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**Corporations (Aboriginal and Torres
Strait Islander) Bill 2005**

No. , 2005

(Immigration and Multicultural and Indigenous Affairs)

**A Bill for an Act to provide for Aboriginal and
Torres Strait Islander corporations, and for related
purposes**

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1 **A Bill for an Act to provide for Aboriginal and**
2 **Torres Strait Islander corporations, and for related**
3 **purposes**

4 **Preamble**

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

8 The law is intended, for the purposes of paragraph 4 of Article 1 of
9 the International Convention on the Elimination of All Forms of
10 Racial Discrimination and the *Racial Discrimination Act 1975*, to
11 be a special measure for the advancement and protection of
12 Aboriginal peoples and Torres Strait Islanders.

1 The Parliament of Australia enacts:

2 **Chapter 1—Introduction**

3 **Part 1-1—Preliminary**

4 **Division 1—Preliminary**

5 **1-1 Short title**

6 This Act may be cited as the *Corporations (Aboriginal and Torres*
7 *Strait Islander) Act 2005*.

8 **1-5 Commencement**

9 This Act commences on 1 July 2006.

10 **1-10 Act binds Crown**

11 (1) This Act (except Part 5.8 of the Corporations Act as applied by
12 subsections 516-1(3), 521-1(3), 526-35(3) and 526-40(3)) binds the
13 Crown in right of the Commonwealth, of each of the States, of the
14 Australian Capital Territory, of the Northern Territory and of
15 Norfolk Island.

16 (2) To avoid doubt, a reference in this section to the Crown in a
17 particular right includes a reference to an instrumentality or agency
18 (whether a body corporate or not) of the Crown in that right.

19 (3) However, this Act does not make the Crown liable to a pecuniary
20 penalty or to be prosecuted for an offence.

21 **1-15 Geographical application of Act**

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

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

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

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

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

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

11 **1-25 Objects of this Act**

12 The objects of this Act are to:

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

25 **1-30 Office of the Registrar of Aboriginal and Torres Strait Islander**
26 **Corporations**

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

29 **1-35 Interpretative provisions**

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

1

2 **Part 1-2—Overview of Act**

3 **Division 6—Overview of Act**

4 **6-1 Overview of Act**

5 (1) This Act primarily provides for the incorporation and regulation of
6 Aboriginal and Torres Strait Islander corporations.

7 (2) It also provides for the Registrar and the Office of the Registrar of
8 Aboriginal and Torres Strait Islander Corporations.

9 **6-5 Aboriginal and Torres Strait Islander corporations**

10 (1) Chapter 2 provides for an application to be made to the Registrar
11 for registration of an Aboriginal and Torres Strait Islander
12 corporation.

13 (2) There are a number of registration requirements that must be met
14 before the Registrar may register an Aboriginal and Torres Strait
15 Islander corporation.

16 (3) Chapter 2 also deals with the effects of registration of an
17 Aboriginal and Torres Strait Islander corporation on the
18 corporation's members, officers, contact persons and registered
19 office.

20 **6-10 Basic features of an Aboriginal and Torres Strait Islander**
21 **corporation**

22 (1) Chapter 3 deals with the basic features of an Aboriginal and Torres
23 Strait Islander corporation. It covers matters such as the
24 corporation's name, constitution and other rules applying to the
25 corporation and the corporation's registered office or address for
26 document access.

27 (2) Chapter 3 also provides for the assumptions that people who deal
28 with an Aboriginal and Torres Strait Islander corporation can make
29 in those dealings.

1 **6-15 Members and observers**

2 (1) Chapter 4 sets out some rules for membership of an Aboriginal and
3 Torres Strait Islander corporation and some rules about cancelling
4 the membership of members of the corporation. Aboriginal and
5 Torres Strait Islander corporations have members (as opposed to
6 shareholders) and they may also have persons who observe the
7 operation of the corporation's meetings (observers).

8 (2) Chapter 4 also deals with the register of members that the
9 corporation is required to keep, and with protection of the rights
10 and interests of members of the corporation.

11 **6-20 Meetings**

12 (1) Chapter 5 sets out some rules for the calling and holding of general
13 meetings and annual general meetings of an Aboriginal and Torres
14 Strait Islander corporation.

15 (2) Chapter 5 also deals with rules concerning directors' meetings.

16 **6-25 Officers**

17 (1) Chapter 6 deals with officers and contact persons of an Aboriginal
18 and Torres Strait Islander corporation.

19 (2) Importantly, Chapter 6 also deals with the duties of officers and
20 their disqualification for breaches of those duties.

21 **6-30 Record keeping, reporting requirements and books**

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

27 (2) Chapter 7 also deals with the books of an Aboriginal and Torres
28 Strait Islander corporation.

1 **6-35 Civil consequences of contravening civil penalty provisions**

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

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

5 **6-40 Lodgments and registers**

6 (1) Chapter 9 deals with the requirement to lodge certain documents
7 with the Registrar.

8 (2) Chapter 9 also deals with the registers that the Registrar may, or is
9 required to, keep. Information on these registers is available to the
10 public.

11 **6-45 Regulation and enforcement**

12 (1) Chapter 10 deals with a number of regulatory powers that the
13 Registrar may use in the regulation of Aboriginal and Torres Strait
14 Islander corporations.

15 (2) Chapter 10 also deals with the Registrar's powers of enforcement
16 and the protection of whistleblowers.

17 **6-50 External administration**

18 (1) Chapter 11 deals with the administration of an Aboriginal and
19 Torres Strait Islander corporation by persons outside the
20 corporation (for example, in a winding up).

21 (2) Importantly, the Registrar may appoint a special administrator for
22 an Aboriginal and Torres Strait Islander corporation in
23 circumstances that are vital to the continued viability of the
24 corporation. The special administrator differs from an ordinary
25 administrator.

26 **6-55 Deregistration and unclaimed property**

27 Chapter 12 deals with the deregistration of an Aboriginal and
28 Torres Strait Islander corporation and with unclaimed property.

1 **6-60 Offences**

2 Chapter 13 deals with general offences against this Act.

3 **6-65 Courts and proceedings**

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

6 **6-70 Administration**

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

10 **6-75 Registrar and Deputy Registrars of Aboriginal and Torres**
11 **Strait Islander Corporations**

12 (1) Chapter 16 deals with the appointment of the Registrar and Deputy
13 Registrars. The Registrar is charged with the administration of this
14 Act.

15 (2) Chapter 16 also deals with the powers and functions of the
16 Registrar.

17 **6-80 Interpreting this Act**

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

1

2

Chapter 2—Aboriginal and Torres Strait Islander corporations

3

4

Part 2-1—Introduction

5

Division 16—Introduction

6

16-1 What this Chapter is about

7

8

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

9

In particular, it deals with:

10

11

- what an Aboriginal and Torres Strait Islander corporation is (see section 16-5); and

12

- the application for registration (see Part 2-2); and

13

- decisions on applications (see Part 2-3); and

14

15

- registration of small, medium and large corporations (see Part 2-4); and

16

- the effects of registration (see Part 2-5).

17

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

18

19

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

1
2 **Part 2-2—Applications for registration of an**
3 **Aboriginal and Torres Strait Islander**
4 **corporation**

5 **Division 21—Applications for registration of an Aboriginal**
6 **and Torres Strait Islander corporation**

7 **21-1 Application for registration**

- 8 (1) An application by a person (the *applicant*) for registration of an
9 Aboriginal and Torres Strait Islander corporation must contain the
10 following information:
11 (a) the applicant's name and address;
12 (b) the corporation's proposed name;
13 (c) if the applicant is requesting an exemption from having to
14 have at least 5 members—a request for the exemption
15 specifying the proposed minimum number of members;
16 (d) an indication of whether, for the corporation's first financial
17 year, the corporation is expected to be a small, medium or
18 large corporation;
19 (e) if the corporation is expected to be a large corporation for the
20 corporation's first financial year—the address of the
21 proposed registered office;
22 (f) if the corporation is expected to be a small or medium
23 corporation for the corporation's first financial year—the
24 address of the proposed document access address;
25 (g) the names and addresses of each person who consents in
26 writing to become a member of the corporation;
27 (h) the director details of each person who consents in writing to
28 become a director of the corporation;
29 (i) if the corporation is expected to be a small or medium
30 corporation in respect of the corporation's first financial
31 year—the name and address of the person who consents in
32 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 21 Applications for registration of an Aboriginal and Torres Strait Islander corporation

Section 21-1

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

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

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

23 *Director details*

- 24 (3) The *director details* of a person who consents to become a director
25 are the following:
- 26 (a) the person's given and family name;
- 27 (b) all former given and family names of the person;
- 28 (c) all other names by which the person is or was known;
- 29 (d) the person's address;
- 30 (e) the person's date and place of birth (if known);
- 31 (f) a declaration in writing from the person stating that the
32 person is eligible to be a director of an Aboriginal and Torres
33 Strait Islander corporation.

- 1 (4) A specification by the Registrar under paragraph (1)(l) is not a
2 legislative instrument.

3 **21-5 Matters to accompany application**

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

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

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

12 **21-10 Registrar may seek further information**

- 13 (1) For the purposes of determining an application, the Registrar may
14 request an applicant to provide such further information as the
15 Registrar requests within the period specified by the Registrar in
16 the request.
- 17 (2) The Registrar may extend a period specified under subsection (1).
- 18 (3) If the applicant does not comply with the request, the Registrar
19 may treat the application as being withdrawn and notify the
20 applicant in writing accordingly. The notice must be given within
21 28 days after the Registrar makes the decision to treat the
22 application as being withdrawn.
- 23 (4) A request under this section must state the effect of subsection (3).

1

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

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

4 **26-1 Registrar to decide application**

5 *Registrar to decide*

- 6 (1) The Registrar must make a decision whether or not to grant an
7 application for registration of an Aboriginal and Torres Strait
8 Islander corporation.

9 *When may Registrar grant application*

- 10 (2) The Registrar may decide to grant the application if:
- 11 (a) an application under section 21-1 has been lodged for
12 registration of the corporation (but see section 26-5); and
- 13 (b) the application is accompanied by the matters set out in
14 section 21-5 (but see section 26-5); and
- 15 (c) the Registrar is satisfied that, on registration, the corporation
16 will meet the following basic requirements set out in
17 Division 29 (but see section 26-10):
- 18 (i) the minimum number of members requirement (see
19 section 29-1);
- 20 (ii) the Indigeneity requirement (see section 29-5);
- 21 (iii) the age of members requirement (see section 29-10);
- 22 (iv) the pre-incorporation requirement (see section 29-15);
- 23 (v) the internal governance rules requirement (see
24 section 29-20);
- 25 (vi) the name requirement (see section 29-25); and
- 26 (d) section 26-15 does not preclude the registration; and
- 27 (e) the Registrar is satisfied that it is more appropriate that the
28 corporation be registered under this Act than under the
29 Corporations Act or a law of a State or Territory dealing with
30 incorporated bodies; and

- 1 (f) the Registrar is satisfied that registering the corporation
2 would not be contrary to the public interest.

