the transferor court is the Federal Court; the transferor court may only transfer the relevant proceeding, or an application in the relevant proceeding, to a State or Territory Supreme Court if:
    - (c) the matter arises out of, or relates to, another proceeding pending in any court of that State or Territory that:
      - (i) arises, or a substantial part of which arises, under the Aboriginal and Torres Strait Islander Corporations legislation; and
      - (ii) is not a subsection 586-5(3) proceeding; regardless of which proceeding was commenced first; and
    - (d) the transferor court considers the transfer to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.
- (6) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

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- (7) The fact that some references in this section to the interests of justice include the desirability of related proceedings being heard in the same jurisdiction does not of itself mean that other references to the interests of justice, in this section or elsewhere in this Act, do not include that matter.

**586-40 Transfer of proceedings by Family Court and State Family Courts**

- (1) This section applies to a proceeding (the *relevant proceeding*) in a court (the *transferor court*) if:
- (a) the relevant proceeding is with respect to a civil matter arising under the Aboriginal and Torres Strait Islander Corporations legislation; and
  - (b) the transferor court is:
    - (i) the Family Court of Australia; or
    - (ii) a State Family Court.
- (2) If it appears to the transferor court:
- (a) that the relevant proceeding arises out of, or is related to, another proceeding pending in:
    - (i) the Federal Court; or
    - (ii) another State or Territory court;and that the court in which the other proceeding is pending is the most appropriate court to determine the relevant proceeding; or
  - (b) that having regard to:
    - (i) whether, in the transferor court's opinion, apart from this Division, the relevant proceeding, or a substantial part of it, would have been incapable of being instituted in the transferor court; and
    - (ii) the extent to which, in the transferor court's opinion, the matters for determination in the relevant proceeding are matters not within the transferor court's jurisdiction apart from this Division; and



- (iii) the interests of justice;  
the Federal Court, or another State or Territory court, is the most appropriate court to determine the relevant proceeding;  
or
  - (c) that it is otherwise in the interests of justice that the Federal Court, or another State or Territory court, determine the relevant proceeding;  
the transferor court must transfer the relevant proceeding to the Federal Court or to that other court.
- (3) Subject to subsection (2), if it appears to the transferor court:
- (a) that the relevant proceeding arises out of, or is related to, another proceeding pending in another court that is:
    - (i) the Family Court of Australia; or
    - (ii) a State Family Court;and that has jurisdiction under section 586-10 in the matters for determination in the relevant proceeding and that the other court is the most appropriate court to determine the relevant proceeding; or
  - (b) that it is otherwise in the interests of justice that the relevant proceeding be determined by another court that is:
    - (i) the Family Court of Australia; or
    - (ii) a State Family Court;and that has jurisdiction under section 586-10 in the matters for determination in the relevant proceeding;  
the transferor court must transfer the relevant proceeding to the other court.
- (4) If:
- (a) the transferor court transfers the relevant proceeding to another court; and
  - (b) it appears to the transferor court that:
    - (i) there is another proceeding pending in the transferor court that arises out of, or is related to, the relevant proceeding; and

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- (ii) it is in the interests of justice that the other court also determine the other proceeding;  
the transferor court must also transfer the other proceeding to the other court.
- (5) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

**586-45 Transfer of proceedings in lower courts**

- (1) This section applies to a proceeding (the *relevant proceeding*) in a court (the *transferor court*) if:
  - (a) the relevant proceeding is with respect to a civil matter arising under the Aboriginal and Torres Strait Islander Corporations legislation; and
  - (b) the transferor court is a lower court of a State or Territory.
- (2) If it appears to the transferor court that, having regard to the interests of justice, it is more appropriate for:
  - (a) the relevant proceeding; or
  - (b) an application in the relevant proceeding;to be determined by another court that has jurisdiction in the matters for determination in the relevant proceeding or application, the transferor court may take action under whichever of subsections (3) and (4) applies.
- (3) If the other court is also a lower court, the transferor court may transfer the relevant proceeding or application to the other court.
- (4) If the other court is a superior court, the transferor court may:
  - (a) transfer the relevant proceeding or application to the Supreme Court of the State or Territory of which the transferor court is a court; and
  - (b) recommend that the relevant proceeding or application be transferred by the Supreme Court to the other court.
- (5) The Supreme Court is not bound to comply with a recommendation under subsection (4) and it may instead decide:
  - (a) to deal with the relevant proceeding or application itself; or

- (b) to transfer the relevant proceeding or application to some other court (which could be the transferor court).
- (6) Nothing in this section allows the Supreme Court to transfer the relevant proceeding or application to another court otherwise than in accordance with section 586-35 and the other requirements of this Division.
- (7) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

**586-50 Further matters for a court to consider when deciding whether to transfer a proceeding**

In deciding whether to transfer under section 586-35, 586-40 or 586-45 a proceeding or application, a court must have regard to:

- (a) the principal place of business of any body corporate concerned in the proceeding or application; and
- (b) the place or places where the events that are the subject of the proceeding or application took place; and
- (c) the other courts that have jurisdiction to deal with the proceeding or application.

**586-55 Transfer may be made at any stage**

A court may transfer under section 586-35, 586-40 or 586-45 a proceeding or application:

- (a) on the application of a party made at any stage; or
- (b) of the court's own motion.

**586-60 Transfer of documents**

If, under section 586-35, 586-40 or 586-45, a court (the *transferor court*) transfers a proceeding, or an application in a proceeding, to another court:

- (a) the Registrar of the transferor court or other proper officer of the transferor court must transmit to the Registrar of the other court or other proper officer of the other court all documents filed in the transferor court in respect of the proceeding or application, as the case may be; and

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- (b) the other court must proceed as if:
  - (i) the proceeding had been originally instituted in the other court; and
  - (ii) the same proceedings had been taken in the other court as were taken in the transferor court; and
  - (iii) in a case where an application is transferred—the application had been made in the other court.

**586-65 Conduct of proceedings**

- (1) Subject to sections 586-80, 586-85 and 586-90, if it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising jurisdiction to which subsection (3) applies, the rules of evidence and procedure to be applied in dealing with that matter are to be the rules that:
  - (a) are applied in a superior court in Australia or in an external Territory; and
  - (b) the court considers appropriate to be applied in the circumstances.
- (2) If a proceeding is transferred or removed to a court (the *transferee court*) from another court (the *transferor court*), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.
- (3) This subsection applies to:
  - (a) jurisdiction conferred on the Federal Court of Australia or the Family Court with respect to civil matters arising under the Aboriginal and Torres Strait Islander Corporations legislation; and
  - (b) jurisdiction conferred on a court of a State, the Australian Capital Territory or the Northern Territory with respect to matters referred to in subsection 586-5(3).

### **586-70 Rights of appearance**

- (1) This section applies if a proceeding (the *transferred proceeding*) in a court (the *transferor court*) is transferred to another court (the *transferee court*) under this Division.
- (2) A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in the transferor court has the same entitlements to practise in relation to:
  - (a) the transferred proceeding; and
  - (b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding;in the transferee court that the person would have if the transferee court were a federal court exercising federal jurisdiction.

### **586-75 Limitation on appeals**

An appeal does not lie from a decision of a court:

- (a) in relation to the transfer of a proceeding under this Division;  
or
- (b) as to which rules of evidence and procedure are to be applied pursuant to subsection 586-65(1).

### **Subdivision 586-D—Rules of court**

#### **586-80 Rules of the Federal Court**

The power to make rules of court conferred by section 59 of the *Federal Court of Australia Act 1976* extends to making rules of court:

- (a) with respect to proceedings, and the practice and procedure, of the Federal Court of Australia under the Aboriginal and Torres Strait Islander Corporations legislation; and
- (b) with respect to any matter or thing that is:
  - (i) required or permitted by the Aboriginal and Torres Strait Islander Corporations legislation to be prescribed

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- by rules within the meaning of the Aboriginal and Torres Strait Islander Corporations legislation; or
- (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Aboriginal and Torres Strait Islander Corporations legislation; and
  - (c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Federal Court of Australia.

**586-85 Rules of the Supreme Court**

- (1) The Judges of the Supreme Court of the Australian Capital Territory, or a majority of them, may make rules of court:
  - (a) with respect to proceedings, and the practice and procedure, of that court under the Aboriginal and Torres Strait Islander Corporations legislation; and
  - (b) with respect to any matter or thing that is:
    - (i) required or permitted by the Aboriginal and Torres Strait Islander Corporations legislation to be prescribed by rules within the meaning of the Aboriginal and Torres Strait Islander Corporations legislation; or
    - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Aboriginal and Torres Strait Islander Corporations legislation; and
  - (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.
- (2) When a lower court of the Australian Capital Territory is exercising jurisdiction with respect to matters arising under the Aboriginal and Torres Strait Islander Corporations legislation, the court must apply the rules of court made under subsection (1), with such alterations as are necessary.

**586-90 Rules of the Family Court**

The power to make rules of court conferred by section 123 of the *Family Law Act 1975* extends to making rules of court:

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- (a) with respect to proceedings, and the practice and procedure, of the Family Court under the Aboriginal and Torres Strait Islander Corporations legislation; and
- (b) with respect to any matter or thing that is:
  - (i) required or permitted by the Aboriginal and Torres Strait Islander Corporations legislation to be prescribed by rules within the meaning of the Aboriginal and Torres Strait Islander Corporations legislation; or
  - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Aboriginal and Torres Strait Islander Corporations legislation; and
- (c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Family Court.

## **Division 589—Criminal jurisdiction**

### **589-1 Operation of Division**

- (1) This Division provides in relation to the jurisdiction of courts in respect of criminal matters arising under the Aboriginal and Torres Strait Islander Corporations legislation and so provides to the exclusion of sections 68, 70 and 70A of the *Judiciary Act 1903*.
- (2) This Division does not limit the operation of the provisions of the *Judiciary Act 1903* other than sections 68, 70 and 70A.
- (3) Without limiting subsection (2), this Division does not limit the operation of subsection 39(2) of the *Judiciary Act 1903* in relation to criminal matters arising under the Aboriginal and Torres Strait Islander Corporations legislation.

### **589-5 Jurisdiction of courts**

- (1) Subject to this section, the several courts of each State, the Australian Capital Territory and the Northern Territory exercising jurisdiction:
  - (a) with respect to:
    - (i) the summary conviction; or
    - (ii) the examination and commitment for trial on indictment; or
    - (iii) the trial and conviction on indictment; of offenders or persons charged with offences against the laws of the State, the Australian Capital Territory or the Northern Territory, and with respect to:
      - (iv) their sentencing, punishment and release; or
      - (v) their liability to make reparation in connection with their offences; or
      - (vi) the forfeiture of property in connection with their offences; or
      - (vii) the proceeds of their crimes; and
  - (b) with respect to the hearing and determination of:



- (i) proceedings connected with; or
  - (ii) appeals arising out of; or
  - (iii) appeals arising out of proceedings connected with;  
any such trial or conviction or any matter of a kind referred  
to in subparagraph (a)(iv), (v), (vi) or (vii);  
have the equivalent jurisdiction with respect to offenders or  
persons charged with offences against the Aboriginal and Torres  
Strait Islander Corporations legislation.
- (2) The jurisdiction conferred by subsection (1) is not to be exercised  
with respect to the summary conviction, or examination and  
commitment for trial, of any person except by a magistrate.
- (3) The jurisdiction conferred by subsection (1) includes jurisdiction in  
accordance with provisions of a relevant law of a State, the  
Australian Capital Territory or the Northern Territory, and:
- (a) the reference in paragraph (1)(b) to “any such trial or  
conviction” includes a reference to any conviction or  
sentencing in accordance with the provisions of a relevant  
law; and
  - (b) unless the contrary intention appears, a reference to  
jurisdiction conferred by subsection (1) includes a reference  
to such included jurisdiction.
- (4) A person may be dealt with in accordance with a relevant law even  
if, apart from this section, the offence concerned:
- (a) would be required to be prosecuted on indictment; or
  - (b) would be required to be prosecuted either summarily or on  
indictment.
- (5) For the purposes of the application of a relevant law as provided by  
subsection (3):
- (a) a reference in that law to an indictable offence is taken to  
include a reference to an offence that may be prosecuted on  
indictment; and
  - (b) in order to determine the sentence that may be imposed on a  
person by a court pursuant to the relevant law, the person is  
taken to have been prosecuted and convicted on indictment in  
that court.

