

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 285**

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

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

*Corporations (Aboriginal and Torres Strait Islander) Amendment  
Regulations 2009 (No. 1)*

Subsection 633-1(1) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (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.

The purpose of the Regulations is to remove two reporting requirements from the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* (the Principal Regulations) and make consequential amendments as a result of removing those reporting requirements.

The Regulations remove the requirement for Aboriginal and Torres Strait Islander corporations to report certain trust and land information in their annual general report. Paragraph 330-5(1)(b) of the Act provides that a general report must contain any other information required by the regulations.

The Regulations also remove the requirement for Aboriginal and Torres Strait Islander corporations reporting under subdivision 333-B of the Principal Regulations to prepare a directors' report. Paragraph 333-5(3)(b) of the Act provides that the regulations may require an Aboriginal and Torres Strait Islander corporation or each corporation in a class of Aboriginal and Torres Strait Islander corporations to prepare a directors' report.

The Act has now been in operation since 1 July 2007. The Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) has the statutory function of administering the Act. The Registrar's experience in the administration of the Act is that the collation and reporting of this trust and land information is a difficult and onerous task for corporations. The information required regarding trusts and land ownership in the report is technical and not well understood by the officers of many corporations. This is particularly the case in relation to land because of the varied and complex legal structures around Indigenous land and its ownership.

The Registrar's experience is also that the trust and land data provided is not reliable, and more reliable information is available to the Registrar, through the examination of corporations' books or land title searches, when needed.

There is no corresponding requirement in the *Corporations Act 2001* (the Corporations Act) for companies to report trust and land information to the Australian Securities and Investments Commission (ASIC).

The proposed Regulations removing the requirement to report certain trust and land information in the annual general report would reduce reporting requirements for all Aboriginal and Torres Strait Islander corporations. The number of corporations registered under the Act varies over time. As at 23 September 2009, there were 2,747 registered corporations.

The preparation of a directors' report under subdivision 333-B of the Principal Regulations is also a difficult and onerous burden for the small and medium size corporations reporting in this class. The required content of the report is not well understood by the officers of these corporations and the quality of the information in these reports is not high. A significant number of corporations in this class did not lodge the report or applied to be exempted by the Registrar from the requirement to prepare and lodge it.

This information is available to the Registrar, through the examination of corporations' books or officers, when needed.

There is no corresponding requirement in the Corporations Act for proprietary companies, in the same circumstances as Aboriginal and Torres Strait Islander corporations in this class, to lodge a directors' report with ASIC.

The proposed Regulations removing the requirement for Aboriginal and Torres Strait Islander corporations in this class to prepare directors' reports would reduce reporting requirements for these corporations. The number of corporations in this class varies each year depending on the corporation's registered size and annual gross operating income. The Registrar estimates this class size at about 1,400 corporations.

Details of the Regulations are set out in the Attachment.

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

### **Consultation**

The Registrar did not consult because the Registrar is satisfied that consultation is unnecessary and inappropriate in this case. The Regulations reduce the reporting obligations on Aboriginal and Torres Strait Islander corporations. Corporations will not be required to include certain trust and land information in their annual general report. Also corporations having gross consolidated income below \$5 million and registered as small and medium will not be required to prepare and lodge a directors' report.

## **Regulatory Impact Analysis**

The Regulations do not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Regulations exempt regulatory requirements for Aboriginal and Torres Strait Islander corporations, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. Their business compliance costs will be reduced.

The Registrar writes to each Aboriginal and Torres Strait Islander corporation after the end of the financial year, and advises the corporation of its registered size, as at 30 June, and the reports that the corporation should prepare and lodge with the Registrar. This advice will inform corporations which do not need to lodge a directors' report.

The Registrar also sends out an individual general report form for all Aboriginal and Torres Strait Islander corporations to complete. The Registrar will send each corporation a new general report which omits questions about trusts and land. The Registrar will also prepare a new general report form and make it available generally on the Registrar's website.

**Details of the Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2009 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the name of the Regulations is the *Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2009 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendment of the Corporations (Aboriginal and Torres Strait Islander) Regulations 2007**

This regulation provides that Schedule 1 amends the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* (the Principal Regulations).

**Schedule 1 – Item 1**

This item amends paragraph 330-5.01(h) of the Principal Regulations. It is a consequential amendment because of the amendment made by item 2.

