

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 186**

Issued by the Authority of the Minister for Families, Community Services and  
Indigenous Affairs

*Native Title Act 1993*

*Native Title (Prescribed Bodies Corporate) Amendment Regulations 2007 (No. 1)*

Section 215 of the *Native Title Act 1993* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under sections 56 and 57 of the Act, when the Federal Court of Australia makes a determination that native title exists, it must also determine a prescribed body corporate to hold or manage the native title rights and interests on behalf of the native title holders.

Section 59 of the Act provides that the regulations may prescribe the kinds of bodies corporate that may be determined under section 56 or 57.

Subregulation 4(1) of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (the Principal Regulations) relevantly provides that an Aboriginal association is prescribed for section 59 of the Act if it is incorporated under the *Aboriginal Councils and Associations Act 1976* (ACA Act) for the purpose of being the subject of a section 56 or 57 determination. Subregulation 4(2) also refers to Aboriginal associations. Regulation 3 provides that Aboriginal association has the same meaning as in the ACA Act.

The ACA Act will be repealed and replaced by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) on 1 July 2007. Aboriginal associations presently incorporated under the ACA Act will be taken to be registered under the CATSI Act from that date.

The Regulations make consequential amendments to regulations 3 and 4 of the Principal Regulations to reflect this change. References to the ACA Act and Aboriginal associations incorporated under the ACA Act are replaced with references to the CATSI Act and corporations registered under the CATSI Act. Details of the Principal Regulations are included in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation was not undertaken as the Regulations are minor in nature. They do not amend the Principal Regulations beyond what is required to reflect the replacement of the ACA Act with the CATSI Act.

The Regulations will not impact on business activity and will have no compliance costs for business or competition impact.

The Regulations commence on 1 July 2007, to coincide with the commencement of the CATSI Act.

**Details of the Native Title (Prescribed Bodies Corporate) Amendment Regulations 2007 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Native Title (Prescribed Bodies Corporate) Amendment Regulations 2007 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides that the Regulations commence on 1 July 2007.

**Regulation 3 – Amendment of Native Title (Prescribed Bodies Corporate) Regulations 1999**

This Regulation notes that Schedule 1 amends the *Native Title (Prescribed Bodies Corporate) Regulations 1999*.

**Schedule 1 – Amendments**

**Item [1] Subregulation 3(1), definition of *Aboriginal association***

This item repeals the definition of Aboriginal association which adopts the definition in the *Aboriginal Councils and Associations Act 1976* (ACA Act). It substitutes a definition of Aboriginal and Torres Strait Islander corporation which adopts the definition in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), that is, a corporation registered under the CATSI Act (see sections 700-1 and 16-5 of the CATSI Act).

**Item [2] Regulation 4**

This item would repeal and replace existing regulation 4.

Existing subregulation 4(1) relevantly provides that an Aboriginal association is prescribed for section 59 of the *Native Title Act 1993* if it is incorporated under the ACA Act for the purpose of being the subject of a section 56 or 57 determination. Proposed new subregulation 4(1) will reflect the change from the ACA Act to the CATSI Act by instead referring to an Aboriginal and Torres Strait Islander corporation registered under the CATSI Act for this purpose.

Existing subregulation 4(2) provides that an Aboriginal association is taken to be incorporated for the purpose of being the subject of a section 56 or 57 determination if the association has certain features. Proposed new subregulation 4(2) would reflect the change from the ACA Act to the CATSI Act by: replacing references to ‘Aboriginal association’ with ‘Aboriginal and Torres Strait Islander corporation’; replacing references to ‘association’ with ‘corporation’; and replacing references to ‘incorporated’ with ‘registered’.