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- (6) Subject to subsection (8), the jurisdiction conferred on a State or Territory court by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or Territory.
- (7) If:
- (a) jurisdiction is conferred on a State or Territory court in relation to the summary conviction of persons charged with offences against the Aboriginal and Torres Strait Islander Corporations legislation by subsection (1); and
  - (b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest; the court may decline to exercise that jurisdiction in relation to an offence committed in another State or Territory.
- (8) The jurisdiction conferred on a court of a State or the Northern Territory by subsection (1) in relation to:
- (a) the examination and commitment for trial on indictment; and
  - (b) the trial and conviction on indictment;
- of offenders or persons charged with offences against the Aboriginal and Torres Strait Islander Corporations legislation is conferred only in relation to:
- (c) offences committed outside Australia; and
  - (d) offences committed, begun or completed in the State or the Territory concerned.
- (9) In this section:

***appeal*** includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

***Australia*** does not include the coastal sea.

***relevant law*** means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on indictment, to be sentenced or otherwise dealt with without being tried in that last-mentioned court.

**589-10 Laws to be applied**

Subject to this Division, the laws of a State, the Australian Capital Territory or the Northern Territory respecting:

- (a) the arrest and custody in the State or Territory of offenders or persons charged with offences; and
- (b) the procedure in the State or Territory for:
  - (i) the summary conviction; and
  - (ii) the examination and commitment for trial on indictment; and
  - (iii) the trial and conviction on indictment; and
  - (iv) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings;of offenders or persons charged with offences, including the procedure for holding accused persons to bail; and
- (c) the rules of evidence applied in criminal procedure in the State or Territory in relation to such persons;

apply in the State or Territory, so far as they are applicable, to persons who are charged with offences against the Aboriginal and Torres Strait Islander Corporations legislation.

## **Chapter 15—Administration**

### **Part 15-1—Introduction**

#### **Division 599—Introduction**

##### **599-1 What this Chapter is about**

This Chapter deals with a number of aspects relating to the administration of this Act, namely:

- protection of information (see Part 15-2);
- protection of the Registrar and certain other persons from liability in performing duties etc. (see Part 15-3);
- review of decisions (see Part 15-4);
- fees (see Part 15-5);
- the power to make regulations etc. (see Part 15-6);
- approved forms (see Part 15-7).

## **Part 15-2—Protection of information**

### **Division 604—Protection of information**

#### **604-1 What this Part is about**

This Part deals with the protection of information received by the Registrar and other persons under this Act from unauthorised use or disclosure.

Section 604-25 authorises particular uses or disclosures of protected information. These include a use or disclosure that is made for the purposes of this Act (for example, including particular information lodged with the Registrar in a publicly accessible register maintained by the Registrar under section 418-1).

#### **604-5 Protected information**

##### *Information provided in confidence*

- (1) Information is **protected information** if the information is given to the Registrar or another person, in confidence, in connection with:
- (a) the performance of a function of the Registrar; or
  - (b) the exercise of a power of the Registrar.

##### *Other protected information*

- (2) Information is also **protected information** if:
- (a) the information:
    - (i) is disclosed to, or obtained by, a person; or
    - (ii) is included in a document given or produced to a person;for the purposes of this Act; and
  - (b) the information relates to the affairs of:

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- (i) an Aboriginal and Torres Strait Islander corporation or a related body corporate; or
- (ii) an officer of an Aboriginal and Torres Strait Islander corporation or a related body corporate; or
- (iii) a member of an Aboriginal and Torres Strait Islander corporation or a related body corporate; or
- (iv) a person who has had, has or proposes to have, dealings with an Aboriginal and Torres Strait Islander corporation or a related body corporate.

Information is not *protected information* under this subsection, however, if the information has already been lawfully made available to the public from other sources.

- (3) The references in paragraph (2)(b) to an Aboriginal and Torres Strait Islander corporation, or a related body corporate, include references to an Aboriginal and Torres Strait Islander corporation, or a related body corporate, that has ceased to exist.

**604-10 Registrar's obligations in relation to protected information**

The Registrar must take all reasonable measures to protect protected information from unauthorised use or disclosure.

Note: The *Privacy Act 1988* also contains provisions relevant to the use and disclosure of information.

**604-15 Special administrator's obligations in relation to protected information**

A special administrator for an Aboriginal and Torres Strait Islander corporation commits an offence if:

- (a) the person uses or discloses protected information; and
- (b) the use or disclosure is not an authorised use or disclosure.

Penalty: Imprisonment for 2 years.

**604-20 Consultant's obligations in relation to protected information**

A person engaged as a consultant under section 658-10 commits an offence if:

- (a) the person uses or discloses protected information; and
- (b) the use or disclosure is not an authorised use or disclosure.

Penalty: Imprisonment for 2 years.

#### **604-25 Authorised use or disclosure**

- (1) The use or disclosure of protected information is taken to be an *authorised use or disclosure* if the use or disclosure:
  - (a) is made for the purposes of this Act; or
  - (b) is required or authorised by a law of the Commonwealth, a State or a Territory.
- (2) The use or disclosure of protected information is taken to be an *authorised use or disclosure* if the use or disclosure:
  - (a) is made by the Registrar or a delegate of the Registrar in the course of:
    - (i) the performance of a duty of the Registrar; or
    - (ii) the exercise of a power of the Registrar; or
  - (b) is made by a person engaged to assist the Registrar in the performance of his or her duties, or the exercise of his or her powers, and is made in the course of providing that assistance; or
  - (c) is made by a special administrator of an Aboriginal and Torres Strait Islander corporation in the course of the performance of a function or duty, or the exercise of a power, as special administrator for the corporation.
- (3) The disclosure of protected information is taken to be an *authorised disclosure* if the disclosure is made to the Minister.
- (4) The disclosure of protected information is taken to be an *authorised disclosure* if it is made to any of the following:
  - (a) ASIC for the purposes of carrying out its functions or exercising its powers;
  - (b) an Agency Head of, or an APS employee in, an Agency (within the meaning of the *Public Service Act 1999*) which has provided, provides, or proposes to provide, funding to an Aboriginal and Torres Strait Islander corporation, for the purpose of administering that funding and related purposes;

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- (c) a Chief Executive, or an officer or employee, of a prescribed Agency (within the meaning of the *Financial Management and Accountability Act 1997*) which has provided, provides, or proposes to provide funding to an Aboriginal and Torres Strait Islander corporation, for the purpose of administering that funding and related purposes;
- (d) the head (however described), or an officer or employee, of a Department of State of a State or Territory which has provided, provides, or proposes to provide, funding to an Aboriginal and Torres Strait Islander corporation, for the purpose of administering that funding and related purposes;
- (e) the head (however described), or an officer or employee, of a body established for a public purpose by or under a law of a State or Territory (including a local governing body) which has provided, provides, or proposes to provide, funding to an Aboriginal and Torres Strait Islander corporation, for the purpose of administering that funding and related purposes;
- (f) an Agency Head of, or an APS employee in, an Agency (within the meaning of the *Public Service Act 1999*) that is prescribed for the purposes of this paragraph for the purposes of performing the functions, or exercising the powers, of the Agency;
- (g) a Chief Executive, or an officer or employee, of a prescribed Agency (within the meaning of the *Financial Management and Accountability Act 1997*), if the prescribed Agency is also prescribed for the purposes of this paragraph, for the purposes of performing the functions, or exercising powers, conferred on the prescribed Agency by a law of the Commonwealth;
- (h) another person for the purposes of that other person performing functions, or exercising powers, under a prescribed Act;
- (i) the head (however described), or an officer or employee, of a prescribed Department of State of a State or Territory for the purposes of performing functions of the Department;
- (j) the head (however described), or an officer or employee, of a prescribed body established for a public purpose by or under a law of a State or Territory (including a local governing



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- body) for the purposes of performing functions conferred on the body by a law of the State or Territory;
- (k) a prescribed professional disciplinary body for the purposes of performing one of its functions or exercising one of its powers;
- (l) a prescribed person or body for the prescribed purposes of the body or person.
- (5) The Registrar may impose conditions to be complied with in relation to protected information disclosed under subsection (4).
- (6) A person or body to whom protected information is disclosed under subsection (4) may use or disclose the information only:
- (a) for the purposes for which it was disclosed to the recipient; and
- (b) in accordance with any conditions imposed under subsection (5).
- (7) The disclosure of:
- (a) a summary of protected information; or
- (a) statistics derived from protected information;
- is an **authorised disclosure** of the information but only if the protected information relating to any particular person cannot be found out from those summaries or statistics.
- (8) If the Registrar, or someone else, discloses protected information to a prescribed professional disciplinary body, in reliance on paragraph (4)(g), the body or member of the body:
- (a) must not disclose the information to any other person; and
- (b) must not use the information;
- for any purpose other than for:
- (c) deciding whether or not to take disciplinary or other action; or
- (d) taking that action.
- Penalty: Imprisonment for 2 years.
- (9) Regulations made for the purposes of this section may specify uses of information and disclosures of protected information that are

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*authorised uses* and *authorised disclosures* for the purposes of this section.

- (10) The regulations cannot modify subsection (8).
- (11) Nothing in any of the above subsections limits:
  - (a) anything else in any of those subsections; or
  - (b) what may otherwise constitute, for the purposes of this Part, authorised use or disclosure of protected information.

**Part 15-3—Protection from liability for Registrar,  
Minister etc.**

**Division 609—Protection from liability for Registrar,  
Minister etc.**

**609-1 Protection from liability for Minister, Registrar etc.**

A person (*protected person*) who is any of the following:

- (a) the Minister;
- (b) the Registrar or a Deputy Registrar;
- (c) a special administrator;
- (d) a person acting under the Registrar's authority;

is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of the performance or exercise, in good faith, of the protected person's functions, powers or duties under or in relation to this Act.

## **Part 15-4—Review of decisions**

### **Division 614—Introduction**

#### **614-1 What this Part is about**

This Part deals with review of decisions.

Division 617 sets out which decisions under this Act are reviewable.

Division 620 deals with internal review of a reviewable decision. After this has occurred, a reviewable decision may be reviewed by the AAT.

Division 623 deals with review by the AAT.