**Schedule 1 – Item 2**

This item omits paragraphs 330-5.01(i), (j), (k), (m) and (n) of the Principal Regulations removing the requirement for Aboriginal and Torres Strait Islander corporations to report the following trust and land information in their annual general report:

- if the corporation is a trustee of a trust — the name of, or other information identifying, the trust;
- if the corporation has a subsidiary that is the trustee of a trust: the name of the subsidiary, and the name of, or other information identifying, the trust;
- if a corporation is a beneficiary of a trust: the name of each trustee and the name of, or other information identifying, the trust;
- if the corporation has a subsidiary that is a beneficiary of a trust: the name of the subsidiary, the name of each trustee, and the name of, or other information identifying, the trust;
- if the corporation is the proprietor or registered proprietor of Torrens system land: the address of the land, the nature of the estate, a description of the land (including the lot and plan description, and title particulars of the land), and whether the land is held by the corporation in its own right or as trustee;
- if the corporation is the legal owner or lessee of a freehold or leasehold estate in general law land: the address of the land, the nature of the estate, a description of the land (including the lot and plan description, and title particulars of the land), and whether the land is held by the corporation in its own right or as trustee.

This item will reduce reporting requirements for Aboriginal and Torres Strait Islander corporations that are required to lodge a general report every year. It removes the need for these corporations to include this trust and land information.

*Corporations (Aboriginal and Torres Strait Islander) Determination 1 / 2009*

The Registrar made *Corporations (Aboriginal and Torres Strait Islander) Determination 1 / 2009* exempting Aboriginal and Torres Strait Islander corporations from having to report certain trust and land information in their annual general report for the financial year ending 30 June 2009 and subsequent financial years. The exemption determination commenced on 1 July 2009.

The amendments made by items 1 and 2 will make the exemption determination ineffective from the date of the commencement of the Regulations.

Schedule 1 – Item 3

This item replaces the heading to regulation 333-16.01 of the Principal Regulations. It is a consequential amendment because of the amendments made by items 4 and 5.

Schedule 1 – Item 4

This item amends subregulation 333-16.01(3) of the Principal Regulations removing the need for Aboriginal and Torres Strait Islander corporations in the class of corporations reporting under subdivision 333-B of the Principal Regulations to prepare a directors' report.

Schedule 1 – Item 5

This item omits regulation 333-16.03 of the Principal Regulations which provides for the content of directors' reports that Aboriginal and Torres Strait Islander corporations in the class of corporations reporting under subdivision 333-B of the Principal Regulations must prepare.

The amendments made by items 4 and 5 will reduce reporting requirements for Aboriginal and Torres Strait Islander corporations having gross consolidated income below \$5 million and registered as small and medium from having to prepare and lodge a directors' report.

Aboriginal and Torres Strait Islander corporations in this class, if registered as proprietary companies under the *Corporations Act 2001* (the Corporations Act), would not be required to prepare a directors' report. Under the Corporations Act, large proprietary companies and public companies must prepare directors' reports. Subsection 45A(3) of the Corporations Act provides that large proprietary companies satisfy two of the following three criteria: consolidated revenue in excess of \$25 million, assets in excess of \$12.5 million and 50 or more employees.

An Aboriginal and Torres Strait Islander corporation registered as medium typically satisfies two of the following three criteria: gross consolidated operating income between \$100,000 and \$5 million, gross consolidated assets between \$100,000 and \$2.5 million, and between 5 and 24 employees.

*Corporations (Aboriginal and Torres Strait Islander) Determination 2 / 2009*

The Registrar made *Corporations (Aboriginal and Torres Strait Islander) Determination 2 / 2009* exempting certain small and medium sized Aboriginal and Torres Strait Islander corporations from the requirement to prepare and lodge an annual directors' report for the financial year ending 30 June 2009 and subsequent financial years. The exemption determination commenced on 1 July 2009.

The amendments made by items 3, 4 and 5 will make the exemption determination ineffective from the date of the commencement of the Regulations.

Schedule 1 – Item 6

This item is a consequential amendment as a result of omitting subregulation 333-16.01(3) of the Principal Regulations. The consequential amendment is the omission of item 5 from the table in Schedule 2 of Part 2 to the Principal Regulations. The Register of Aboriginal and Torres Strait Islander Corporations will no longer include directors' reports from the class of Aboriginal and Torres Strait Islander corporations reporting under subdivision 333-B.