3 **26-5 Registrar may grant application if application is incomplete etc.**

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

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

11 **26-10 Registrar may grant application if some basic requirements**
12 **are not met**

13 *Circumstances when Registrar may register corporation*

- 14 (1) Despite paragraph 26-1(2)(c), the Registrar may grant the
15 application even if the Registrar is not satisfied that the
16 corporation, on registration, would meet:
17 (a) the minimum number of members requirement; or
18 (b) the age of members requirement; or
19 (c) the pre-incorporation requirement.

20 *Registrar not to register body in certain circumstances*

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

27 **26-15 Registrar not to register trade unions etc.**

28 The following cannot be registered under this Act:

- 29 (a) a trade union;

Chapter 2 Aboriginal and Torres Strait Islander corporations

Part 2-3 Decisions on applications

Division 26 Registrar to decide application

Section 26-15

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

1

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

4 **29-1 Minimum number of members requirement**

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

8 **29-5 Indigeneity requirement**

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

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

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

22 **29-10 Age of members requirement**

23 An Aboriginal and Torres Strait Islander corporation meets the *age*
24 *of members requirement* if each member of the corporation is at
25 least 15 years of age.

26 **29-15 Pre-incorporation requirement**

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

Section 29-20

- 1 (a) authorised the applicant to apply for the incorporation of the
2 Aboriginal and Torres Strait Islander corporation; and
3 (b) approved the proposed constitution provided to the Registrar
4 under subsection 29-20(2) as the constitution of the
5 corporation; and
6 (c) if the internal governance rules that would apply to the
7 corporation will include one or more replaceable rules—
8 agreed to those replaceable rules so applying; and
9 (d) nominated, as persons who will become directors of the
10 corporation, the persons specified in the application as
11 persons who will become directors on registration; and
12 (e) if the application indicates that the corporation is expected to
13 be a small or medium corporation in respect of the
14 corporation's first financial year—nominated, as a person
15 who will become a contact person of the corporation, the
16 person specified in the application as a person who will
17 become contact person on registration; and
18 (f) if the application indicates that the corporation is expected to
19 be a large corporation in respect of the corporation's first
20 financial year—nominated, as a person who will become the
21 corporation's secretary, the person specified in the
22 application as a person who will become the corporation's
23 secretary on registration.
- 24 (2) The document evidencing the agreement under paragraph (1)(c)
25 must:
26 (a) refer by section or subsection number (as appropriate) to the
27 replaceable rules that will apply without modification to the
28 corporation; and
29 (b) set out the terms of the replaceable rules (if any) that are
30 being modified or replaced by the proposed constitution.

31 **29-20 Internal governance rules requirement**

- 32 (1) An Aboriginal and Torres Strait Islander corporation meets the
33 ***internal governance rules requirement*** if the corporation's
34 constitution complies with the requirements set out in section 66-1.

- 1 (2) In addition, a copy of the corporation's proposed constitution must
2 be lodged before the time the Registrar makes a decision under
3 section 26-1 in respect of the application.

4 **29-25 Name requirement**

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

Section 32-1

1

2 **Division 32—Decisions on applications**

3 **32-1 Successful applications**

- 4 (1) If the Registrar grants an application for registration of an
5 Aboriginal and Torres Strait Islander corporation, the Registrar
6 must:
- 7 (a) register the Aboriginal and Torres Strait Islander corporation;
8 and
 - 9 (b) register the corporation's constitution; and
 - 10 (c) issue a certificate to the applicant that states the following:
 - 11 (i) the corporation's name and ICN;
 - 12 (ii) that the corporation is registered under this Act;
 - 13 (iii) the date of the registration.

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

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

19 **32-5 Unsuccessful applications**

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

1

(2) If the Registrar is advised under subparagraph (1)(d)(ii), the

2

Registrar must reconsider the application.

Chapter 2 Aboriginal and Torres Strait Islander corporations

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

Section 37-1

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

3

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

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

9

10

- (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.

11

12

13

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.

14

15

16

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

17

18

(a) the application for registration indicates; or

19

(b) the Registrar is otherwise satisfied;

20

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

21

22

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

23

24

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

25

26

(a) the application for registration indicates; or

27

(b) the Registrar is otherwise satisfied;

28

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

29

30

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

31

Section 37-5

- 1 (4) The Registrar may register the corporation as a large corporation
2 only if:
3 (a) the application for registration indicates; or
4 (b) the Registrar is otherwise satisfied;
5 that the corporation is likely to be a large corporation in respect of
6 its first financial year.
7 Note: Subsection 37-10(3) sets out the criteria for determining whether the
8 corporation is a large corporation for a particular financial year.

9 **37-5 Registrar may alter registered size of corporation after**
10 **registration**

- 11 (1) If the Registrar is satisfied that an Aboriginal and Torres Strait
12 Islander corporation that is registered as a small corporation was in
13 fact a medium or large corporation for the most recent financial
14 year, the Registrar may alter the corporation's registration so that
15 the corporation is registered as a medium or large corporation.
16 (2) If the Registrar is satisfied that an Aboriginal and Torres Strait
17 Islander corporation that is registered as a medium corporation was
18 in fact a small or large corporation for the most recent financial
19 year, the Registrar may alter the corporation's registration so that
20 the corporation is registered as a small or large corporation.
21 (3) If the Registrar is satisfied that an Aboriginal and Torres Strait
22 Islander corporation that is registered as a large corporation was in
23 fact a small or medium corporation for the most recent financial
24 year, the Registrar may alter the corporation's registration so that
25 the corporation is registered as a small or medium corporation.
26 (4) An alteration to an Aboriginal and Torres Strait Islander
27 corporation's registration made under subsection (1), (2) or (3) is
28 not a legislative instrument.
29 (5) The Registrar must notify an Aboriginal and Torres Strait Islander
30 corporation in writing of an alteration made under this section.

Chapter 2 Aboriginal and Torres Strait Islander corporations

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

Section 37-10

1 **37-10 Small, medium and large corporations**

2 *Small corporations*

3 (1) An Aboriginal and Torres Strait Islander corporation is a ***small***
4 ***corporation*** for a financial year if it satisfies at least 2 of the
5 following paragraphs:

6 (a) the consolidated gross operating income for the financial year
7 of the corporation and the entities it controls (if any) is less
8 than the amount prescribed in the regulations for the
9 purposes of this paragraph;

10 (b) the value of the consolidated gross assets at the end of the
11 financial year of the corporation and the entities it controls (if
12 any) is less than the amount prescribed in the regulations for
13 the purposes of this paragraph;

14 (c) the corporation and the entities it controls (if any) have, at the
15 end of the financial year, fewer employees than the number
16 of employees prescribed for the purposes of this paragraph.

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

19 *Medium corporations*

20 (2) An Aboriginal and Torres Strait Islander corporation is a ***medium***
21 ***corporation*** for a financial year if it satisfies at least 2 of the
22 following paragraphs:

23 (a) the consolidated gross operating income for the financial year
24 of the corporation and the entities it controls (if any) is equal
25 to or more than the amount prescribed under paragraph (1)(a)
26 but less than the amount prescribed for the purposes of this
27 paragraph;

28 (b) the value of the consolidated gross assets at the end of the
29 financial year of the corporation and the entities it controls (if
30 any) is equal to or more than the amount prescribed under
31 paragraph (1)(b) but less than the amount prescribed for the
32 purposes of this paragraph;

33 (c) the corporation and the entities it controls (if any) have, at the
34 end of the financial year, a number of employees that is equal
35 to or more than the number prescribed under paragraph (1)(c)

Section 37-15

1 but fewer than the number of employees prescribed for the
2 purposes of this paragraph.

3 *Large corporations*

4 (3) An Aboriginal and Torres Strait Islander corporation is a **large**
5 **corporation** for a financial year if it satisfies at least 2 of the
6 following paragraphs:

- 7 (a) the consolidated gross operating income for the financial year
8 of the corporation and the entities it controls (if any) is equal
9 to or more than the amount prescribed for the purposes of
10 paragraph (2)(a);
11 (b) the value of the consolidated gross assets at the end of the
12 financial year of the corporation and the entities it controls (if
13 any) is equal to or more than the amount prescribed for the
14 purposes of paragraph (2)(b);
15 (c) the corporation and the entities it controls (if any) have, at the
16 end of the financial year, a number of employees that is equal
17 to or more than the number of employees prescribed for the
18 purposes of paragraph (2)(c).

19 *Native Title*

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

23 **37-15 When an Aboriginal and Torres Strait Islander corporation**
24 **controls an entity**

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

Chapter 2 Aboriginal and Torres Strait Islander corporations

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

Section 37-20

1 **37-20 Counting employees**

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

5 (2) Without limiting subsection (1), regulations made under that
6 subsection may specify:

7 (a) that employees of a class are to be disregarded for the
8 purposes of section 37-10; or

9 (b) that employees of a class are to be taken into account by
10 treating each employee as representing a specified fraction of
11 an employee.

12 **37-25 Accounting standards**

13 In consolidating under section 37-10:

14 (a) the consolidated gross operating income; and

15 (b) the value of consolidated gross assets;

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

1

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

3 **Division 42—Effects of registration**

4 **42-1 Corporation comes into existence on registration**

5 An Aboriginal and Torres Strait Islander corporation comes into
6 existence as a body corporate with perpetual succession at the
7 beginning of the day on which it is registered.

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

10 **42-5 Corporation's name**

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

13 **42-10 Members, directors, corporation secretary and contact person**
14 **of corporation**

15 *Persons become members etc. on registration*

16 (1) A person becomes a member, director, corporation secretary or
17 contact person of an Aboriginal and Torres Strait Islander
18 corporation on registration if the person is specified in the
19 application with his or her consent as a proposed member, director,
20 corporation secretary or contact person of the corporation.

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

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

24 (2) If:

25 (a) an Aboriginal and Torres Strait Islander corporation is
26 registered as a small or medium corporation; and

27 (b) the application for registration does not specify a person to be
28 the contact person for the corporation;

Section 42-15

1 the applicant becomes the contact person for the corporation on
2 registration.

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

5 (3) If:

6 (a) a person is specified in an application for registration of an
7 Aboriginal and Torres Strait Islander corporation as the
8 contact person for the corporation; and

9 (b) the person is specified without his or her consent; and

10 (c) before registration, the Registrar becomes aware of that fact;
11 the Registrar may determine, by notice in writing given to the
12 applicant, that the applicant for registration is the contact person
13 for the corporation on registration.

14 (4) A determination under subsection (3) is not a legislative
15 instrument.

16 **42-15 Registered office**

17 If an Aboriginal and Torres Strait Islander corporation is registered
18 as a large corporation, the address (if any) specified in the
19 corporation's application for registration as the proposed registered
20 office becomes the address of the corporation's registered office on
21 registration.

22 **42-20 Document access address**

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

28 **42-25 Corporation may have common seal**

29 (1) An Aboriginal and Torres Strait Islander corporation may have a
30 common seal. If an Aboriginal and Torres Strait Islander

Section 42-30

1 corporation does have a common seal, the corporation must set out
2 on it the corporation's name and ICN.