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## Division 617—Reviewable decisions

### 617-1 Reviewable decisions

Each of the following decisions by the Registrar is a *reviewable decision*:

<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
1	To treat an application for registration as being withdrawn	subsection 21-10(3), 22-10(3) or 23-10(3)
2	To refuse to grant an application for registration as an Aboriginal and Torres Strait Islander corporation	subsection 26-1(1)
3	To alter the registration of an Aboriginal and Torres Strait Islander corporation that is registered as a small corporation	subsection 37-5(1)
4	To alter the registration of an Aboriginal and Torres Strait Islander corporation that is registered as a medium corporation	subsection 37-5(2)
5	To alter the registration of an Aboriginal and Torres Strait Islander corporation that is registered as a large corporation	subsection 37-5(3)
5A	To make or refuse to make a direction about persons who would otherwise be disqualified from administering a compromise or arrangement	paragraph 411(7)(f) of the Corporations Act as applied by section 45-1 of this Act
6	To refuse to register a constitutional change lodged under section 69-20 by the corporation	subsection 69-30(1)
7	To register or to refuse to register a constitutional change lodged under section 69-25 by a special administrator	subsection 69-30(1)

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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
8	To change an Aboriginal and Torres Strait Islander corporation's constitution (internal governance rules requirements not being met)	subsection 69-35(2)
9	To change an Aboriginal and Torres Strait Islander corporation's constitution (oppressive conduct)	subsection 69-35(3)
10	To refuse to grant an exemption from the requirement to have at least 5 members	section 77-10
11	To allow an Aboriginal and Torres Strait Islander corporation to have a different minimum number of members to the number requested	section 77-15
12	To refuse a name being available to an Aboriginal and Torres Strait Islander corporation	subsection 85-5(2)
13	To consent to a name being available to an Aboriginal and Torres Strait Islander corporation	subsection 85-5(2)
14	To impose conditions on an agreement to a name being available to an Aboriginal and Torres Strait Islander corporation	subsection 85-5(3)
15	To direct an Aboriginal and Torres Strait Islander corporation to change its name	subsection 88-5(1)
16	To direct an Aboriginal and Torres Strait Islander corporation to change its document access address	subsection 115-15(1)
16A	To refuse to make a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from an exemptible provision of Chapter 4	subsection 187-5(1)
16B	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from an exemptible provision of Chapter 4	subsection 187-5(5)

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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
17	To grant an application by directors seeking to deny a request by members to call a general meeting	subsection 201-10(4)
18	To refuse an application by directors seeking to deny a request by members to call a general meeting	subsection 201-10(4)
19	To extend the period in which an AGM may be held	subsection 201-155(2)
20	To refuse to extend the period in which an AGM may be held	subsection 201-155(2)
21	To refuse to make a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from provisions of Chapter 5	subsection 225-5(1)
22	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from provisions of Chapter 5	subsection 225-5(4)
23	To disqualify a person from managing an Aboriginal and Torres Strait Islander corporation	subsection 279-30(1)
24	To refuse to give a person permission to manage an Aboriginal and Torres Strait Islander corporation	subsection 279-30(7)
25	To impose conditions or exceptions on the grant of permission to allow a person to manage an Aboriginal and Torres Strait Islander corporation	subsection 279-30(7)
26	To make a declaration in relation to voting on a proposed resolution by or on behalf of a related party	subsection 290-35(4)
27	To refuse to make a determination concerning a person's residential address	paragraph 304-15(2)(b)

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**Reviewable decisions**

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<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
27A	To refuse to make a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from an exemptible provision of Chapter 6	subsection 310-5(1)
27B	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from an exemptible provision of Chapter 6	subsection 310-5(5)
28	To determine that an Aboriginal and Torres Strait Islander corporation prepare a report	paragraph 336-1(1)(a)
29	To determine that an Aboriginal and Torres Strait Islander corporation provide particular information etc.	paragraph 336-1(1)(b)
30	To determine that extra requirements be met in respect of a financial report	subsection 336-1(7)
31	To refuse to exempt an Aboriginal and Torres Strait Islander corporation, its directors or its auditor from record-keeping and/or reporting requirements	subsection 353-3(1)
31A	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation, its directors or its auditor from record-keeping and/or reporting requirements	subsection 353-3(4)
32	To certify and grant leave to reodge lost or destroyed registered documents	subsection 404-15(4)
33	To refuse to certify and grant leave to reodge lost or destroyed registered documents	subsection 404-15(4)
34	To refuse to receive or register a document submitted for lodgment	section 407-1

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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
35	To issue a notice requiring directors of an Aboriginal and Torres Strait Islander corporation to take the action specified in the notice to comply with this Act or the corporation's constitution etc.	subsection 439-20(1)
36	To issue a notice requiring directors of an Aboriginal and Torres Strait Islander corporation to take the action specified in the notice to cause particular circumstances to cease to exist	subsection 439-20(3)
37	To issue a notice requiring directors of an Aboriginal and Torres Strait Islander corporation to take the action specified in the notice to prevent particular circumstances from occurring or developing	subsection 439-20(5)
38	A determination that an Aboriginal and Torres Strait Islander corporation be under special administration	subsection 487-1(1)
39	To extend the period for which an Aboriginal and Torres Strait Islander corporation is under special administration	subsection 487-15(1)
40	To terminate the appointment of a special administrator for a reason specified in paragraph 505-5(b), (c) or (d)	subsection 505-1(4)
41	To make or refuse to make a direction about persons who are not to act as receivers	paragraph 418(1)(f) of the Corporations Act as applied by section 516-1 of this Act
42	To make or refuse to make a direction about persons who are not taken to be connected with an Aboriginal and Torres Strait Islander corporation	paragraph 448C(3)(b) of the Corporations Act as applied by section 521-1 of this Act
43	To make or refuse to make a direction about persons who are not taken to be connected with an Aboriginal and Torres Strait Islander corporation	paragraph 532(6)(b) of the Corporations Act as applied by section 526-35 of this Act

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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
44	To refuse a claim of entitlement to be paid money that is unclaimed property etc.	subsection 551-15(2)

**617-5 Deadlines for making reviewable decisions**

If:

- (a) this Act provides for a person to apply to the Registrar to make a reviewable decision; and
- (b) a period is specified under this Act for giving notice of the decision to the applicant; and
- (c) the Registrar has not notified the applicant of the Registrar's decision within that period;

the Registrar is taken, for the purposes of this Act, to have made a decision to reject the application.

**617-10 Notice of reviewable decision and review rights**

- (1) This section applies to a person (the *decision maker*) who:
  - (a) makes a reviewable decision; or
  - (b) reviews a reviewable decision under Division 620 of this Part.
- (2) Subject to subsection (3), the decision maker must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by the decision notice, in writing or otherwise:
  - (a) of the making of the decision; and
  - (b) of the person's right to have the decision reviewed under this Part.
- (3) Subsection (2) does not require the decision maker to give notice to a person affected by the decision or to the persons in a class of persons affected by the decision, if the decision maker determines that giving notice to the person or persons is not warranted, having regard to:

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- (a) the cost of giving notice to the person or persons; and
  - (b) the way in which the interests of the person or persons are affected by the decision.
- (4) A failure to comply with this section does not affect the validity of the decision.
- (5) The fact that a person has not been given notice of the decision because of a determination under subsection (3) constitutes special circumstances for the purposes of subsection 29(6) of the *Administrative Appeals Tribunal Act 1975*.

## **Division 620—Internal review of reviewable decisions**

### **620-1 Registrar may reconsider reviewable decisions on own initiative**

- (1) The Registrar may, on his or her own initiative, reconsider a reviewable decision if the Registrar is satisfied that there is sufficient reason to reconsider the decision.
- (2) The Registrar may reconsider a decision even if:
  - (a) an application for reconsideration of the decision has been made under section 620-5; or
  - (b) if the decision has been affirmed, varied or set aside under section 620-5—an application has been made under section 623-1 for review of the decision.
- (3) After reconsidering the decision, the Registrar must:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- (4) The Registrar's decision (the *decision on review*) to affirm, vary or set aside the decision takes effect:
  - (a) on the day specified in the decision on review; or
  - (b) if a day is not specified—on the day on which the decision on review was made.

### **620-5 Reconsideration of reviewable decisions**

- (1) A person whose interests are affected by a reviewable decision may request the Registrar to reconsider the decision.
- (2) The person's request must be made by written notice given to the Registrar within 28 days, or such longer period as the Registrar allows, after the day on which the person first received notice of the decision.
- (3) The notice must set out the reasons for making the request.

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- (4) The Registrar must, on receiving an application, cause the decision to be reviewed by a person (the *reviewer*) to whom the Registrar's power under this section is delegated. The reviewer must be a person who was not involved in making the decision.
- (5) A reviewer who reviews a reviewable decision may:
  - (a) make a decision affirming, varying or setting aside the reviewable decision; and
  - (b) if the reviewer sets aside the decision, make such other decision as the reviewer thinks appropriate.
- (6) The reviewer's decision (the *decision on review*) takes effect:
  - (a) on the day specified in the decision on review; or
  - (b) if a day is not specified—on the day on which the decision on review was made.
- (7) The Registrar is taken, for the purposes of this Part, to have affirmed the reviewable decision if the person does not receive notice of the review decision within 90 days after receiving the person's request.

## **Division 623—AAT review of reviewable decisions**

### **623-1 AAT review of reviewable decisions**

An application may be made to the AAT for the review of a reviewable decision that has been affirmed, varied or set aside under section 620-1 or 620-5.

## **Part 15-5—Fees**

### **Division 628—Fees**

#### **628-1 Fees**

- (1) The regulations may prescribe fees that are payable for services the Registrar provides in performing his or her functions, or exercising his or her powers, under:
  - (a) this Act (including the regulations); and
  - (b) any other Commonwealth law that imposes functions on the Registrar.
- (2) A prescribed fee must not be such as to amount to taxation.
- (3) A prescribed fee is payable to the Commonwealth.
- (4) The regulations may prescribe the circumstances in which the Registrar, on behalf of the Commonwealth, may wholly or partly waive a prescribed fee. The circumstances may relate to an individual Aboriginal and Torres Strait Islander corporation or a class of Aboriginal and Torres Strait Islander corporation.

#### **628-5 Lodgment of document without payment of fee**

If:

- (a) a fee is prescribed for the lodgment of a document; and
- (b) the document was submitted for lodgment without payment of the fee;

the document is not taken not to have been lodged merely because of non-payment of the fee.

#### **628-10 Doing act without payment of fee**

If a fee is prescribed for a matter involving the doing of an act by the Registrar, the Registrar may refuse to do that act until the fee is paid.

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**628-15 Effect of sections 628-5 and 628-10**

Sections 628-5 and 628-10 have effect despite anything in another Part of this Act.

**628-20 Debt due to the Commonwealth**

Each prescribed fee is a debt due to the Commonwealth.

**628-25 Payment of fee does not give right to inspect or search**

To avoid doubt, nothing in this Part, and nothing done under this Part:

- (a) imposes on the Registrar a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available;

except so far as such a duty or right would, but for the effect of section 628-10, exist under a provision of another Part of this Act or under some other law.



## **Part 15-6—Regulations**

### **Division 633—Regulations**

#### **633-1 General regulation making power**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision prescribing penalties not exceeding 50 penalty units for contraventions of the regulations.

#### **633-5 Regulations concerning registered native title bodies corporate**

##### *Regulations concerning registered native title bodies corporate generally*

- (1) Without limiting section 633-1, the regulations may modify any of the provisions of this Act (other than subsections (8) and (9) of this section) as they relate to a registered native title body corporate.