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

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

7 (2) An Aboriginal and Torres Strait Islander corporation may have a
8 duplicate common seal. The duplicate must be a copy of the
9 common seal with the words "duplicate seal" added.

10 (3) A person commits an offence if:

11 (a) the person uses, or authorises the use of, a seal; and

12 (b) the seal purports to be the common seal of an Aboriginal and
13 Torres Strait Islander corporation or a duplicate; and

14 (c) the seal does not comply with the requirements set out in
15 subsection (1) or (2).

16 Penalty: 10 penalty units.

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

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

19 **42-30 Vesting of property in corporation on registration**

20 *Application of section*

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

24 *Personal property other than land*

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

Section 42-30

1

Estate or interest in land

2

(3) If:

3

(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

4

5

(b) the body is registered;

6

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.

7

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(4) In subsection (2):

11

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

12

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

3

4

Part 3-1—Introduction

5

Division 52—Introduction

6

52-1 What this Chapter is about

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11

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.

Section 57-1

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2

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

3

4

Division 57—Introduction

5

57-1 What this Part is about

6

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

7

8

(a) common law rules; and

9

(b) rules in this Act that cannot be replaced by the corporation's constitution; and

10

11

(c) replaceable rules in this Act that may be modified or replaced by the corporation's constitution; and

12

13

(d) rules that are in the corporation's constitution.

14

Some of the rules in paragraph (d):

15

(a) may be required by this Act to be in the constitution; or

16

17

(b) may be there to modify or replace a replaceable rule; or

18

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(c) may be there as a special rule applying to that particular corporation.

20

21

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).

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

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Section 57-1

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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.

Section 60-1

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

4 **60-1 Replaceable rules**

5 *Which are the replaceable rules?*

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

8 *To which corporations do the replaceable rules apply?*

9 (2) The replaceable rules apply to:

10 (a) an Aboriginal and Torres Strait Islander corporation (not
11 being a corporation to which paragraph (b) applies) that is
12 registered on or after the day this section commences (the
13 **commencing day**); and

14 (b) an Aboriginal and Torres Strait Islander corporation:

15 (i) that was registered under the *Aboriginal Councils and*
16 *Associations Act 1976* as an Aboriginal corporation
17 immediately before the commencing day; and

18 (ii) that repeals its constitution after the commencing day;
19 except to the extent to which the rules are modified or replaced by
20 the corporation’s constitution as provided for in section 60-5.

21 **60-5 Corporation’s constitution can modify or replace replaceable**
22 **rules**

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

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

1 **60-10 Effect of constitution and replaceable rules**

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

12 **60-15 Failure to comply with replaceable rules**

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

17 **60-20 Modification by regulations**

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

26 **60-25 List of replaceable rules**

27 The following table sets out the provisions of this Act that apply to
28 Aboriginal and Torres Strait Islander corporations as replaceable
29 rules.
30

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

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

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

Section 60-25

Provisions that apply as replaceable rules		
Item	Subject of provision	Provision
Chapter 4—Members and observers		
1	Application for membership of corporation to be in writing	subsection 144-5(2)
2	Notice of rejection of membership application to be in writing	subsection 144-10(7)
3	Notice of resignation from membership of corporation to be in writing	subsection 150-10(2)
4	Member not eligible for membership etc.	section 150-20
5	Observer is entitled to attend a general meeting of the corporation	subsection 158-5(2)
6	Corporation or directors may allow member to inspect books	section 175-15
Chapter 5—Meetings		
7	Director may call meetings	section 201-1
8	Notice to joint members	subsection 201-25(2)
9	When notice by post or fax is given	subsection 201-25(5)
10	When notice under paragraph (3)(e) is given	subsection 201-25(6)
11	Quorum for meeting of members of corporation	subsection 201-70(1)
12	Corporations with 10 members or less	subsection 201-70(2)
13	Adjourned meeting	subsection 201-70(5)
14	No quorum at resumed meeting	subsection 201-70(6)
15	Chairing general meeting	section 201-75
16	Business at adjourned meetings	subsection 201-85(2)
17	Who may appoint a proxy	section 201-90
18	How many votes a member has	section 201-115
19	Objections to right to vote	section 201-120

Provisions that apply as replaceable rules		
Item	Subject of provision	Provision
20	How voting is carried out	section 201-125
21	When and how polls must be taken	section 201-140
22	Calling directors' meetings	section 212-5
23	Chairing directors' meetings	section 212-15
24	Passing of directors' resolutions	section 212-25
25	Circulating resolutions of corporation with more than 1 director	section 215-1
Chapter 6—Officers		
26	Corporation may appoint a director	section 246-15
27	Directors may appoint other directors to make up a quorum	section 246-20
28	Directors appointed on registration	subsection 246-25(1)
29	Director may be reappointed	subsection 246-25(3)
30	Alternate directors	section 246-30
31	Written notice to be given of resignation as director of corporation	subsection 249-5(2)
32	Terms and conditions of office for secretaries	section 257-45
33	Terms and conditions of contact person's appointment	section 257-50
34	Powers of directors	section 274-1
35	Negotiable instruments	section 274-5

Section 63-1

1

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

4 **63-1 Meaning of internal governance rules**

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

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

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

4 **66-1 Requirements**

- 5 (1) The following are the *internal governance rules requirements* for
6 an Aboriginal and Torres Strait Islander corporation.
- 7 (2) The corporation must have a constitution written in English that
8 sets out the corporation's objects.
- 9 (3) The corporation's constitution must cover the matters that this Act
10 specifies must be covered in the corporation's constitution.
- 11 (4) The internal governance rules must cover the matters that are
12 provided for in the replaceable rules (see section 66-5).
- 13 (5) The internal governance rules must also be:
- 14 (a) internally consistent; and
- 15 (b) adequate and workable, given the context in which the
16 corporation operates; and
- 17 (c) consistent with this Act; and
- 18 (d) consistent with the Native Title legislation if:
- 19 (i) an application for registration of an Aboriginal and
20 Torres Strait Islander corporation seeks registration of
21 the corporation for the purpose of becoming a registered
22 native title body corporate; or
- 23 (ii) the corporation is a registered native title body
24 corporate.
- 25 (6) The corporation must meet the requirements at all times after
26 registration.

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

30 Note 2: If an Aboriginal and Torres Strait Islander corporation is making a
31 change to its constitution and the Registrar is of the opinion that the
32 corporation's internal governance rules, after the change, would not

Section 66-5

1 comply with the internal governance rules requirements, the Registrar
2 may refuse to register the change (see section 69-30).

3 **66-5 Meaning of *cover the matters provided for in the replaceable***
4 ***rules***

5 *If all replaceable rules apply or all are replaced*

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

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

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

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

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

28 *Regulations may modify section*

- 29 (4) The regulations may modify this section.
30 (5) Without limiting subsection (4), the regulations may provide for
31 further situations in which the internal governance rules of an

1
2

Aboriginal and Torres Strait Islander corporation *cover the matters provided for in the replaceable rules.*

Section 69-1

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2 **Division 69—Constitutions and amendment and**
3 **replacement of constitutions**

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

5 **69-1 Constitution of an Aboriginal and Torres Strait Islander**
6 **corporation**

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

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

14 (2) A *constitution* is an instrument (other than this Act):

- 15 (a) constituting, or defining the constitution of, an Aboriginal
16 and Torres Strait Islander corporation; or
17 (b) governing the activities of such a corporation or its members.

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

19 **69-5 Overview—ways a constitution may be changed**

20 *Corporation wants to change its constitution*

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

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

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

6 *Court may change a constitution*

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

9 Note: The constitutional change takes effect as provided for in paragraph
10 69-40(b).

11 *Registrar may change a constitution*

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

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

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

18 *Special administrator may change a constitution*

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

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

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

28 **69-10 Meaning of *constitutional change* etc.**

29 (1) For the purposes of this Act, an Aboriginal and Torres Strait
30 Islander corporation's constitution is ***changed*** if:

31 (a) the constitution is repealed and a new constitution is
32 substituted; or

Section 69-15

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

12 **69-15 Extra requirements for constitutional change in constitution**

- 13 (1) An Aboriginal and Torres Strait Islander corporation's constitution
14 may provide that a change to its constitution does not have any
15 effect unless a requirement specified in the constitution relating to
16 that constitutional change has been complied with.
- 17 (2) Unless the constitution provides otherwise, the corporation may
18 modify or repeal a requirement described in subsection (1) only if
19 the requirement is itself complied with.
- 20 Note: Section 69-40 deals with when the constitutional change takes effect.

21 **69-20 Corporation to lodge copy of constitutional changes**

- 22 (1) If no requirement of a kind mentioned in section 69-15 is specified
23 in the corporation's constitution, within 28 days after the special
24 resolution is passed, the corporation must lodge with the Registrar:
25 (a) a copy of the special resolution; and
26 (b) a copy of those parts of the minutes of the meeting at which
27 the special resolution was passed that relate to the passing of
28 the special resolution; and
29 (c) a directors' statement (see subsection (4)); and
30 (d) a copy of the constitutional change.
- 31 Penalty: 5 penalty units.

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

6 Penalty: 5 penalty units.

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

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

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

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

15 (a) 2 directors of the corporation; or

16 (b) if there is only 1 director—that director;

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

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

21 **69-25 Special administrator to lodge copy of constitutional changes**

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

26 **69-30 Registrar to determine if constitutional change should be** 27 **registered**

28 *Registrar to decide*

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

Section 69-35

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

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

7 *Proposed change after Registrar's change*

8 (3) In addition to being satisfied as required by subsection (2), the
9 Registrar must not register a constitutional change lodged after the
10 Registrar has changed the constitution under section 69-35 unless
11 the Registrar is satisfied that:

12 (a) the lodged change is consistent with the change made by the
13 Registrar, taking into account the Registrar's reasons for
14 making that change; and

15 (b) the reasons for the Registrar making that change are no
16 longer applicable.

17 *If Registrar is not satisfied*

18 (4) If the Registrar is not satisfied as required by this section, the
19 Registrar must:

20 (a) refuse to register the change; and

21 (b) notify the corporation or special administrator concerned in
22 writing of the decision within 28 days after that decision.

23 *If Registrar is satisfied*

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

26 **69-35 Registrar may change an Aboriginal and Torres Strait**
27 **Islander corporation's constitution on own initiative**

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

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

4 Note: Section 66-1 sets out the requirements.

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

7 (a) the conduct of the corporation's affairs; or

8 (b) an actual or proposed act or omission by or on behalf of the
9 corporation; or

10 (c) a resolution, or a proposed resolution, of members or a class
11 of members of the corporation;

12 is either:

13 (d) contrary to the interests of the members as a whole; or

14 (e) oppressive to, unfairly prejudicial to, or unfairly
15 discriminatory against, a member or members whether in that
16 capacity or in any other capacity.

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

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

23 (a) an act (or omission from doing an act); or

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

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

27 (c) in good faith; and

28 (d) with the belief that doing (or refraining from doing) the act is
29 necessary to ensure that the corporation complies with a
30 Native Title legislation obligation.

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

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

Section 69-40

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

9 **69-40 Date of effect of constitutional change**

- 10 A constitutional change takes effect:
- 11 (a) if it is the result of a special resolution—on the day the
12 change is registered; or
13 (b) if it is the result of a Court order made under section 166-5:
14 (i) on the date on which the order is made if it specifies no
15 later date; or
16 (ii) on a date specified by the order; or
17 (c) if the Registrar has made the change—on the day the change
18 is registered; or
19 (d) if a special administrator has made the change—on the day
20 the change is registered.

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

3 **72-1 Registrar may direct corporation to lodge constitution**

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

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

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

10 **72-5 Corporation must provide governance material to members**

11 *Corporation must provide member with constitution etc.*

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

17 (a) free of charge; and

18 (b) within 7 days.

19 Penalty: 5 penalty units.

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

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

22 *Registered office*

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

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

Section 72-10

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Document access address

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- (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.

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

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

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Penalty: 5 penalty units.

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

14

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

15

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

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17

(a) the corporation's constitution; and

18

(b) any replaceable rules that apply to the corporation; and

19

(c) any other material concerning the internal governance of the corporation that is prescribed.

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72-10 Constitution may limit powers

22

- (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.

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- (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.

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

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

7 **77-1 What this Part is about**

8 This Part deals with the minimum number of members that an
9 Aboriginal and Torres Strait Islander corporation must have.

10 **77-5 Minimum number of members requirement**

11 *Minimum number of members*

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

17 *Request in application for registration for exemption from at least*
18 *5 members*

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

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

Section 77-10

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

3 (3) If:

4 (a) the Registrar has determined a lesser number of members
5 under subsection (2) in respect of an Aboriginal and Torres
6 Strait Islander corporation and the determination is in force;
7 and

8 (b) after registration of the corporation, the corporation wants to
9 have fewer members than the number determined;

10 the corporation may request the Registrar in writing to:

11 (c) exempt the corporation from having the number previously
12 determined; and

13 (d) determine the corporation to have the lesser minimum
14 number of members specified in the application.

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

17 (4) If:

18 (a) an Aboriginal and Torres Strait Islander corporation is
19 required to have at least 5 members; and

20 (b) after registration of the corporation, the corporation wants to
21 have fewer than 5 members;

22 the corporation may request the Registrar in writing to:

23 (c) exempt the corporation from having at least 5 members; and

24 (d) determine the corporation to have the lesser minimum
25 number of members specified in the application.

26 **77-10 Registrar may exempt if appropriate and reasonable to do so**

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

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

1 **77-15 Registrar may determine a different number to number**
2 **requested**

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

7 **77-20 Earlier determination taken to be revoked**

8 If the Registrar grants an exemption on a request under subsection
9 77-5(3), the determination referred to in paragraph 77-5(3)(a) is
10 taken to be revoked.

11 **77-25 Notice to be given**

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

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

Part 3-4 Names

Division 82 Introduction

Section 82-1

1

2 **Part 3-4—Names**

3 **Division 82—Introduction**

4 **82-1 What this Part is about**

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

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

3 **85-1 Corporation's name requirements**

- 4 (1) The requirements concerning an Aboriginal and Torres Strait
5 Islander corporation's name are set out in the following
6 subsections.
- 7 (2) The corporation may have as its name:
8 (a) a name that is available (see section 85-5); or
9 (b) the expression "Indigenous Corporation Number" followed
10 by the corporation's ICN.
- 11 (3) The corporation must have as part of its name one of the following
12 sets of words:
13 (a) "Aboriginal corporation";
14 (b) "Torres Strait Islander corporation";
15 (c) "Aboriginal and Torres Strait Islander corporation";
16 (d) "Torres Strait Islander and Aboriginal corporation";
17 (e) "Indigenous corporation".
- 18 (4) If the corporation is a registered native title body corporate, then
19 the corporation must also have as part of its name the words
20 "registered native title body corporate".
- 21 (5) If abbreviations are used in its name, the corporation must use only
22 the abbreviations that are acceptable (see section 85-10).
- 23 (6) If the corporation is not a registered native title body corporate the
24 corporation must not:
25 (a) have the term "registered native title body corporate" as part
26 of its name; or
27 (b) include the abbreviation "RNTBC" in its name.
- 28 (7) The requirements must be met by an Aboriginal and Torres Strait
29 Islander corporation at all times after registration.
- 30 Note: The requirements must be complied with on registration of an
31 Aboriginal and Torres Strait Islander corporation (see section 29-25).
-

Section 85-5

1 **85-5 Available names**

2 *Name is available unless identical or unacceptable*

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

17 *Registrar may consent to a name being available*

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

32 Note: If the corporation breaches a condition, the Registrar may direct it to

33 change its name under section 88-5.

- 1 (4) The regulations may specify that a particular unacceptable name is
2 available if:
- 3 (a) a specified public authority, or an instrumentality or agency
4 of the Crown in right of the Commonwealth, a State or an
5 internal Territory has consented to the corporation using or
6 assuming the name; or
- 7 (b) the corporation is otherwise permitted to use or assume the
8 name by or under:
- 9 (i) an Act of the Commonwealth, a State or an internal
10 Territory; or
- 11 (ii) a specified provision of an Act of the Commonwealth, a
12 State or an internal Territory.
- 13 The consent of the authority, instrumentality or agency may be
14 given subject to conditions.
- 15 Note: If the consent is withdrawn, the corporation ceases to be permitted or
16 the corporation breaches a condition, the Registrar may direct it to
17 change its name under section 88-5.

18 **85-10 Acceptable abbreviations**

- 19 (1) The abbreviations set out in the following table may be used:
- 20 (a) instead of words that this Act requires to be part of an
21 Aboriginal and Torres Strait Islander corporation's name, or
22 to be included in a document or on an Aboriginal and Torres
23 Strait Islander corporation's common seal; and
- 24 (b) instead of words that are part of an Aboriginal and Torres
25 Strait Islander corporation's name; and
- 26 (c) with or without full stops.
- 27

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

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

Part 3-4 Names

Division 85 What names may a corporation have?

Section 85-15

Acceptable abbreviations		
	Word	Abbreviation
6	registered native title body corporate	RNTBC

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

4 **85-15 Using a name and ICN on documents**

- 5 (1) An Aboriginal and Torres Strait Islander corporation must set out
6 its name on all its public documents and negotiable instruments.
- 7 (2) Subject to sections 85-20 and 85-25, if the corporation's ICN is not
8 used in its name, the corporation must also set out with its name, or
9 with one of the references to its name, the expression "Indigenous
10 Corporation Number" followed by the corporation's ICN.

- 11 (3) If the corporation's name appears on 2 or more pages of the
12 document or instrument, this must be done on the first of those
13 pages.

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

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

20 Note 3: Section 85-10 provides that "ICN" is an acceptable abbreviation of
21 "Indigenous Corporation Number".

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

24 Penalty: 10 penalty units.

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

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

1 **85-20 Exception to requirement to have ICN on receipts**

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

7 **85-25 Regulations may exempt from requirement to set out**
8 **information on documents**

9 The regulations may exempt an Aboriginal and Torres Strait
10 Islander corporation, or a specified class of Aboriginal and Torres
11 Strait Islander corporation, from the requirement in subsection
12 85-15(2) to set out information on its public documents and
13 negotiable instruments.

Section 88-1

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

3 **88-1 Corporation changing its name**

4 (1) If an Aboriginal and Torres Strait Islander corporation wants to
5 change its name, it must:

- 6 (a) pass a special resolution adopting a new name; and
7 (b) lodge an application in writing with the Registrar.

8 (2) The corporation must lodge:

- 9 (a) a copy of the special resolution; and
10 (b) a copy of those parts of the minutes of the meeting at which
11 the special resolution was passed that relate to the passing of
12 the special resolution;

13 with the Registrar within 28 days after the resolution is passed.

14 Penalty: 5 penalty units.

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

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

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

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

24 **88-5 Registrar's power to direct corporation to change its name**

25 (1) The Registrar may direct an Aboriginal and Torres Strait Islander
26 corporation in writing to change its name within 2 months if:

- 27 (a) the name should not have been registered; or
28 (b) the corporation has breached a condition under subsection
29 85-5(3) on the availability of the name; or
30 (c) a consent given under subsection 85-5(4) to use or assume
31 the name has been withdrawn; or

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

18 **88-10 If Aboriginal and Torres Strait Islander corporation becomes**
19 **a registered native title body corporate**

20 *Notice required*

- 21 (1) If an Aboriginal and Torres Strait Islander corporation becomes a
22 registered native title body corporate, the corporation must, within
23 28 days after becoming registered, notify the Registrar in writing
24 accordingly.

25 *Registrar to change registration*

- 26 (2) If:
27 (a) the Registrar is notified under subsection (1) that the
28 corporation has become a registered native title body
29 corporate; or
30 (b) the Registrar otherwise becomes aware of that fact;
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Section 88-15

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

4 *When name change takes effect*

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

7 **88-15 If Aboriginal and Torres Strait Islander corporation ceases to**
8 **be a registered native title body corporate**

9 *Notice required*

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

14 *Registrar to change registration*

15 (2) If:

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

23 *When name change takes effect*

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

26 **88-20 Registrar must issue new certificate if name changes**

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

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

3 Note 2: For the evidentiary value of a certificate of registration, see subsection
4 424-5(2).

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

6 **88-25 Effect of name change**

7 (1) The changing of an Aboriginal and Torres Strait Islander
8 corporation's name does not:

9 (a) create a new legal entity; or

10 (b) affect the corporation's existing property, rights or
11 obligations; or

12 (c) render defective any legal proceedings by or against the
13 corporation.

14 (2) Any legal proceedings that could have been continued or begun by
15 or against the corporation in its former name may be continued or
16 begun by or against it in its new name.

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

Part 3-5 Corporation powers and how they are exercised

Division 93 Introduction

Section 93-1

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

3

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Division 93—Introduction

5

93-1 What this Part is about

6

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

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

3 **96-1 Legal capacity and powers**

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

Section 99-1

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

3 **99-1 Agent exercising a corporation's power to make contracts etc.**

4 (1) An Aboriginal and Torres Strait Islander corporation's power to
5 make, vary, ratify or discharge a contract may be exercised by an
6 individual acting with the corporation's express or implied
7 authority and on behalf of the corporation. The power may be
8 exercised without using a common seal.

9 (2) This section does not affect the operation of a law that requires a
10 particular procedure to be complied with in relation to the contract.

11 **99-5 Execution of documents (including deeds) by the corporation**
12 **itself**

13 (1) An Aboriginal and Torres Strait Islander corporation may execute
14 a document without using a common seal if the document is signed
15 by:

- 16 (a) 2 directors of the corporation; or
17 (b) a director and a corporation secretary (if any) of the
18 corporation; or
19 (c) if the corporation has only 1 director—that director.

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

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

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

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

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 104-1

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

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

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104-1 Entitlement to make assumptions

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(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.

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(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.

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(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.

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(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.

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.

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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Document duly executed without seal

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- (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.

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Document duly executed with seal

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- (7) A person may assume that a document has been duly executed by the corporation if:

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- (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.

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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.