##### *Regulations concerning registered native title bodies corporate and special administrators*

- (2) Without limiting subsection (1), the regulations may modify the operation of:
  - (a) Division 499; and
  - (b) the provisions of the Corporations Act (as applied by section 499-10);in relation to the functions, duties and powers of a special administrator for a registered native title body corporate.
- (3) Without limiting subsection (1), the regulations may make provision for the manner in which a special administrator for a

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registered native title body corporate is to exercise his or her powers in relation to the body corporate.

*Regulations concerning registered native title bodies corporate and receivers or liquidators*

- (4) Without limiting subsection (1), regulations made for the purposes of paragraph 516-1(2)(b) may modify the operation of the Corporations Act receiver provisions in relation to the functions, duties and powers of a receiver or controller of property of a registered native title body corporate.
- (5) Without limiting subsection (1), the regulations may make provision for the manner in which a receiver or controller of property of a registered native title body corporate is to exercise his or her powers in relation to the body corporate.

*Regulations concerning registered native title bodies corporate and administrators*

- (6) Without limiting subsection (1), regulations made for the purposes of paragraph 521-1(2)(b) may modify the operation of the Corporations Act administration provisions in relation to the functions, duties and powers of an administrator appointed under those provisions for a registered native title body corporate.
- (7) Without limiting subsection (1), the regulations may make provision for the manner in which an administrator appointed under those provisions for a registered native title body corporate is to exercise his or her powers in relation to the body corporate.

*Regulations must not increase criminal penalties etc.*

- (8) Regulations made for the purposes of subsection (1) must not:
  - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
  - (b) widen, or have the effect of widening, the scope of any offence.

*Consistency with Native Title legislation obligations*

- (9) To avoid doubt, regulations that modify this Act in relation to a registered native title body corporate, must not be inconsistent with the Native Title legislation obligations.

## **Part 15-7—Approved forms**

### **Division 638—Approved forms**

#### **638-1 Registrar may approve forms**

- (1) The Registrar may, in writing, approve a form for any notice, statement, application or other document given to the Registrar, or any other person, for the purposes of a provision of this Act.
- (2) The approval may require all or any of the following:
  - (a) the form in which the notice, statement, application or other document is to be given;
  - (b) that the notice, statement, application or other document contain a declaration that is of the kind specified in the approval and that is signed by a person of the kind specified in the approval;
  - (c) that the notice, statement, application or other document contain information that is of the kind specified in the approval;
  - (d) subject to subsection (3), the manner in which the notice, statement, application or other document is to be given.
- (3) This section, and any approval under this section, does not affect the operation of section 404-10.

Note: Section 404-10 deals with lodging documents with the Registrar electronically.
- (4) The Registrar may approve different forms for different entities.
- (5) The Registrar may combine in the same form more than one notice, statement, application or other document.
- (6) If the giving of a notice, statement, application or other document is covered by an approval under this section:
  - (a) the notice is taken for the purposes of this Act not to have been given if it is not in accordance with that approval; and

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(b) is in the *approved form* if, and only if, it is in accordance with that approval.

However, strict compliance is not required and substantial compliance is sufficient.

**Chapter 16** Registrar and Deputy Registrars of Aboriginal and Torres Strait Islander Corporations

**Part 16-1** Introduction

**Division 648** Introduction

Section 648-1

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## **Chapter 16—Registrar and Deputy Registrars of Aboriginal and Torres Strait Islander Corporations**

### **Part 16-1—Introduction**

#### **Division 648—Introduction**

##### **648-1 What this Chapter is about**

This Chapter provides for the appointment of the Registrar of Aboriginal and Torres Strait Islander Corporations and for the Registrar's functions and powers. It also provides for the appointment of Deputy Registrars.

## **Part 16-2—Appointment of the Registrar and Deputy Registrars**

### **Division 653—Appointment of Registrar and Deputy Registrars**

#### **653-1 Registrar of Aboriginal and Torres Strait Islander Corporations**

- (1) There is to be a Registrar of Aboriginal and Torres Strait Islander Corporations.
- (2) The Registrar is to be appointed by the Minister and has such duties, functions and powers as are provided for by this Act or another law of the Commonwealth.
- (3) The Registrar holds office for such period of up to 5 years that is specified in the instrument of appointment.

#### **653-5 Deputy Registrars of Aboriginal and Torres Strait Islander Corporations**

- (1) The Registrar may appoint one or more Deputy Registrars of Aboriginal and Torres Strait Islander Corporations for the purpose of assisting the Registrar in carrying out his or her functions and powers.
- (2) The Deputy Registrars are to be persons engaged under the *Public Service Act 1999*.
- (3) A Deputy Registrar holds office for such period of up to 5 years that is specified in the instrument of appointment.

## **Part 16-3—Registrar's functions and powers**

### **Division 658—Registrar's functions and powers**

#### **658-1 Functions of the Registrar**

- (1) The Registrar has the following functions:
  - (a) to administer this Act;
  - (b) to maintain such registers as the Registrar thinks appropriate;
  - (c) to make available to the public information about the registration of Aboriginal and Torres Strait Islander corporations and the administration of this Act;
  - (d) to provide advice to persons about:
    - (i) the registration of a particular Aboriginal and Torres Strait Islander corporation; and
    - (ii) the rules governing the internal management of the corporation; and
    - (iii) the operation of the corporation;
  - (e) to conduct public education programs on the operation of the Act and on the governance of Aboriginal and Torres Strait Islander corporations;
  - (f) to assist with the resolution of disputes:
    - (i) internal to the operation of an Aboriginal and Torres Strait Islander corporation; or
    - (ii) between an Aboriginal and Torres Strait Islander corporation and others;
  - (g) to assist with complaints under this Act:
    - (i) about the internal operation of an Aboriginal and Torres Strait Islander corporation; or
    - (ii) involving Aboriginal and Torres Strait Islander corporations;
  - (h) to conduct research in relation to matters affecting Aboriginal and Torres Strait Islander corporations;
  - (i) to develop policy proposals about Aboriginal and Torres Strait Islander corporations;



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- (j) such other functions as are conferred on the Registrar under another law of the Commonwealth;
  - (k) such other functions as are prescribed.
- (2) If the Registrar provides advice in undertaking his or her functions, the Registrar is not precluded from exercising a power under this Act, or exercising such a power in a particular way, in respect of an Aboriginal and Torres Strait Islander corporation.

**658-5 Aims of the Registrar**

The Registrar, in performing his or her functions and exercising his or her powers, must have the following aims:

- (a) to facilitate and improve the effectiveness, efficiency, sustainability and accountability of Aboriginal and Torres Strait Islander corporations; and
- (b) to provide certainty:
  - (i) for the members, officers and employees of an Aboriginal and Torres Strait Islander corporation in their dealings with the corporation and with each other; and
  - (ii) for persons outside Aboriginal and Torres Strait Islander corporations in their dealings with those corporations; and
- (c) to have regard to Aboriginal and Torres Strait Islander tradition and circumstances; and
- (d) to administer the laws of the Commonwealth that confer functions and powers on the Registrar effectively and with a minimum of procedural requirements; and
- (e) to ensure that information is available as soon as practicable for access by the public.

**658-10 Powers of the Registrar**

The Registrar has power to do all things necessary or convenient to be done for, or in connection with, the performance of his or her functions.

Note: Chapter 10 (about regulation and enforcement) contains other specific powers of the Registrar.

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**658-15 Registrar to have a seal**

- (1) The Registrar must have and use as the seal of his or her office a seal in such form as the Minister, by notice in the *Gazette*, determines.
- (2) A notice under subsection (1) is not a legislative instrument.

**658-20 Judicial notice of certain matters**

All courts, judges and persons acting judicially must take judicial notice of:

- (a) the signature of any person who holds or has held, or acts or has acted in, the office of Registrar or Deputy Registrar; and
- (b) the fact that that person holds or has held, or is acting or has acted in, that office; and
- (c) the seal of the Registrar.

## **Part 16-4—Matters concerning the Registrar's and Deputy Registrars' appointments**

### **Division 663—Matters concerning the Registrar's and Deputy Registrars' appointments**

#### **663-1 Registrar's remuneration**

- (1) The Registrar is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Registrar is to be paid the remuneration that is determined in writing by the Minister.
- (2) The Registrar is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **663-5 Resignation**

- (1) The Registrar may resign his or her appointment by giving the Minister a written resignation.
- (2) A Deputy Registrar may resign his or her appointment by giving the Registrar a written resignation.

#### **663-10 Termination of Registrar's appointment**

- (1) The Minister may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of the Registrar if the Registrar:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

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- (b) is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
- (d) fails, without reasonable excuse, to comply with section 663-20.

**663-15 Termination of Deputy Registrar's appointment**

- (1) The Registrar may terminate, by writing signed by him or her, the appointment of a Deputy Registrar.
- (2) The appointment of the Deputy Registrar is terminated if the Deputy Registrar ceases to be, for any reason, engaged under the *Public Service Act 1999*.

**663-20 Disclosure of interests**

- (1) The Registrar must give written notice to the Minister of all interests, pecuniary or otherwise, that the Registrar has or acquires and that could conflict with the proper performance of the Registrar's functions.
- (2) A notice under subsection (1) is not a legislative instrument.

**663-25 Acting appointments**

*Acting Registrar*

- (1) The Minister may appoint a person to act as the Registrar:
  - (a) during a vacancy in the office concerned, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the office holder is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

*Acting Deputy Registrar*

- (2) The Registrar may appoint a person to act as a Deputy Registrar:

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- (a) during a vacancy in the office concerned, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the office holder is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

*Validity of acts done by persons appointed to act*

- (3) Anything done by or in relation to a person purporting to act under an appointment as Registrar or Deputy Registrar is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**663-30 Leave of absence**

- (1) The Registrar has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Registrar leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

**663-35 Outside employment**

- (1) The Registrar must not engage in paid employment outside the duties of the Registrar's office without the Minister's approval.
- (2) An approval under subsection (1) is not a legislative instrument.

## **Part 16-5—Delegation**

### **Division 668—Delegation**

#### **668-1 Delegation by Registrar**

- (1) The Registrar may delegate all or any of the Registrar's powers and functions to:
  - (a) a Deputy Registrar; or
  - (b) an SES employee, or acting SES employee, in the Department; or
  - (c) an APS employee within the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations who has the expertise appropriate to the function or power delegated.
- (2) The delegation must be in writing.
- (3) In exercising functions or powers under a delegation, the delegate must comply with any directions of the Registrar.

#### **668-5 Sub-delegation by Deputy Registrar**

- (1) If the Registrar delegates a function or power to a Deputy Registrar, the Deputy Registrar may sub-delegate the function or power to:
  - (a) an SES employee, or acting SES employee, in the Department; or
  - (b) an APS employee within the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations who has the expertise appropriate to the function or power delegated.
- (2) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to the sub-delegation in a corresponding way to the way in which they apply to a delegation.
- (3) The sub-delegation must be in writing.

- (4) In exercising functions or powers under a sub-delegation, the delegate must comply with any directions of the Deputy Registrar.

## **Part 16-6—Staffing**

### **Division 673—Staffing**

#### **673-1 Staff assisting the Registrar and Deputy Registrar**

The staff required to assist the Registrar and Deputy Registrar are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.

#### **673-5 Engagement of consultants etc. by the Registrar**

- (1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar.
- (2) An engagement under subsection (1) is to be made:
  - (a) on behalf of the Commonwealth; and
  - (b) in writing.
- (3) A person does not hold a public office within the meaning of the *Remuneration Tribunal Act 1973* if the person is engaged as a consultant.