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

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- (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.

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- (9) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

Basic features of an Aboriginal and Torres Strait Islander corporation **Chapter 3**
Assumptions people dealing with Aboriginal and Torres Strait Islander corporations are
entitled to make **Part 3-6**
Assumptions people dealing with Aboriginal and Torres Strait Islander corporations are
entitled to make **Division 104**

Section 104-10

1 **104-10 Information available to the public from Registrar does not**
2 **constitute constructive notice**

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

Section 109-1

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

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Division 109—Introduction

5

109-1 What this Part is about

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This Part deals with:

7

(a) the registered office of an Aboriginal and Torres
Strait Islander corporation that is registered as a
large corporation; and

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

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2 **Division 112—Registered office**

3 **112-1 General**

4 *Application of Division*

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

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

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

11 **112-5 Corporation to have registered office**

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

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

17 (2) If the corporation has one or more places of business in Australia,
18 one of those places must be its registered office.

19 (3) The corporation must lodge notice of a change of address of its
20 registered office with the Registrar not later than 28 days after the
21 date on which the change occurs.

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

26 (4) A notice of change of address takes effect when the changed
27 address is included on the Register of Aboriginal and Torres Strait
28 Islander Corporations.

29 (5) The corporation commits an offence if the corporation does not
30 have a registered office in Australia.

Section 112-10

1 Penalty: 5 penalty units.

2 (6) The corporation commits an offence if:

3 (a) the corporation has one or more places of business in
4 Australia; and

5 (b) one of those places of business is not the corporation's
6 registered office.

7 Penalty: 5 penalty units.

8 (7) The corporation commits an offence if:

9 (a) the corporation's registered office address changes; and

10 (b) the corporation does not lodge the notice required by
11 subsection (3) within 28 days after the change.

12 Penalty: 5 penalty units.

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

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

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

18 **112-10 Registrar may change address of registered office to a**
19 **director's address**

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

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

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

28 Penalty: 5 penalty units.

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

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

Section 112-15

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

16 **112-15 Corporation's name must be displayed**

- 17 (1) The corporation must display its name and ICN prominently at its
18 registered office. The corporation must also display its name and
19 ICN at every place at which the corporation carries on business if
20 that place is open to the public.
- 21 (2) The corporation commits an offence if the corporation fails to
22 prominently display its name and ICN:
23 (a) at its registered office; or
24 (b) at a place at which the corporation carries on business that is
25 open to the public.
- 26 Penalty: 10 penalty units.
- 27 (3) An offence against subsection (2) is an offence of strict liability.
- 28 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

29 **112-20 Address of registered office etc.**

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

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

Part 3-7 Registered office or document access address

Division 112 Registered office

Section 112-20

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

1

2 **Division 115—Document access address**

3 **115-1 Division applies to Aboriginal and Torres Strait Islander**
4 **corporations registered as small or medium corporations**

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

7 **115-5 Corporation to have document access address**

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

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

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

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

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

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

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

27 Penalty: 5 penalty units.

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

Section 115-10

1 Penalty: 5 penalty units.

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

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

5 **115-10 Registrar may change document access address to a**
6 **director's address**

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

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

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

15 Penalty: 5 penalty units.

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

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

18 (4) If the Registrar becomes aware that the occupier of those premises:

19 (a) has not consented to the use of the premises as the address of
20 the corporation's document access address; or

21 (b) has withdrawn the consent;

22 the Registrar may:

23 (c) give written notice to a director of the corporation who
24 resides in Australia that the Registrar intends to change the
25 address of the corporation's document access address to the
26 director's address; and

27 (d) if the Registrar is not notified of the address of the
28 corporation's proposed new document access address under
29 section 115-5 within 14 days after the notice under that
30 section is sent—change the address of the corporation's
31 document access address to the address of that director.

32 (5) A notice under paragraph (4)(c) is not a legislative instrument.

1 **115-15 Registrar may direct corporation to change the location of its**
2 **document access address**

- 3 (1) If the Registrar is satisfied that the corporation's document access
4 address is not in an area that allows the corporation's members
5 appropriate access to the corporation's books, the Registrar may
6 direct the corporation to change its document access address so that
7 it is within the area specified in the direction.
- 8 (2) The direction must:
9 (a) be given by notice in writing to the corporation; and
10 (b) specify the period within which the direction must be
11 complied with.
- 12 (3) The period specified under paragraph (2)(b) must be at least 28
13 days after the day on which the notice is given to the corporation.
- 14 (4) The corporation commits an offence if it does not comply with the
15 direction.
16 Penalty: 5 penalty units.
- 17 (5) An offence against subsection (4) is an offence of strict liability.
18 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 19 (6) A direction under subsection (1) is not a legislative instrument.

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

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

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

Part 3-7 Registered office or document access address

Division 115 Document access address

Section 115-20

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

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

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Division 120—Service on Aboriginal and Torres Strait Islander corporations

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120-1 Service on Aboriginal and Torres Strait Islander corporation

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(1) A notice, demand, summons, writ or other document or process
may be served on an Aboriginal and Torres Strait Islander
corporation by:

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(a) if the corporation is registered as a large corporation—
leaving it at, or posting it to, the corporation's registered
office; or

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(b) if the corporation is registered as a large corporation—
serving a copy of the document personally on the corporation
secretary; or

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16

(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

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(d) serving a copy of the document personally on a director; or

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22

23

(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

24

25

(f) if an 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; or

26

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29

(g) if a special 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.

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

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

Division 120 Service on Aboriginal and Torres Strait Islander corporations

Section 120-1

- 1 (2) The address for service of the contact person is the address that is
2 on the Register of Aboriginal and Torres Strait Islander
3 Corporations for the contact person.
- 4 (3) The Registrar may change the address on the register in respect of
5 the registered office or contact person if:
- 6 (a) the Registrar is notified of a new address by the corporation
7 or contact person; or
- 8 (b) the Registrar otherwise becomes aware that the corporation
9 or contact person has a new address.
- 10 Note: This subsection also applies to a director's address that has become
11 the corporation's registered office under section 112-10 and to a
12 director who has become a contact person under section 257-25.

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Chapter 4—Members and observers

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Part 4-1—Introduction

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Division 130—Introduction

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130-1 What this Chapter is about

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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 (Part 4-5).

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Part 4-2—Members

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Division 135—Introduction

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135-1 What this Part is about

5

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

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

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9

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

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

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Division 144 deals with how a person becomes a member.

16

Division 147 deals with member obligations.

17

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

18

Division 153 provides for different classes of members.

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

3

4

138-1 Meaning of *member*

5

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

6

7

(a) is a member of the corporation on its registration; or

8

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

9

10

11

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

12

13

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

14

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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.

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Section 141-1

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

3

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Subdivision 141-A—Introduction

5

141-1 Overview

6

(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).

7

8

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(2) These requirements have implications for the eligibility of persons
for membership of Aboriginal and Torres Strait Islander
corporations (see section 141-20).

10

11

12

(3) In addition, an Aboriginal and Torres Strait Islander corporation
may impose additional eligibility requirements for membership of
the corporation (see section 141-25).

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

16

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141-5 Minimum number of members requirement

19

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

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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.

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141-10 Indigeneity requirement

26

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

27

28

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

29

Section 141-15

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

141-15 Age of members requirement

- 11 (1) An Aboriginal and Torres Strait Islander corporation must meet the
12 age of members requirement set out in section 29-10 at all times.
- 13 Note 1: The requirement is that the members of the corporation be at least 15
14 years of age.
- 15 Note 2: Section 29-10 also requires the age of members requirement to be met
16 at registration of the corporation.
- 17 (2) However, the corporation's constitution may provide that the
18 members of the corporation must be at least of an age that is older
19 than 15 years.
- 20 (3) An Aboriginal and Torres Strait Islander corporation that does
21 increase the minimum age of members is not in breach of
22 subsection (1) only because some members are younger than that
23 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**

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

Section 141-25

1 **141-25 Corporation may have other eligibility requirements for**
2 **membership**

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

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

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144-1 How does a person become a member?

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

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(a) the person applies as provided for in section 144-5; and

8

(b) the person is eligible for membership; and

9

(c) the application is accepted as provided for in section 144-10;

10

and

11

(d) the person is entered on the register of members (see

12

subsection 144-10(5)).

13

144-5 Application to corporation

14

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

15

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17

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

18

(2) The application must be in writing.

19

144-10 Determination of applications for membership

20

(1) The directors are responsible for deciding membership applications in respect of an Aboriginal and Torres Strait Islander corporation.

21

22

(2) The directors must not accept an application for membership of the corporation unless:

23

24

(a) the applicant applies for membership in the required manner;

25

and

26

(b) the applicant meets the eligibility for membership

27

requirements of the corporation.

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 144-10

1 *Discretion to refuse to accept membership application*

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

4 *Circumstances when application not to be accepted*

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

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

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

13 Penalty: 5 penalty units.

14 *Corporation to give notice if application not accepted*

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

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

18 (7) The notice must be in writing.

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

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

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

28 Penalty: 5 penalty units.

Section 144-15

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

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

4 **144-15 Fees for membership and being an observer**

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

9 Note: Section 158-5 deals with observers.

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

Section 147-1

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2 **Division 147—Obligations of members**

3 **147-1 Obligation to contribute on winding up**

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

8 **147-5 Corporation may impose other member obligations**

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

12 **147-10 Liability of corporation members**

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

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

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

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

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

3

4

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Subdivision 150-A—General

6

150-1 Cessation of membership

7

Ways a membership ceases

8

(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:

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(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.

18

When a person ceases to be a member

19

(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.

20

21

22

150-5 Resolution of disputes

23

24

25

The constitution of an Aboriginal and Torres Strait Islander corporation must provide for the resolution of disputes internal to the operation of the corporation.

Chapter 4 Members and observers

Part 4-2 Members

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

Section 150-10

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

2 **150-10 Resignation**

3 *Resignation to be given to corporation*

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

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

7 (2) The notice must be in writing.

8 *Register to be amended within 14 days of resignation*

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

12 Penalty: 5 penalty units.

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

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

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

16 **150-15 General**

17 *Eligibility for membership etc. (replaceable rule—see section 60-1)*

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

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

25 *Specific grounds for cancellation of membership*

26 (2) Sections 150-25, 150-30 and 150-35 deal with cancellation of
27 membership on the grounds that:

Section 150-20

-
- 1 (a) the member is uncontactable (see section 150-25); and
 2 (b) the member is not an Aboriginal and Torres Strait Islander
 3 person (see section 150-30); and
 4 (c) the member has misbehaved (see section 150-35).
 5 If a membership is to be cancelled on any of the grounds set out in
 6 these sections, the only way the membership may be cancelled is as
 7 provided for in the applicable section.

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

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

13 Penalty: 5 penalty units.

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

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

16 **150-20 Member not eligible for membership etc. (replaceable rule—**
 17 **see section 60-1)**

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

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

27 *Member to be given notice*

- 28 (2) Before cancelling the membership, the directors must give the
 29 member notice in writing:
 30 (a) stating that the directors intend to cancel the membership for
 31 the reasons specified in the notice; and
-

Chapter 4 Members and observers

Part 4-2 Members

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

Section 150-20

- 1 (b) stating that the member has 14 days to object to the
2 cancellation of the membership; and
3 (c) stating that the objection must be:
4 (i) in writing; and
5 (ii) given to the corporation within the period of 14 days
6 from the day the notice is given.