## Chapter 17—Interpreting this Act

### Part 17-1—Meaning of some important concepts

#### Division 683—Directors and officers of Aboriginal and Torres Strait Islander corporations

##### 683-1 Meaning of *director* and *officer*

- (1) A person is a *director* of an Aboriginal and Torres Strait Islander corporation if the person:
- (a) is appointed to the position of a director of the corporation;  
or
  - (b) is appointed to the position of an alternate director of the corporation and is acting in that capacity.

This is so regardless of the name that is given to the person's position.

- (2) A person is also a *director* of an Aboriginal and Torres Strait Islander corporation if:
- (a) the person is not validly appointed as a director of the corporation; and
  - (b) either:
    - (i) the person acts in the position of a director of the corporation; or
    - (ii) subject to subsections (4), (5) and (7), the directors of the corporation are accustomed to act in accordance with the person's instructions or wishes.

This subsection has effect unless the contrary intention appears.

Note: Contrary intention—Examples of provisions for which a person referred to in paragraph (b) would not be included in the term "director" are:

- (a) section 201-1 (power to call meetings of the corporation's members); and
- (b) subsection 220-5(8) (signing minutes of meetings); and
- (c) section 304-5 (notice to Registrar of change of address).

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- (3) A person is an *officer* of an Aboriginal and Torres Strait Islander corporation if:
- (a) the person is a director or secretary of the corporation; or
  - (b) a person:
    - (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
    - (ii) has the capacity to affect significantly the corporation's financial standing; or
  - (c) subject to subsections (4), (5) and (7), the directors of the corporation are accustomed to act in accordance with the person's instructions or wishes; or
  - (d) the person is:
    - (i) a special administrator of the corporation; or
    - (ii) a receiver, or receiver and manager, of the property of the corporation; or
    - (iii) a person appointed as an administrator of the corporation under Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act); or
    - (iv) a liquidator of the corporation; or
    - (v) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

Note: Section 246-1 contains rules about who can be a director of an Aboriginal and Torres Strait Islander corporation.

- (4) A person is not a *director* under subparagraph (2)(b)(ii), or an *officer* under paragraph (3)(c), merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the corporation.
- (5) A common law holder of native title is not a *director* of an Aboriginal and Torres Strait Islander corporation under subparagraph (2)(b)(ii), or an *officer* of an Aboriginal and Torres Strait Islander corporation under paragraph (3)(c), merely because the directors of the corporation take action, or refrain from taking action, to ensure that the corporation complies with a Native Title legislation obligation.

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- (6) A person who is a common law holder of native title is not an *officer* of an Aboriginal and Torres Strait Islander corporation under paragraph (3)(b), merely because:
  - (a) the person, in complying with a Native Title legislation obligation, makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
  - (b) the person, as a common law holder of native title, has the capacity to affect significantly the corporation's financial standing.
  
- (7) The Registrar is not a *director*, or an *officer*, of an Aboriginal and Torres Strait Islander corporation merely because of the exercise by the Registrar of powers under this Act.

## Division 686—Associates

### 686-1 Effect of Division

- (1) This Division has effect for the purposes of interpreting a reference (the *associate reference*), in relation to a person (the *primary person*), to an associate.
- (2) A person is not an associate of the primary person except as provided in this Division.
- (3) Nothing in this Division limits the generality of anything else in it.

### 686-5 Associates of bodies corporate

If the primary person is a body corporate, the associate reference includes a reference to:

- (a) a director or secretary of the body; and
- (b) a related body corporate; and
- (c) a director or secretary of a related body corporate.

### 686-10 General

- (1) The associate reference includes a reference to:
  - (a) a person in concert with whom the primary person is acting, or proposes to act; and
  - (b) a person who, under the regulations, is, for the purposes of the provision in which the associate reference occurs, an associate of the primary person; and
  - (c) a person with whom the primary person is, or proposes to become, associated, whether formally or informally, in any other way;in respect of the matter to which the associate reference relates.
- (2) If the primary person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in

subsection (1), the associate reference includes a reference to that other person.

**686-15 Exclusions**

- (1) A person is not an associate of another person by virtue of subsection 686-10(1), or by virtue of subsection 686-10(2) as it applies in relation to subsection 686-10(1), merely because of one or more of the following:
  - (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;
  - (b) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.
- (2) A person who is a common law holder of native title is not an associate of another person by virtue of subsection 686-10(1), or by virtue of subsection 686-10(2) as it applies in relation to subsection 686-10(1), merely because a Native Title legislation obligation has been complied with.

## Division 689—Subsidiaries and control

### 689-1 What is a subsidiary

A body corporate (the *first body*) is a subsidiary of another body corporate if, and only if:

- (a) the other body:
  - (i) controls the composition of the first body's board; or
  - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or
  - (iii) holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first body is a subsidiary of a subsidiary of the other body.

Note: Subparagraph (a)(iii)—although an Aboriginal and Torres Strait Islander corporation itself does not have shares, the corporation may hold shares in a body corporate that does have shares.

### 689-5 Control of a body corporate's board

- (1) For the purposes of this Act, the composition of the board of a body corporate (the *first body*) is taken to be controlled by another body (the *second body*) if the second body, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the first body.
- (2) For the purposes of this Division, the second body is taken to have power to make such an appointment if:
  - (a) a person cannot be appointed as a director of the first body without the exercise by the second body of such a power in the person's favour; or

- (b) a person's appointment as a director of the first body follows necessarily from the person being a director or other officer of the second body.
- (3) Subsections (1) and (2) do not limit the circumstances in which the composition of a body corporate's board is taken to be controlled by another body corporate.

**689-10 Matters to be disregarded**

- (1) This section applies for the purposes of determining whether a body corporate (the *first body*) is a subsidiary of another body corporate.
- (2) Any shares held, or power exercisable, by the other body in a fiduciary capacity are treated as not held or exercisable by it.
- (3) Subject to subsections (4) and (5), any shares held, or power exercisable:
  - (a) by a person as a nominee for the other body (except where the other body is concerned only in a fiduciary capacity); or
  - (b) by, or by a nominee for, a subsidiary of the other body (not being a subsidiary that is concerned only in a fiduciary capacity);are treated as held or exercisable by the other body.
- (4) Any shares held, or power exercisable, by a person by virtue of the provisions of debentures of the first body, or of a trust deed for securing an issue of such debentures, are to be disregarded.
- (5) Any shares held, or power exercisable, otherwise than as mentioned in subsection (4), by, or by a nominee for, the other body or a subsidiary of it are to be treated as not held or exercisable by the other body if:
  - (a) the ordinary business of the other body or that subsidiary, as the case may be, includes lending money; and
  - (b) the shares are held, or the power is exercisable, only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, not being a transaction entered into with an

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associate of the other body, or of that subsidiary, as the case may be.

**689-15 References in this Division to a subsidiary**

A reference in paragraph 689-1(b) or 689-10(3)(b) or subsection 689-10(5) to being a subsidiary, or to a subsidiary, of a body corporate includes a reference to being a subsidiary, or to a body corporate that is a subsidiary, as the case may be, of the first-mentioned body by virtue of any other application or applications of this Division.

**689-20 Related bodies corporate**

If a body corporate is:

- (a) a holding body corporate of another body corporate; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding body corporate of another body corporate;

the first-mentioned body and the other body are related to each other.

**689-25 Control**

- (1) For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.
- (2) In determining whether the first entity has this capacity:
  - (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
  - (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
- (3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies.



- (4) If the first entity:
  - (a) has the capacity to influence decisions about the second entity's financial and operating policies; and
  - (b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity's members;the first entity is taken not to control the second entity.
- (5) If the first entity is a common law holder of native title and the second entity is a registered native title body corporate, the first entity does not control the second entity merely because the second entity complies with a Native Title legislation obligation.

## **Part 17-2—Interpretation of other expressions**

### **Division 694—Interpretation of other expressions**

#### **694-1 Giving information**

A reference in this Act to *giving information* includes a reference to:

- (a) explaining or stating a matter; or
- (b) identifying a person, matter or thing; or
- (c) disclosing information; or
- (d) answering a question.

#### **694-5 Doing acts**

A reference to doing an act or thing includes a reference to causing or authorising the act or thing to be done.

#### **694-10 Signing**

Without affecting the law on agency, if this Act requires that something be signed, it can be signed by an individual using a power of attorney from the person required to sign.

#### **694-15 Business affairs of a body corporate**

A body corporate's *business affairs* include (without limitation):

- (a) any of the body's affairs (including anything that is included in the body's affairs because of the definition of *affairs* in section 700-1); and
- (b) matters concerned with ascertaining the corporations with which the body is or has been connected.

#### **694-20 Business affairs of a natural person**

A natural person's *business affairs* include (without limitation):

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- (a) the person's examinable operations and examinable assets and liabilities; and
- (b) any act done (including any contract made and any transaction entered into) by or on behalf of the person, or to or in relation to the person or his or her business or property, at a time when:
  - (i) the person was, under the *Bankruptcy Act 1966* or the law of an external Territory, a bankrupt in respect of a bankruptcy from which the person had not been discharged; or
  - (ii) the person had, under a law of an external Territory or of a foreign country, the status of an undischarged bankrupt; or
  - (iii) the person's property was subject to control under Division 2 of Part X of the *Bankruptcy Act 1966* because of an authority given by the person under section 188 of that Act; or
  - (iv) a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* or under the corresponding provisions of the law of an external Territory or of a foreign country was in effect in relation to the person or the person's property; and
- (c) without limiting the generality of paragraph (b), any conduct of the trustee of such a bankrupt estate or of such a personal insolvency agreement or a person acting under such an authority; and
- (d) matters concerned with ascertaining the corporations with which the person is or has been connected.

**694-25 Business affairs of a partnership**

A partnership's *business affairs* include (without limitation):

- (a) the partnership's promotion, formation, membership, control, examinable operations and examinable assets and liabilities; and
- (b) the partnership's management and proceedings; and
- (c) any act done (including any contract made and any transaction entered into) by or on behalf of the partnership, or

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- to or in relation to the partnership, at a time when the partnership is being wound up; and
- (d) matters concerned with ascertaining the corporations with which the partnership is or has been connected.

**694-30 Business affairs of a trust**

A trust's *business affairs* include (without limitation):

- (a) the creation of the trust; and
- (b) matters arising under, or otherwise relating to, the terms of the trust; and
- (c) the appointment and removal of a trustee of the trust; and
- (d) the business, trading, transactions and dealings of the trustee of the trust; and
- (e) the profits, income and receipts of the trustee of the trust; and
- (f) the losses, outgoings and expenditure of the trustee of the trust; and
- (g) the trust property, including transactions and dealings in, and the income arising from, the trust property; and
- (h) the liabilities of the trustee of the trust; and
- (i) the management of the trust; and
- (j) any act done (including any contract made and any transaction entered into) by or on behalf of the trustee of the trust, or to or in relation to the trust, at a time when the trust is being wound up; and
- (k) matters concerned with ascertaining the corporations with which the trust is or has been connected.

**694-35 Meaning of court and Court**

- (1) Subject to subsection (2), in this Act:

*court* means any court.

*Court* means any of the following courts:

- (a) the Federal Court;
- (b) the Supreme Court of a State or Territory;
- (c) the Family Court of Australia;

- (d) a court to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41(2) of that Act.
- (2) Except where there is a clear expression of a contrary intention (for example, by use of the expression *the Court*), proceedings in relation to a matter under this Act may, subject to Part 14-3, be brought in any court.

Note: The matters dealt with in Part 14-3 include the applicability of limits on the jurisdictional competence of courts.

### **694-40 Entities**

Except in Part 6-6, a reference to an *entity*:

- (a) is a reference to a natural person, a body corporate (other than an exempt public authority within the meaning of the Corporations Act), a partnership or a trust; and
- (b) includes, in the case of a trust, a reference to the trustee of the trust.

### **694-45 Entities connected with a corporation (including an Aboriginal and Torres Strait Islander corporation)**

*Body corporate*

- (1) A body corporate is connected with a corporation if, and only if, the corporation:
  - (a) can control, or influence materially, the body's activities or internal affairs; or
  - (b) is a member of the body; or
  - (c) is in a position to cast, or to control the casting of, a vote at a general meeting of the body; or
  - (d) has power to dispose of, or to exercise control over the disposal of, a share in the body; or
  - (e) is financially interested in the body's success or failure or apparent success or failure; or
  - (f) is owed a debt by the body; or
  - (g) is engaged by the body under a contract for services; or
  - (h) acts as agent for the body in any transaction or dealing.

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*Natural person*

- (2) A natural person is connected with a corporation if, and only if, the corporation:
- (a) is a trustee of a trust under which the person is capable of benefiting; or
  - (b) is engaged by the person under a contract for services; or
  - (c) acts as agent for the person in any transaction or dealing; or
  - (d) is an attorney of the person under a power of attorney; or
  - (e) has appointed the person as the corporation's attorney under a power of attorney; or
  - (f) is given financial, business or legal advice by the person in the performance of the functions attaching to the person's professional capacity.

*Partnership*

- (3) A partnership is connected with a corporation if, and only if, the corporation:
- (a) is a partner in the partnership; or
  - (b) can control, or influence materially, the partnership's activities or internal affairs; or
  - (c) is financially interested in the partnership's success or failure or apparent success or failure; or
  - (d) is a creditor of the partnership; or
  - (e) is engaged by the partnership under a contract for services; or
  - (f) acts as agent for the partnership in any transaction or dealing.

*Trust*

- (4) A trust is connected with a corporation if, and only if, the corporation:
- (a) is the settlor, or one of the settlors, of the trust; or
  - (b) has power under the terms of the trust to appoint or remove a trustee of the trust or to vary, or cause to be varied, any of the terms of the trust; or
  - (c) is a trustee of the trust; or

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- (d) can control, or influence materially, the activities of the trust;  
or
  - (e) is capable of benefiting under the trust; or
  - (f) is a creditor of the trustee of the trust; or
  - (g) is engaged by the trustee of the trust under a contract for services; or
  - (h) acts as agent for the trustee of the trust in any transaction or dealing.
- (5) To avoid doubt, a reference in this section to a *corporation* includes a reference to an Aboriginal and Torres Strait Islander corporation.

**694-50 Extension of period for doing an act**

If this Act confers power to extend the period for doing an act, an application for the exercise of the power may be made, and the power may be exercised, even if the period, or the period as last extended, as the case requires, has ended.

**694-55 Involvement in contraventions**

A person is *involved in* a contravention if, and only if, the person:

- (a) has aided, abetted, counselled or procured the contravention;  
or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

**694-60 Possession**

A thing that is in a person's custody or under a person's control is in the person's possession.

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**694-65 Public document of a body corporate**

- (1) Subject to this section, *public document*, in relation to a body, means:
- (a) an instrument of, or purporting to be signed, issued or published by or on behalf of, the body that:
    - (i) when signed, issued or published, is intended to be lodged or is required by or under this Act to be lodged; or
    - (ii) is signed, issued or published under or for the purposes of this Act or any other Australian law; or
  - (b) an instrument of, or purporting to be signed or issued by or on behalf of, the body that is signed or issued in the course of, or for the purposes of, a particular transaction or dealing; or
  - (c) without limiting paragraph (a) or (b), a business letter, statement of account, invoice, receipt, order for goods, order for services or official notice of, or purporting to be signed or issued by or on behalf of, the body.
- (2) A thing is not a public document of a body if it:
- (a) is applied, or is intended or required to be applied:
    - (i) to goods; or
    - (ii) to a package, label, reel or thing in or with which goods are, or are to be, supplied; and
  - (b) is so applied, or is intended or required to be so applied, for a purpose connected with the supply of the goods.

- (3) In subsection (2):

*apply* to includes print on, weave in, impress on, work into, or annex, affix or attach to.

*label* includes a band or ticket.

*package* includes:

- (a) a covering, stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper; or
- (b) any other container or thing in which goods are, or are to be, packed.



### **694-70 Receivers and managers**

A receiver of property of a body corporate is also a manager if the receiver manages, or has under the terms of the receiver's appointment power to manage, affairs of the body.

### **694-75 Securities**

- (1) Subject to this section, *securities* means:
  - (a) debentures, stocks or bonds issued or proposed to be issued by a government; or
  - (b) shares in, or debentures of, a body; or
  - (c) interests in a managed investment scheme; or
  - (d) units of such shares;but does not include:
  - (e) a derivative (within the meaning of Chapter 7 of the Corporations Act), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or
  - (f) an excluded security.
- (2) The expression *securities*, when used in relation to a body, means:
  - (a) shares in the body; or
  - (b) debentures of the body; or
  - (c) interests in a managed investment scheme made available by the body; or
  - (d) units of such shares;but does not include:
  - (e) a derivative (within the meaning of Chapter 7 of the Corporations Act), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or
  - (f) an excluded security.
- (3) An expression used in this section and in the Corporations Act has the same meaning in this section as it has in that Act.

### **694-80 Solvency and insolvency**

- (1) A person is *solvent* if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.

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- (2) A person who is not solvent is *insolvent*.

**694-85 Meaning of *chief executive officer function***

*Persons with overall management responsibility for corporation*

- (1) A person performs a ***chief executive officer function (CEO function)*** in relation to a Aboriginal and Torres Strait Islander corporation if the person is the person who is primarily and directly responsible to the directors for the general and overall management of the corporation.
- (2) If there is no one person who performs CEO functions under subsection (1), a person performs a CEO function in relation to the corporation if the person is one of a number of people who together are primarily and directly responsible to the directors for the general and overall management of the corporation.

*Persons responsible for financial matters*

- (3) A person performs a CEO function in relation to the corporation if that person is the person who is:
- (a) primarily responsible for financial matters in relation to the corporation; and
  - (b) directly responsible for those matters to either:
    - (i) the directors; or
    - (ii) the person or persons who perform the CEO function in relation to the corporation.
- (4) If there is no one person who performs a CEO function under subsection (3), a person performs a CEO function in relation to the corporation if the person is one of a number of people who together are:
- (a) primarily responsible for financial matters in relation to the corporation; and
  - (b) directly responsible for those matters to either:
    - (i) the directors; or
    - (ii) the person or persons who perform the CEO function in relation to the corporation.

**694-90 Applications to be in writing**

An application to the Registrar for the issuing of a document or the doing of any other act or thing by the Registrar under this Act must be in writing.

Note: For electronic lodgment of documents with the Registrar, see section 404-10.

**694-95 Effect of certain contraventions of this Act**

- (1) This section has effect except so far as this Act otherwise provides.
- (2) An act, transaction, agreement, instrument, matter or thing is not invalid, void, voidable or unenforceable merely because of:
  - (a) a contravention of section 284-1 or 284-5; or
  - (b) a failure to comply with a requirement of this Act that a person cause a notice, or a copy of a document, to be published in the *Gazette* or in a newspaper.
- (3) Nothing in this section limits the generality of anything else in it.

**694-100 Effect of provisions empowering a person to require or prohibit conduct**

If, in accordance with a provision of this Act (other than the replaceable rules), a person requires another person to do, or prohibits another person from doing, a particular act, that provision is taken to require the other person to comply with the requirement or prohibition, as the case may be.

**694-105 Calculation of time**

Without limiting subsection 36(1) of the *Acts Interpretation Act 1901*, in calculating how many days a particular day, act or event is before or after another day, act or event, the first-mentioned day, or the day of the first-mentioned act or event, is to be counted but not the other day, or the day of the other act or event.

**694-110 Performance of functions by Registrar or Deputy Registrar includes reference to delegate etc.**

- (1) For the purpose of the performance of a function, or the exercise of a power, under this Act by a delegate of the Registrar, a reference to the Registrar in a provision of this Act relating to the performance of the function, or the exercise of the power, includes a reference to the delegate.
- (2) For the purpose of the performance of a function, or the exercise of a power, under this Act by a sub-delegate of a Deputy Registrar, a reference to a Registrar in a provision of this Act relating to the performance of the function, or the exercise of the power, includes a reference to the sub-delegate.
- (3) Subsections (1) and (2) do not, by implication, limit the operation of section 34AA, paragraph 34AB(a), (b), (d) or (e) or section 34A of the *Acts Interpretation Act 1901*.

## **Part 17-3—Dictionary**

### **Division 700—Dictionary**

#### **700-1 Dictionary**

In this Act:

*AAT* means the Administrative Appeals Tribunal.

*ABN* (short for Australian Business Number) has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

*Aboriginal and Torres Strait Islander corporation* has the meaning given by section 16-5.

*Aboriginal and Torres Strait Islander corporation affected* by a contravention of a civil penalty provision means the Aboriginal and Torres Strait Islander corporation to which the conduct that constituted the contravention relates.

*Aboriginal and Torres Strait Islander Corporations legislation* means:

- (a) this Act; and
- (b) except in Subdivision 586-D—rules of court made by the Federal Court, the Supreme Court of the Australian Capital Territory, or the Family Court, because of a provision of this Act; and
- (c) except in Subdivision 586-D—rules of court applied by the Supreme Court, or a State Family Court, of a State, or by the Supreme Court of the Northern Territory when exercising jurisdiction conferred by Division 586 (including jurisdiction conferred by virtue of any previous application or applications of this paragraph).

*Aboriginal and Torres Strait Islander person* means the following:

- (a) an Aboriginal person;

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- (b) a Torres Strait Islander;
- (c) an Aboriginal and Torres Strait Islander person;
- (d) a Torres Strait Islander and Aboriginal person;
- (e) an Aboriginal and Torres Strait Islander corporation;
- (f) a body corporate prescribed by name in the regulations for the purposes of this paragraph;
- (g) a body corporate that falls within a class of bodies specified in the regulations for the purposes of this paragraph;
- (h) a body corporate in which a controlling interest is held by any, or all, of the following persons:
  - (i) Aboriginal persons;
  - (ii) Torres Strait Islanders;
  - (iii) Aboriginal and Torres Strait Islander persons;
  - (iv) Torres Strait Islander and Aboriginal persons.

***Aboriginal person*** means a person of the Aboriginal race of Australia.

***accounting standard*** means:

- (a) a standard in force under section 334 of the Corporations Act; or
- (b) a provision of such a standard as it so has effect.