7 Penalty: 10 penalty units.

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

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

10 *If member does not object*

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

13 *If member does object*

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

18 *Notice of resolution to be given*

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

23 Penalty: 5 penalty units.

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

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

1 **150-25 Member not contactable**

2 *Operation of section*

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

5 *Membership may be cancelled if not contactable*

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

11 *Manner and circumstances*

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

23 *Notice*

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

28 Penalty: 5 penalty units.

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

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

Chapter 4 Members and observers

Part 4-2 Members

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

Section 150-30

1 **150-30 Member is not an Aboriginal and Torres Strait Islander**
2 **person**

3 *Operation of section*

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

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

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

14 *Manner and circumstances*

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

19 *Notice*

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

23 Penalty: 5 penalty units.

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

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

1 **150-35 Member misbehaves**

2 *Operation of section*

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

5 *Membership may be cancelled if member misbehaves*

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

11 *Manner and circumstances*

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

16 *Notice*

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

20 Penalty: 5 penalty units.

Section 153-1

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

3 **153-1 Different classes of members**

4 (1) An Aboriginal and Torres Strait Islander corporation's constitution
5 may provide that the corporation has different classes of members.

6 (2) The corporation's constitution may provide that different rights
7 may attach to different classes of membership.

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

1

2 **Part 4-3—Observers**

3 **Division 158—Observers**

4 **158-1 What this Part is about**

5

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.

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8

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.

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12 **158-5 Observers**

13

Corporation may have observers

14

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

15

16

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

17

18

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

19

20

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

21

22

Other matters for which constitution must provide if corporation has observers

23

24

- (3) If the constitution provides for the corporation to have observers, the constitution must also provide for the following matters:

25

26

- (a) the application process for becoming an observer of the corporation;

27

Chapter 4 Members and observers

Part 4-3 Observers

Division 158 Observers

Section 158-5

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

1

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

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

5 **163-1 Rights and remedies**

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

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

Section 166-1

1

2

Division 166—Oppressive conduct of affairs

3

166-1 Grounds for Court order

4

(1) Subject to subsection (2), the Court may make an order under section 166-5 if:

5

6

(a) the conduct of an Aboriginal and Torres Strait Islander corporation's affairs; or

7

8

(b) an actual or proposed act or omission by or on behalf of an Aboriginal and Torres Strait Islander corporation; or

9

10

(c) a resolution, or a proposed resolution, of members or a class of members of an Aboriginal and Torres Strait Islander corporation;

11

12

13

is either:

14

(d) contrary to the interests of the members as a whole; or

15

(e) oppressive to, unfairly prejudicial to or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.

16

17

18

(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:

19

20

21

(a) an act (or omission from doing an act); or

22

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

23

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

24

25

(c) in good faith; and

26

(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.

27

28

29

166-5 Orders the Court can make

30

(1) The Court can make any order under this section that it considers appropriate in relation to the corporation, including the following:

31

32

(a) an order that the corporation be wound up;

Section 166-5

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

12 *Order that the corporation be wound up*

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

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

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

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

Chapter 4 Members and observers

Part 4-4 Protection of members' interests

Division 166 Oppressive conduct of affairs

Section 166-10

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

3 **166-10 Who can apply for an order?**

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

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

20 **166-15 Requirement for person to lodge order**

21 (1) If an order is made under section 166-5, the applicant must lodge a
22 copy of the order with the Registrar within 14 days after it is made.

23 (2) Subsection (1) does not apply if the applicant is the Registrar.

24 (3) A person commits an offence if the person contravenes
25 subsection (1).

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

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

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

**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.

Chapter 4 Members and observers

Part 4-4 Protection of members' interests

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

Section 169-5

1 **169-5 Applying for and granting leave**

2 *Who may apply for leave?*

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

5 *Court to grant the application in certain circumstances*

6 (2) The Court must grant the application if it is satisfied that:

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

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

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

24 (3) A rebuttable presumption that granting leave is not in the best
25 interests of the corporation arises if it is established that:

- 26 (a) the proceedings are:
27 (i) by the corporation against a person who is not a related
28 party of the corporation; or
29 (ii) by such a person against the corporation;
30 (including any appeal from a decision made in proceedings
31 by or against the corporation); and
32 (b) the corporation has decided:
33 (i) not to bring the proceedings; or
-

Section 169-10

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

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

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

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

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

29 **169-10 Substitution of another person for the person granted leave**

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

Chapter 4 Members and observers

Part 4-4 Protection of members' interests

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

Section 169-15

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

6 *When may Court make order*

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

16 **169-15 Effect of ratification by members**

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

26 *Effect of ratification on court*

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

Section 169-20

1 (b) in relation to an application for leave under that section.

2 (3) In doing this, it must have regard to:

3 (a) how well-informed about the conduct the members were
4 when deciding whether to ratify or approve the conduct; and

5 (b) whether the members who ratified or approved the conduct
6 were acting for proper purposes.

7 **169-20 Leave to discontinue, compromise or settle proceedings**
8 **brought, or intervened in, with leave**

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

12 **169-25 General powers of the Court**

13 (1) The Court may make any orders, and give any directions, that it
14 considers appropriate in relation to proceedings brought or
15 intervened in with leave, or an application for leave, including:

16 (a) interim orders; and

17 (b) directions about the conduct of the proceedings, including
18 requiring mediation; and

19 (c) an order directing the corporation, or an officer of the
20 corporation, to do, or not to do, any act; and

21 (d) an order appointing an independent person to investigate, and
22 report to the Court on:

23 (i) the financial affairs of the corporation; or

24 (ii) the facts or circumstances which gave rise to the cause
25 of action the subject of the proceedings; or

26 (iii) the costs incurred in the proceedings by the parties to
27 the proceedings and the person granted leave.

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

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

Chapter 4 Members and observers

Part 4-4 Protection of members' interests

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

Section 169-30

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

169-30 Power of the Court to make costs orders

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

1
2 **Division 172—What protections apply to variations or**
3 **cancellations of class rights?**

4 **172-1 Varying and cancelling class rights**

5 *If constitution sets out procedure*

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

11 *If constitution does not set out procedure*

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

21 *Notice of variation*

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

27 Penalty: 5 penalty units.

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

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

Section 172-5

1 **172-5 Certain actions taken to vary rights etc**

- 2 (1) If the members in a class of members of an Aboriginal and Torres
3 Strait Islander corporation are divided into further classes of
4 members and, after the division, the rights of all of those members
5 are not the same:
- 6 (a) the division is taken to vary the rights of every member who
7 was in the class existing before the division; and
8 (b) members who have the same rights after the division form a
9 separate class.
- 10 (2) If the rights of some of the members in a class of members are
11 varied:
- 12 (a) the variation is taken to vary the rights of every other
13 member who was in the class existing before the variation;
14 and
15 (b) members who have the same rights after the variation form a
16 separate class.

17 **172-10 Variation, cancellation or modification without unanimous**
18 **support of class**

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

Section 172-15

- 1 (b) if an application is made to the Court to have it set aside—
2 when the application is withdrawn or finally determined.
- 3 (4) The members of the class who want to have the variation,
4 cancellation or modification set aside may appoint one or more of
5 themselves to make the application on their behalf. The
6 appointment must be in writing.
- 7 (5) The Court may set aside the variation, cancellation or modification
8 if it is satisfied that it would unfairly prejudice the applicants.
9 However, the Court must confirm the variation, cancellation or
10 modification if the Court is not satisfied of unfair prejudice.
- 11 (6) Within 14 days after the Court makes an order, the corporation
12 must lodge a copy of the order with the Registrar.
- 13 (7) The corporation commits an offence if it contravenes
14 subsection (6).
- 15 Penalty: 5 penalty units.
- 16 (8) An offence against subsection (6) is an offence of strict liability.
17 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

18 **172-15 Variation, cancellation or modification with unanimous**
19 **support of class**

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

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

Section 175-1

1

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

4 **175-1 Order for inspection of books of corporation**

- 5 (1) On application by a member of an Aboriginal and Torres Strait
6 Islander corporation, the Court may make an order:
7 (a) authorising the applicant to inspect books of the corporation;
8 or
9 (b) authorising another person (whether a member or not) to
10 inspect books of the corporation on the applicant's behalf.
11 The Court may only make the order if it is satisfied that the
12 applicant is acting in good faith and that the inspection is to be
13 made for a proper purpose.
- 14 (2) A person authorised to inspect books may make copies of the
15 books unless the Court orders otherwise.
- 16 (3) A person who:
17 (a) is granted leave under section 169-5; or
18 (b) applies for leave under that section; or
19 (c) is eligible to apply for leave under that section;
20 may apply to the Court for an order under this section.
- 21 (4) On application, the Court may make an order authorising:
22 (a) the applicant to inspect books of the corporation; or
23 (b) another person to inspect books of the corporation on the
24 applicant's behalf.
- 25 (5) The Court may make the order only if it is satisfied that:
26 (a) the applicant is acting in good faith; and
27 (b) the inspection is to be made for a purpose connected with:
28 (i) applying for leave under section 169-5; or
29 (ii) bringing or intervening in proceedings with leave under
30 that section.

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

7 **175-5 Ancillary orders**

- 8 If the Court makes an order under section 175-1, the Court may
9 make any other orders it considers appropriate, including either or
10 both of the following:
- 11 (a) an order limiting the use that a person who inspects books
12 may make of information obtained during the inspection;
- 13 (b) an order limiting the right of a person who inspects books to
14 make copies in accordance with subsection 175-1(2).

15 **175-10 Disclosure of information acquired in inspection**

- 16 (1) A person who inspects books on behalf of an applicant under
17 section 175-1 must not disclose information obtained during the
18 inspection.
- 19 (2) Subsection (1) does not apply to the extent that the disclosure is to:
20 (a) the Registrar; or
21 (b) the applicant.
- 22 Note: A defendant bears an evidential burden in relation to the matter in
23 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 24 (3) A person commits an offence if the person contravenes
25 subsection (1).

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

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

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

Chapter 4 Members and observers

Part 4-4 Protection of members' interests

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

Section 175-15

1 **175-15 Corporation or directors may allow member to inspect books**
2 **(replaceable rule—see section 60-1)**

3 The directors of an Aboriginal and Torres Strait Islander
4 corporation, or the corporation by a resolution passed at a general
5 meeting, may authorise a member to inspect books of the
6 corporation.

1
2 **Part 4-5—Registers of members and former**
3 **members**

4 **Division 180—Registers of members and former members**

5 **180-1 Aboriginal and Torres Strait Islander corporations to**
6 **maintain register of members**

7 (1) An Aboriginal and Torres Strait Islander corporation must set up
8 and maintain a register of members.

9 (2) An Aboriginal and Torres Strait Islander corporation commits an
10 offence if it contravenes subsection (1).