***act*** includes a thing.

***administrator***:

- (a) in relation to an Aboriginal and Torres Strait Islander corporation but not in relation to a deed of corporation arrangement:
  - (i) means an administrator of the corporation appointed under Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act); and
  - (ii) if 2 or more persons are appointed under that Part as administrators of the corporation—has a meaning affected by paragraph 451A(2)(b) of that Act as so applied; or
- (b) in relation to a deed of corporation arrangement:

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- (i) means an administrator of the deed appointed under Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act); and
- (ii) if 2 or more persons are appointed under that Part as administrators of the deed—has a meaning affected by paragraph 451B(2)(b) of that Act as so applied; or
- (c) in relation to a body corporate (other than an Aboriginal and Torres Strait Islander corporation) but not in relation to a deed of company arrangement:
  - (i) means an administrator of the body or entity appointed under Part 5.3A of the Corporations Act; and
  - (ii) if 2 or more persons are appointed under that Part as administrators of the body or entity—has a meaning affected by paragraph 451A(2)(b) of the Corporations Act; or
- (d) in relation to a deed of company arrangement:
  - (i) means an administrator of the deed appointed under Part 5.3A of the Corporations Act; and
  - (ii) if 2 or more persons are appointed under that Part as administrators of the deed—has a meaning affected by paragraph 451B(2)(b) of the Corporations Act.

*affairs* of a body corporate (including an Aboriginal and Torres Strait Islander corporation) include:

- (a) the promotion or formation of the body; and
- (b) the membership of the body; and
- (c) the control of the body; and
- (d) the body's business, trading, transactions and dealings (whether alone or jointly with any other person or persons and including transactions and dealings as agent, bailee or trustee); and
- (e) the body's property (whether held alone or jointly with any other person or persons and including property held as agent, bailee or trustee); and
- (f) the body's liabilities (including liabilities owed jointly with any other person or persons and liabilities as trustee); and
- (g) the body's profits and other income, receipts, losses, outgoings and expenditure; and

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- (h) if the body is a trustee but not an authorised trustee corporation (without limiting the generality of paragraphs (a) to (g))—matters concerned with:
  - (i) the ascertainment of the identity of the persons who are beneficiaries under the trust; and
  - (ii) their rights under the trust; and
  - (iii) any payments that they have received, or are entitled to receive, under the terms of the trust; and
- (i) the body's internal management and proceedings; and
- (j) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the body, or to or in relation to the body or its business, operations or property, at a time when:
  - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the body; or
  - (ii) if the body is an Aboriginal and Torres Strait Islander corporation—the body is under special administration; or
  - (iii) the corporation is under administration; or
  - (iv) a deed of company arrangement, or deed of corporation arrangement, executed by the body has not yet terminated; or
  - (v) a compromise or arrangement made between the body and any other person or persons is being administered; or
  - (vi) the body is being wound up; and
- (k) without limiting paragraph (j), any conduct of:
  - (i) such a receiver; or
  - (ii) such a receiver and manager; or
  - (iii) such a special administrator of the body; or
  - (iv) such an administrator of the body; or
  - (v) an administrator of such a deed of company arrangement or corporation arrangement; or
  - (vi) a person administering such a compromise or arrangement; or
  - (vii) a liquidator or provisional liquidator of the body; and



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- (l) the ownership of shares in, debentures of, and interests in a managed investment scheme made available by, the body; and
- (m) the power of persons:
  - (i) to exercise, or to control the exercise of, the rights to vote attached to shares in the body; or
  - (ii) to dispose of, or to exercise control over the disposal of, such shares; and
- (n) if the body is an Aboriginal and Torres Strait Islander corporation—the power of persons to exercise, or to control the exercise of, the rights to vote attached to membership of the corporation; and
- (o) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the body or are or have been able to control or materially to influence the policy of the body; and
- (p) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests in a managed investment scheme made available by, the body; and
- (q) where the body has made available interests in a managed investment scheme—any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate; and
- (r) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in a preceding paragraph.

***age of members requirement*** has the meaning given by section 29-10.

***AGM*** means an annual general meeting of an Aboriginal and Torres Strait Islander corporation.

***amount*** includes a nil amount and zero.

***applied provision*** means a provision of the Corporations Act that is applied in relation to Aboriginal and Torres Strait Islander corporations by a provision of this Act.

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**approved form** has the meaning given by paragraph 638-1(6)(b).

**ASIC** means the Australian Securities and Investments Commission.

**associate** has the meaning given by Division 686.

**audit** means an audit conducted for the purposes of this Act.

**audit company** means a company that consents to be appointed, or is appointed, as auditor of an Aboriginal and Torres Strait Islander corporation.

**audited body**, in relation to an audit of an Aboriginal and Torres Strait Islander corporation, means the corporation in relation to which the audit is, or is to be, conducted.

**audit firm** means a firm that consents to be appointed, or is appointed, as auditor of an Aboriginal and Torres Strait Islander corporation.

**auditing standard** means:

- (a) a standard in force under section 336 of the Corporations Act; or
- (b) a provision of such a standard as it so has effect.

**auditor independence requirements of this Act** means the requirements of:

- (a) Subdivision 339-D; and
- (b) the regulations made for the purposes of that Subdivision; and
- (c) the Corporations Act auditor independence provisions as applied by section 339-75 of this Act.

**Australia**, when used in a geographical sense, does not include an external Territory.

Note: Paragraph 17(a) of the *Acts Interpretation Act 1901* would otherwise provide that **Australia** included the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

**Australian ADI** means:

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- (a) an ADI (short for authorised deposit-taking institution) within the meaning of the *Banking Act 1959*; and
- (b) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

***Australian Capital Territory*** includes the Jervis Bay Territory.

***authorised audit company*** means a company registered under Part 9.2A of the Corporations Act.

***authorised disclosure*** has the meaning given by subsections 604-25(3), (4) and (7).

***authorised officer*** means a person appointed by the Registrar under section 447-1 for the purposes of a provision in which the expression occurs.

***authorised trustee corporation*** has the same meaning as in the Corporations Act.

***authorised use or disclosure*** has the meaning given by subsections 604-25(1) and (2).

***benefit*** means any benefit, whether by way of payment of cash or otherwise.

***body*** means a body corporate or an unincorporated body and includes, for example, a society or association.

***body corporate*** includes a body corporate that is being wound up or has been dissolved.

***books*** includes:

- (a) a register; and
- (b) any other record of information; and
- (c) financial reports or financial records; and
- (d) a document;

however compiled, recorded or stored.

***business affairs*** of an entity has a meaning affected by sections 694-15, 694-20, 694-25 and 694-30.

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**business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

**business judgment** has the meaning given by subsection 265-1(3).

**cause** includes procure.

**certified** means:

- (a) in relation to a copy of, or extract from, a document—certified by a statement in writing to be a true copy of, or extract from, the document; or
- (b) in relation to a translation of a document—certified by a statement in writing to be a correct translation of the document into English.

**changed**, in relation to an Aboriginal and Torres Strait Islander corporation's constitution, has the meaning given by subsection 69-10(1).

**civil matter** means a matter other than a criminal matter.

**civil penalty order** means any of the following:

- (a) a declaration of contravention under section 386-1;
- (b) a pecuniary penalty order under section 386-10;
- (c) a compensation order under section 386-15;
- (d) an order under section 279-15 disqualifying a person from managing corporations.

**civil penalty provision** has the meaning given by subsection 386-1(1).

**closely-held subsidiary** has the meaning given by subsection 287-5(2).

**coastal sea** means:

- (a) the territorial sea of Australia; and
  - (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or internal Territory;
- and includes the airspace over, and the sea-bed and subsoil beneath, any such sea.

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***common law holder*** has the same meaning as in the Native Title Act.

***Commonwealth authority*** means an authority or other body (whether incorporated or not) that is established or continued in existence by or under an Act.

***company*** means a body registered as a company under the Corporations Act.

***connected entity*** of a corporation means:

- (a) a body corporate that is, or has been, related to the corporation; or
- (b) an entity that is, or has been, connected (as defined by section 694-45) with the corporation.

***consolidated entity*** means an Aboriginal and Torres Strait Islander corporation together with all the entities it is required to include in a consolidated financial report.

***constitution*** has the meaning given by subsection 69-1(2).

***constitutional change*** has the meaning given by subsection 69-10(2).

***contributory*** of an Aboriginal and Torres Strait Islander corporation means:

- (a) a person liable as a member, or past member, to contribute to the property of the corporation if it is wound up; and
- (b) before the final determination of the persons who are contributories because of paragraph (a)—a person alleged to be such a contributory.

***control*** has the meaning given by section 689-25.

***Corporations Act*** means the *Corporations Act 2001*.

***Corporations Act administration provisions*** has the meaning given by subsection 521-1(4).

***Corporations Act auditor independence provisions*** has the meaning given by subsection 339-75(4).

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***Corporations Act corporation*** means a corporation within the meaning of the *Corporations Act 2001*.

***Corporations Act employees' entitlements provisions*** has the meaning given by subsection 536-1(3).

***Corporations Act insolvent trading provisions*** has the meaning given by subsection 531-1(3).

***Corporations Act pre-winding up provisions*** has the meaning given by subsection 526-40(3).

***Corporations Act receiver provisions*** has the meaning given by subsection 516-1(3).

***Corporations Act winding up provisions*** has the meaning given by subsection 526-35(3).

***court*** has the meaning given by section 694-35.

***Court*** has the meaning given by section 694-35.

***court of summary jurisdiction*** means any justice or justices of the peace or other magistrate sitting as a court for the making of summary orders or the summary punishment of offences:

- (a) under a law of the Commonwealth or of a State or Territory;  
or
- (b) by virtue of his or her commission or their commissions.

***cover the matters provided for in the replaceable rules***, in relation to the internal governance rules of an Aboriginal and Torres Strait Islander corporation, has the meaning given by section 66-5.

***current reporting obligations*** has the meaning given by subsection 358-10(1).

***daily newspaper*** means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published (whether or not the newspaper is ordinarily published on other days).

***deed*** includes a document having the effect of a deed.

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***deed of corporation arrangement*** means:

- (a) a deed of corporation arrangement executed under Part 5.3A of the Corporations Act (as applied by section 521-1 of this Act); or
- (b) such a deed as varied and in force from time to time.

***de facto spouse***, in relation to a person, means an individual of the opposite sex to that person who is living with that person as his or her spouse on a genuine domestic basis although not legally married to that person.

***Deputy Registrar*** means a Deputy Registrar of Aboriginal and Torres Strait Islander Corporations appointed under section 653-5.

***deregistered***, in relation to an Aboriginal and Torres Strait Islander corporation, means deregistered under Chapter 12.

***director*** has the meaning given by section 683-1.

***directors' meeting*** means a meeting of directors of an Aboriginal and Torres Strait Islander corporation.

***directors' statement*** has the meaning given by subsection 69-20(5).

***document access address*** for an Aboriginal and Torres Strait Islander corporation means the address that is the corporation's document access address under section 42-20 or Division 115.

***document that has been lodged*** has the meaning given by subsection 404-1(2).

***employee*** of an Aboriginal and Torres Strait Islander corporation includes a contact person for the corporation (regardless of the basis on which the person is appointed as contact person).

***entity***: for the purposes of Part 6-6, an entity is any of the following:

- (a) a body corporate;
- (b) a partnership;
- (c) an unincorporated body;
- (d) an individual;

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(e) for a trust that has only 1 trustee—the trustee;

(f) for a trust that has more than 1 trustee—the trustees together.

Otherwise, entity has the meaning given by section 694-40.