11 Penalty: 10 penalty units.

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

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

14 **180-5 Information on the register of members**

15 (1) The register of members must contain the following information
16 about each member:

17 (a) the member's given and family name;

18 (b) all other names by which the member is or was known;

19 (c) the member's address;

20 (d) the date on which the entry of the member's name in the
21 register is made.

22 (2) If:

23 (a) the corporation's constitution allows for members who are
24 not Aboriginal and Torres Strait Islander persons; and

25 (b) a member is not an Aboriginal and Torres Strait Islander
26 person;

27 the entry for the member in the register must also indicate that the
28 member is not an Aboriginal and Torres Strait Islander person.

Section 180-10

1 **180-10 Aboriginal and Torres Strait Islander corporations to**
2 **maintain register of former members**

3 (1) An Aboriginal and Torres Strait Islander corporation must set up
4 and maintain a register of former members.

5 (2) An Aboriginal and Torres Strait Islander corporation commits an
6 offence if it contravenes subsection (1).

7 Penalty: 10 penalty units.

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

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

10 **180-15 Information on the register of former members**

11 The register of former members must contain the following
12 information about each person who stopped being a member of the
13 corporation within the last 7 years:

14 (a) the person's given and family name; and

15 (b) all other names by which the person is or was known; and

16 (c) the person's address; and

17 (d) the date on which the person stopped being a member.

18 **180-20 Location and inspection of registers**

19 (1) An Aboriginal and Torres Strait Islander corporation must keep the
20 register of members and the register of former members at:

21 (a) the corporation's registered office if the corporation is
22 registered as a large corporation; or

23 (b) the corporation's document access address if the corporation
24 is registered as a small or medium corporation.

25 Penalty: 10 penalty units.

26 (2) The register must be open for inspection by any person.

27 (3) An offence against subsection (1) is an offence of strict liability.

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

1 **180-25 Right to inspect and get copies**

2 *Right to inspect*

- 3 (1) Any person has a right to inspect an Aboriginal and Torres Strait
4 Islander corporation's register of members and register of former
5 members.

6 Note 1: A corporation commits an offence under section 376-1 if it does not
7 allow inspection of a register.

8 Note 2: Other provisions that are relevant to the inspection of a register are:

- 9 (a) section 180-45 (evidentiary value); and
10 (b) section 376-1 (place and times for inspection); and
11 (c) section 376-20 (form).

- 12 (2) If a register is not kept on computer, the corporation must allow the
13 person to inspect the register itself.

- 14 (3) If a register is kept on a computer, the corporation must (unless the
15 person and the corporation agree that the person can access the
16 information by computer) allow the person to inspect a hard copy
17 of the information on the register.

18 *Inspection fees*

- 19 (4) A member of the corporation may inspect the register without
20 charge. Other people may inspect the register only on payment of
21 any fee (up to the prescribed amount) required by the corporation.

22 *Right to get copies*

- 23 (5) The corporation must give a person a copy of the register (or a part
24 of the register) within 7 days if the person:

- 25 (a) asks for the copy; and
26 (b) pays any fee (up to the prescribed amount) required by the
27 corporation.

28 The Registrar may allow a longer period to comply with the
29 request.

30 Penalty: 10 penalty units.

Section 180-30

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

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

3 **180-30 Aboriginal and Torres Strait Islander corporation to make**
4 **register of members available at AGM**

5 (1) An Aboriginal and Torres Strait Islander corporation must:

6 (a) make the register available for inspection by members at the
7 AGM; and

8 (b) ask each member attending the AGM to:

9 (i) check the entry for that member in the register; and

10 (ii) inform the corporation of any corrections that need to be
11 made to that entry.

12 Penalty: 10 penalty units.

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

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

15 **180-35 Aboriginal and Torres Strait Islander corporation to give**
16 **Registrar copy of register of members**

17 (1) The Registrar may, at any time, request the corporation to give him
18 or her a copy of the register of members as at the date when the
19 copy is given to the Registrar, and the corporation must comply
20 with the request within 14 days or such longer period as the
21 Registrar specifies.

22 Note: An Aboriginal and Torres Strait Islander corporation must give a
23 general report to the Registrar in respect of each financial year. That
24 report must include details of the names and addresses of the
25 corporation's members: see sections 330-1 and 330-5.

26 (2) An Aboriginal and Torres Strait Islander corporation commits an
27 offence if it contravenes subsection (1).

28 Penalty: 10 penalty units.

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

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

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

3 **180-40 Correction of register of members**

4 (1) The corporation, or a person aggrieved, may apply to the Court to
5 have the register of members or the register of former members
6 corrected.

7 (2) If the Court orders the corporation to correct the register, it may
8 also order the corporation to compensate a party to the application
9 for loss or damage suffered.

10 **180-45 Evidentiary value of registers**

11 In the absence of evidence to the contrary, the register of members
12 and the register of former members are proof of the matters shown
13 in the registers under this Part.

Section 183-1

1

2

Division 183—Use of information on the register of members

3

4

183-1 Use of information on register

5

(1) A person must not:

6

(a) use information about a person obtained from a register of members to contact or send material to the person; or

7

8

(b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person.

9

10

11

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.

12

13

14

(2) Subsection (1) does not apply if the use or disclosure of the information is:

15

16

(a) relevant to the person's membership of the corporation or the exercise of the person's rights as a member of the corporation; or

17

18

19

(b) approved by the corporation.

20

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

21

22

(3) A person commits an offence if the person contravenes subsection (1).

23

24

Penalty: 10 penalty units.

25

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

26

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

27

(5) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.

28

29

30

(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.

31

32

Section 183-1

- 1 (7) If a person owes a debt under subsection (6) to the corporation:
2 (a) the debt may be recovered by the corporation as a debt due to
3 it; and
4 (b) any amount paid or recovered in respect of the debt forms
5 part of the corporation's property.

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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).

1

2 **Part 5-2—General meetings**

3 **Division 198—Introduction**

4 **198-1 What this Part is about**

5

This Part sets out the rules for holding general meetings. An
Aboriginal and Torres Strait Islander corporation is required to
hold annual general meetings.

6

7

8

Some of the rules in this Chapter may be modified or replaced by
the corporation's constitution. Others cannot be.

9

Section 201-1

1

2 **Division 201—What are the rules concerning general**
3 **meetings?**

4 **Subdivision 201-A—Who may call general meetings?**

5 **201-1 Director may call meetings (replaceable rule—see**
6 **section 60-1)**

7 A director of an Aboriginal and Torres Strait Islander corporation
8 may call a general meeting of the corporation.

9 **201-5 Request by members for directors to call general meetings**

10 *Which members may make a request?*

11 (1) The directors of an Aboriginal and Torres Strait Islander
12 corporation must call and arrange to hold a general meeting on the
13 request of at least the required number of members under
14 subsection (4).

15 (2) The request must:

16 (a) be in writing; and

17 (b) state any resolution to be proposed at the meeting; and

18 (c) be signed by the members making the request; and

19 (d) nominate a member (the *nominated member*) to be the
20 contact member on behalf of the members making the
21 request; and

22 (e) be given to the corporation.

23 (3) Separate copies of a document setting out the request may be used
24 for signing by members if the wording of the request is identical in
25 each copy.

26 (4) The required number of members for an Aboriginal and Torres
27 Strait Islander corporation is the greater of:

28 (a) 5 members of the corporation; or

29 (b) 10% of the members of the corporation.

Section 201-10

- 1 (5) The regulations may prescribe a different number of members for
2 the purposes of applying paragraph (4)(a) to:
3 (a) a particular Aboriginal and Torres Strait Islander corporation;
4 or
5 (b) a particular class of Aboriginal and Torres Strait Islander
6 corporation.
7 Without limiting this, the regulations may specify the number as a
8 percentage of the number of members of the corporation.
- 9 (6) The regulations may prescribe a different percentage for the
10 purposes of applying paragraph (4)(b) to:
11 (a) a particular Aboriginal and Torres Strait Islander corporation;
12 or
13 (b) a particular class of Aboriginal and Torres Strait Islander
14 corporation.

15 **201-10 When must directors comply with members' request?**

- 16 (1) If the directors resolve:
17 (a) that the request under section 201-5 is frivolous or
18 unreasonable; or
19 (b) that complying with the request would be contrary to the
20 interests of the members as a whole;
21 a director, on behalf of all of the directors, may apply to the
22 Registrar for permission to deny the request.
- 23 (2) The application must:
24 (a) be in writing; and
25 (b) set out the ground on which the application is made; and
26 (c) be made within 21 days after the request is made.
- 27 (3) The directors must, as soon as is practicable after making the
28 application, give the nominated member notice that an application
29 has been made under subsection (1).
- 30 (4) The Registrar must:
31 (a) determine the application within 21 days after receiving it;
32 and

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-15

- 1 (b) notify the director, the corporation and the nominated
2 member in writing of the outcome of the determination.

3 **201-15 When must a requested meeting be held?**

4 *No application to Registrar under section 201-10*

- 5 (1) If a director has not applied to the Registrar under section 201-10
6 in respect of the request, the directors must call the requested
7 meeting within 21 days after the request is given to the corporation.

8 *Application to Registrar under section 201-10*

- 9 (2) If:
10 (a) a director has applied under section 201-10 in respect of the
11 request; and
12 (b) the Registrar's decision is that the ground is not made out;
13 the directors must call the meeting within 21 days after being
14 notified of the Registrar's determination.

15 **Subdivision 201-B—How to call general meetings**

16 **201-20 Amount of notice of general meetings**

17 *General rule*

- 18 (1) Subject to subsection (2), at least 21 days notice must be given of a
19 general meeting. However, an Aboriginal and Torres Strait Islander
20 corporation's constitution may specify a longer minimum period of
21 notice.

22 *Calling meetings on shorter notice*

- 23 (2) An Aboriginal and Torres Strait Islander corporation:
24 (a) may call an AGM on shorter notice, if all the members of the
25 corporation agree beforehand; and
26 (b) may call any other general meeting on shorter notice, if at
27 least 95% of the members of the corporation agree
28 beforehand.

Section 201-25

1 An Aboriginal and Torres Strait Islander corporation cannot call an
2 AGM or other general meeting on shorter notice if it is a meeting
3 of the kind referred to in subsection (3) or (4).

4 *Shorter notice not allowed—removing or appointing director*

- 5 (3) At least 21 days notice must be given of a general meeting at
6 which a resolution will be moved to:
7 (a) remove a director under section 249-10; or
8 (b) appoint a director in place of a director removed under that
9 section.

10 *Shorter notice not allowed—removing auditor*

- 11 (4) At least 21 days notice must be given of a general meeting at
12 which a resolution will be moved to remove an auditor.

13 **201-25 Notice of general meeting to members, officers and observers**

14 *Notice to members, officers and observers individually*

- 15 (1) Written notice of a general meeting must be given by the
16 corporation individually to the following persons:
17 (a) each member entitled to vote at the meeting;
18 (b) each director;
19 (c) the corporation secretary (if any);
20 (d) the contact officer (if any);
21 (e) any observer entitled to attend the meeting.