***examinable affairs*** of an Aboriginal and Torres Strait Islander corporation means:

- (a) the promotion, formation, management, administration or winding up of the corporation; or
- (b) any other affairs of the corporation (including anything that is included in the corporation's affairs because of the definition of affairs in this section); or
- (c) the business affairs of a connected entity of the corporation, in so far as they are, or appear to be, relevant to:
  - (i) the corporation; or
  - (ii) anything that is included in the corporation's examinable affairs because of paragraph (a) or (b).

***examinable assets and liabilities*** of an entity means all of the following:

- (a) the entity's property and assets:
  - (i) whether present or future; and
  - (ii) whether held alone or jointly with any other person or persons; and
  - (iii) whether or not held as agent, bailee or trustee;
- (b) the entity's liabilities:
  - (i) whether present or future; and
  - (ii) whether actual or contingent; and
  - (iii) whether owed alone or jointly with any other person or persons; and
  - (iv) whether or not owed as trustee.

***examinable operations*** of an entity means all of the following:

- (a) the entity's business, trading, transactions and dealings:
  - (i) whether alone or jointly with any other entity or entities; and
  - (ii) whether or not as agent, bailee or trustee;
- (b) the entity's profits, income and receipts;



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(c) the entity's losses, outgoings and expenditure.

***excluded winding up provisions*** of the Corporations Act has the meaning given by subsection 526-35(3).

***expert***, in relation to a matter, means a person whose profession or reputation gives authority to a statement made by him or her in relation to that matter.

***extend***, in relation to a period:

- (a) includes further extend; and
- (b) has a meaning affected by section 694-50.

***externally-administered body corporate*** has the same meaning as in the Corporations Act.

***Family Court*** means the Family Court of Australia.

***Federal Court*** means the Federal Court of Australia.

***financial benefit*** has a meaning that is affected by section 293-5.

***financial records*** includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain:
  - (i) the methods by which a financial report is made up; and
  - (ii) adjustments to be made in preparing a financial report.

***financial report*** means a financial report prepared under Chapter 7.

***financial year*** has the meaning given by subsections 333-5(4), (4A) and (5).

***general law*** means the principles and rules of the common law and equity.

***general meeting*** means a general meeting of the members of an Aboriginal and Torres Strait Islander corporation.

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**general report** means a report that section 330-1 requires an Aboriginal and Torres Strait Islander corporation to prepare.

**giving a financial benefit** has the meaning given by section 293-5.

**giving information** has a meaning affected by section 694-1.

**have**, in relation to information, includes be in possession of the information.

**holding body corporate**, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

**ICN**: see **Indigenous Corporation Number**.

**Indigeneity requirement** has the meaning given by section 29-5.

**Indigenous Corporation Number** or **ICN** means the number given by the Registrar to an Aboriginal and Torres Strait Islander corporation on registration under subsection 26-1(2).

**individual auditor** means an individual who consents to be appointed, or is appointed, as auditor of an Aboriginal and Torres Strait Islander corporation.

**information** includes complaint.

**insolvent** has the meaning given by subsection 694-80(2).

**internal governance framework rules** has the meaning given by subsection 72-5(7).

**internal governance rules** has the meaning given by section 63-1.

**internal governance rules requirements** means the requirements set out in Division 66.

**involved in**, in relation to a contravention, has the meaning given by section 694-55.

**Judge** means a judge of the Court.

**judgment** means a judgment, decree or order, whether final or interlocutory.

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**lead auditor** has the meaning given by subsection 339-20(1).

**lodge** means lodge with the Registrar.

**lower court** means a court of a State or Territory that is not a superior court.

**member** of an Aboriginal and Torres Strait Islander corporation has the meaning given by section 138-1.

**minimum number of members requirement** has the meaning given by section 29-1.

**modifications** includes additions, omissions and substitutions.

**money** includes a payment order.

**name requirement** means a requirement under section 85-1.

**national business names register** means the record or records of information identified in a notice under subsection 147(5) of the Corporations Act.

**national newspaper** means a daily newspaper that circulates generally in each State and each internal Territory.

**native title** has the same meaning as in the Native Title Act.

**Native Title Act** means the *Native Title Act 1993*.

**Native Title legislation** means:

- (a) the Native Title Act and any regulations made under that Act; and
- (b) a prescribed law, or a prescribed provision of a law, of the Commonwealth or of a State or Territory.

**Native Title legislation obligations** means the following obligations imposed by the Native Title legislation on a registered native title body corporate:

- (a) an obligation to consult with the common law holders of native title;
- (b) an obligation to act in accordance with the directions of the common law holders of native title;

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- (c) an obligation to act only with the consent of the common law holders of native title;
- (d) an obligation to take any other action in relation to the common law holders of native title.

***negotiable instrument***, in relation to an Aboriginal and Torres Strait Islander corporation, means:

- (a) a bill of exchange, promissory note, cheque or other negotiable instrument; or
- (b) an indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument; or
- (c) a letter of credit;

of, or purporting to be issued or signed by or on behalf of, the corporation.

***observer*** means a person appointed under section 158-5.

***offence against this Act*** includes an offence against Chapter 7 of the *Criminal Code* that relates to this Act.

***officer*** of an Aboriginal and Torres Strait Islander corporation has the meaning given by section 683-1.

***officer of the Commonwealth*** has the same meaning as in paragraph 75(v) of the Constitution.

***on behalf of*** includes on the instructions of.

***party***, in relation to a transaction that has been completed, given effect to, or terminated, includes a person who was a party to the transaction.

***personal information*** has the same meaning as in the *Privacy Act 1988*.

***person involved in the conduct of an audit*** has the meaning given by subsection 339-90(6).

***possession*** has a meaning affected by section 694-60.

***power*** includes an authority.

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***pre-incorporation requirement*** has the meaning given by section 29-15.

***premises*** includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) any land or place (whether enclosed or built on or not); and
- (c) a part of a structure, building, aircraft, vehicle or vessel or of such a place.

***proceeding*** includes:

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal;

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature.

***procure*** includes cause.

***produce*** includes (except in Chapter 10) permits access to.

***property*** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action.

***proposed reporting obligations*** has the meaning given by subsection 358-10(2).

***protected information*** has the meaning given by section 604-5.

***prove*** includes establish in any way (for example, but without limitation, through the operation of a presumption for which this Act or a law of a State or Territory provides).

***provision*** of a law includes:

- (a) a subsection, section, Subdivision, Division, Part or Chapter of the law; and
- (b) a Schedule, or an item in a Schedule, to the law.

***public authority*** means an authority or body (whether a body corporate or not) established or incorporated for a public purpose by a law of the Commonwealth or of a State or Territory and

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includes a body corporate incorporated under a law of the Commonwealth or of a State or Territory being a body corporate in which the Commonwealth or a State or Territory has a controlling interest.

*public document* has the meaning given by section 694-65.

*public money* includes the meaning given by subsection 487-10(3).

*receiver and manager* has a meaning affected by section 694-70.

*register* means register under this Act.

*registered company auditor* means a person registered as an auditor under Part 9.2 of the Corporations Act.

*registered native title body corporate* has the same meaning as in the Native Title Act.

*registered office* of an Aboriginal and Torres Strait Islander corporation means the office that is the corporation's registered office under section 42-15 or Division 112.

*Register of Aboriginal and Torres Strait Islander Corporations* means the register kept under paragraph 418-1(a).

*Register of Disqualified Officers* means the register kept under paragraph 418-1(b).

*register of former members* means a register provided for in section 180-10.

*register of members* means a register provided for in section 180-1.

*Registrar* means the Registrar of Aboriginal and Torres Strait Islander Corporations appointed under section 653-1.

*related body corporate*, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 689-20.

*related party* has the meaning given by section 293-1.

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**remuneration** of an officer or employee of an Aboriginal and Torres Strait Islander corporation. A benefit given to an officer or employee of an Aboriginal and Torres Strait Islander corporation is **remuneration** if and only if the benefit, were it received by a director of the corporation, would be remuneration of the director for the purposes of an accounting standard that deals with disclosure in companies' financial reports of information about directors' remuneration. For the purposes of this definition, the following are not officers of a corporation:

- (a) a receiver, or receiver and manager, of the property of the corporation;
- (b) an administrator of the corporation;
- (c) an administrator of a deed of company arrangement executed by the corporation;
- (d) a liquidator of the corporation;
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and someone else;
- (f) a special administrator.

**reproduction**, in relation to a document, means a machine-copy of the document or a print made from a negative of the document.

**required to be conducted in accordance with the auditing standards** has the meaning given by section 339-15.

**required to comply with the accounting standards** has the meaning given by section 339-10.

**result** includes:

- (a) when used as a verb—result indirectly; and
- (b) when used as a noun—an indirect result.

**reviewable decision** has the meaning given by section 617-1.

**review auditor** has the meaning given by subsection 339-20(2).

**rules** means:

- (a) rules of the Federal Court; or
- (b) rules of the Supreme Court of a State or internal Territory;

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as the case requires.

**section 333-5 report** means a report that an Aboriginal and Torres Strait Islander corporation is required to prepare by regulations made for the purposes of section 333-5.

**securities** has the meaning given by section 694-75.

**senior manager** of an Aboriginal and Torres Strait Islander corporation means a person (other than a director or secretary of the corporation) who:

- (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
- (b) has the capacity to affect significantly the corporation's financial standing.

**solvent** has the meaning given by subsection 694-80(1).

**special administrator** means a person appointed under subsection 490-1(1).

**special resolution** means, in relation to an Aboriginal and Torres Strait Islander corporation, a resolution:

- (a) of which notice as set out in paragraph 201-35(c) has been given; and
- (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

**State Family Court**, in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41(2) of that Act.

**State or Territory court** means a court of a State, the Australian Capital Territory or the Northern Territory.

**State or Territory Supreme Court** means the Supreme Court of:

- (a) a State; or
- (b) the Australian Capital Territory; or
- (c) the Northern Territory.



**subsection 586-5(3) proceeding** means a proceeding with respect to a matter referred to in subsection 586-5(3).

**subsidiary**, in relation to a body corporate, means a body corporate that is a subsidiary of the first-mentioned body by virtue of Division 689.

**superior court** means the Federal Court of Australia, the Supreme Court of a State or Territory, the Family Court or a State Family Court.

**superior court matter** means a civil matter that this Act clearly intends (for example, by use of the expression **the Court**) to be dealt with only by a superior court.

**territorial sea** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**this Act** includes:

- (a) the regulations; and
- (b) any provision of the Corporations Act as applied by a provision of this Act.

**Torres Strait Islander** means a descendant of an Indigenous inhabitant of the Torres Strait Islands.

**unclaimed property** has the meaning given by section 551-1.

**under special administration** has the meaning given by section 487-25.

**unincorporated body** includes:

- (a) an unincorporated association; and
- (b) an unincorporated society.

**wholly-owned subsidiary**, in relation to a body corporate (the **holding body corporate**), means a body corporate none of whose members is a person other than:

- (a) the holding body corporate; or
- (b) a nominee of the holding body corporate; or
- (c) a subsidiary of the holding body corporate, being a subsidiary none of whose members is a person other than:

**Chapter 17** Interpreting this Act

**Part 17-3** Dictionary

**Division 700** Dictionary

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- (i) the holding body corporate; or
  - (ii) a nominee of the holding body corporate; or
  - (d) a nominee of such a subsidiary.
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*[Minister's second reading speech made in—  
House of Representatives on 23 June 2005  
Senate on 16 October 2006]*

(104/05)