22 Note: A failure to give notice to a member might not invalidate the meeting
23 (see section 576-15).

24 *Notice to joint members (replaceable rule—see section 60-1)*

- 25 (2) Notice to joint members must be given to the joint member named
26 first in the register of members.

27 *How notice is given*

- 28 (3) The corporation may give the notice of meeting to a member:
29 (a) personally; or

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-25

- 1 (b) by sending it by post to the address for the member in the
2 register of members or the alternative address (if any)
3 nominated by the member; or
4 (c) by sending it to the fax number or electronic address (if any)
5 nominated by the member; or
6 (d) by sending it to the member by other electronic means (if
7 any) nominated by the member; or
8 (e) by notifying the member in accordance with subsection (4);
9 or
10 (f) by any other means that the corporation's constitution (if
11 any) permits.

12 Note: A defect in the notice given may not invalidate a meeting (see
13 section 576-15).

- 14 (4) If the member nominates:
15 (a) an electronic means (the *nominated notification means*) by
16 which the member may be notified that notices of meeting
17 are available; and
18 (b) an electronic means (the *nominated access means*) the
19 member may use to access notices of meeting;
20 the corporation may give the member notice of the meeting by
21 notifying the member (using the nominated notification means):
22 (c) that the notice of meeting is available; and
23 (d) how the member may use the nominated access means to
24 access the notice of meeting.

25 This subsection does not limit subsection (3).

26 *When notice by post or fax is given (replaceable rule—see*
27 *section 60-1)*

- 28 (5) A notice of meeting sent by post is taken to be given 3 days after it
29 is posted. A notice of meeting sent by fax, or other electronic
30 means, is taken to be given on the business day after it is sent.

1 *When notice under paragraph (3)(e) is given (replaceable rule—*
2 *see section 60-1)*

- 3 (6) A notice of meeting given to a member under paragraph (3)(e) is
4 taken to be given on the business day after the day on which the
5 member is notified that the notice of meeting is available.

6 **201-30 Auditor entitled to notice and other communications**

- 7 (1) An Aboriginal and Torres Strait Islander corporation must give its
8 auditor (if any):
9 (a) notice of a general meeting in the same way that a member of
10 the corporation is entitled to receive notice; and
11 (b) any other communications relating to the general meeting
12 that a member of the corporation is entitled to receive.

13 Penalty: 5 penalty units.

14 Note: An auditor may authorise a representative to attend a meeting (see
15 subsection 201-80(4).

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

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

18 **201-35 Contents of notice of general meeting**

- 19 (1) A notice of a general meeting must:
20 (a) set out the place, date and time for the meeting (and, if the
21 meeting is to be held in 2 or more places, the technology that
22 will be used to facilitate this); and
23 (b) state the general nature of the meeting's business; and
24 (c) if a special resolution is to be proposed at the meeting—set
25 out an intention to propose the special resolution and state the
26 resolution; and
27 (d) if a member is entitled to appoint a proxy—contain a
28 statement setting out the following information:
29 (i) that the member has a right to appoint a proxy;
30 (ii) whether or not the proxy needs to be a member of the
31 corporation;

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-40

- 1 (iii) that a member who is entitled to cast 2 or more votes
2 may appoint 2 proxies and may specify the proportion
3 or number of votes each proxy is appointed to exercise.

4 Note: There may be other requirements for disclosure to members.

- 5 (2) The information included in the notice of meeting must be worded
6 and presented in a clear, concise and effective manner.

7 **Subdivision 201-C—Members’ rights to put resolutions etc. to**
8 **general meeting**

9 **201-40 Members’ resolutions**

- 10 (1) Notice of a resolution that they propose to move at a general
11 meeting may be given to an Aboriginal and Torres Strait Islander
12 corporation by at least the required number of members under
13 subsection (4).
- 14 (2) The notice must:
15 (a) be in writing; and
16 (b) set out the wording of the proposed resolution; and
17 (c) be signed by the members proposing to move the resolution.
- 18 (3) Separate copies of a document setting out the notice may be used
19 for signing by members if the wording of the notice is identical in
20 each copy.
- 21 (4) The required number of members for an Aboriginal and Torres
22 Strait Islander corporation is the greater of:
23 (a) 5 members of the corporation; or
24 (b) 10% of the members of the corporation.
- 25 (5) The regulations may prescribe a different number of members for
26 the purposes of applying paragraph (4)(a) to:
27 (a) a particular Aboriginal and Torres Strait Islander corporation;
28 or
29 (b) a particular class of Aboriginal and Torres Strait Islander
30 corporation.
- 31 Without limiting this, the regulations may specify the number as a
32 percentage of the number of members of the corporation.

- 1 (6) The regulations may prescribe a different percentage for the
2 purposes of applying paragraph (4)(b) to:
3 (a) a particular Aboriginal and Torres Strait Islander corporation;
4 or
5 (b) a particular class of Aboriginal and Torres Strait Islander
6 corporation.

7 **201-45 Notice of members' resolutions**

- 8 (1) If an Aboriginal and Torres Strait Islander corporation has been
9 given notice of a resolution under section 201-40, the resolution is
10 to be considered at the next general meeting that occurs more than
11 28 days after the notice is given.
- 12 (2) The corporation must give all its members notice of the resolution
13 at the same time, or as soon as practicable afterwards, and in the
14 same way, as it gives notice of a general meeting.
- 15 (3) The corporation is responsible for the cost of giving members
16 notice of the resolution.
- 17 (4) The corporation need not give notice of the resolution if it is
18 defamatory.

19 **201-50 Members' statements to be distributed**

- 20 (1) Members may request an Aboriginal and Torres Strait Islander
21 corporation to give to all its members a statement provided by the
22 members making the request about:
23 (a) a resolution that is proposed to be moved at a general
24 meeting; or
25 (b) any other matter that may be properly considered at a general
26 meeting.
- 27 (2) The request must be made by at least the required number of
28 members under subsection (8).
- 29 (3) The request must be:
30 (a) in writing; and
31 (b) signed by the members making the request; and

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-50

- 1 (c) given to the corporation.
- 2 (4) Separate copies of a document setting out the request may be used
3 for signing by members if the wording of the request is identical in
4 each copy.
- 5 (5) After receiving the request, the corporation must distribute to all its
6 members a copy of the statement at the same time, or as soon as
7 practicable afterwards, and in the same way, as it gives notice of
8 the general meeting.
- 9 (6) The corporation is responsible for the cost of making the
10 distribution.
- 11 (7) The corporation need not comply with the request if the statement
12 is defamatory.
- 13 (8) The required number of members for an Aboriginal and Torres
14 Strait Islander corporation is the greater of:
15 (a) 5 members of the corporation; or
16 (b) 10% of the members of the corporation.
- 17 (9) The regulations may prescribe a different number of members for
18 the purposes of applying paragraph (8)(a) to:
19 (a) a particular Aboriginal and Torres Strait Islander corporation;
20 or
21 (b) a particular class of Aboriginal and Torres Strait Islander
22 corporation.
23 Without limiting this, the regulations may specify the number as a
24 percentage of the number of members of the corporation.
- 25 (10) The regulations may prescribe a different percentage for the
26 purposes of applying paragraph (8)(b) to:
27 (a) a particular Aboriginal and Torres Strait Islander corporation;
28 or
29 (b) a particular class of Aboriginal and Torres Strait Islander
30 corporation.

1 **Subdivision 201-D—Holding general meetings**

2 **201-55 Purpose**

3 A general meeting must be held for a proper purpose.

4 **201-60 Time and place for general meeting**

5 A general meeting must be held at a reasonable time and place.

6 **201-65 Technology**

7 An Aboriginal and Torres Strait Islander corporation may hold a
8 general meeting at 2 or more venues using any technology that
9 gives the members as a whole a reasonable opportunity to
10 participate.

11 Note: See section 576-15 for the consequences of a member not being given
12 a reasonable opportunity to participate.

13 **201-70 Quorum**

14 *Quorum (replaceable rule—see section 60-1)*

- 15 (1) If an Aboriginal and Torres Strait Islander corporation has 11 or
16 more members, the quorum for a meeting of the corporation's
17 members is the lesser of:
18 (a) 10 members; or
19 (b) the greater of:
20 (i) the number of members holding 10% of the voting
21 rights; or
22 (ii) 2 members.

23 *Corporations with 10 members or less (replaceable rule—see*
24 *section 60-1)*

- 25 (2) If an Aboriginal and Torres Strait Islander corporation has 10
26 members or less, the quorum for a meeting of the corporation's
27 members is 2 members.

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-75

1

Quorum to be present

2

- (3) The quorum must be present at all times during the meeting.

3

How to determine if quorum is present

4

- (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.

5

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Note 1: For rights to appoint proxies, see section 201-90.

10

Note 2: For body corporate representatives, see section 201-110.

11

Adjourned meeting (replaceable rule—see section 60-1)

12

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14

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- (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.

17

18

No quorum at resumed meeting (replaceable rule—see section 60-1)

19

20

- (6) If no quorum is present at the resumed meeting within 1 hour after the time for the meeting, the meeting is dissolved.

21

22

201-75 Chairing general meeting (replaceable rule—see section 60-1)

23

- (1) The directors may elect an individual to chair general meetings.

24

25

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27

28

- (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).

29

30

- (3) The members at a general meeting must elect a member present to chair the meeting (or part of it) if:

Section 201-80

- 1 (a) a chair has not previously been elected by the directors to
2 chair the meeting; or
3 (b) a previously elected chair is not available, or declines to act,
4 for the meeting (or part of the meeting).
- 5 (4) The chair must adjourn a general meeting if the members present
6 with a majority of votes at the meeting agree or direct that the chair
7 must do so.

8 **201-80 Auditor's right to be heard at general meetings**

- 9 (1) If an Aboriginal and Torres Strait Islander corporation has an
10 auditor, the auditor is entitled to attend any general meeting of the
11 corporation.
- 12 Note: See section 333-20 for when a financial report is required to be
13 audited.
- 14 (2) The auditor is entitled to be heard at the meeting on any part of the
15 business of the meeting that concerns the auditor in the auditor's
16 capacity as auditor.
- 17 (3) The auditor is entitled to be heard even if:
18 (a) the auditor retires at the meeting; or
19 (b) the meeting passes a resolution to remove the auditor from
20 office.
- 21 (4) The auditor may authorise a person in writing as the auditor's
22 representative for the purpose of attending and speaking at any
23 general meeting.
- 24 Note: At an AGM, members may ask the auditor questions (see
25 section 201-170).

26 **201-85 Adjourned meetings**

- 27 *When resolution passed*
- 28 (1) A resolution passed at a general meeting resumed after an
29 adjournment is passed on the day it was passed.

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-90

1 *Business at adjourned meetings (replaceable rule—see*
2 *section 60-1)*

- 3 (2) Only unfinished business is to be transacted at a general meeting
4 resumed after an adjournment.

5 **Subdivision 201-E—Proxies**

6 **201-90 Who may appoint a proxy (replaceable rule—see**
7 **section 60-1)**

8 *Who may appoint proxy*

- 9 (1) A member of an Aboriginal and Torres Strait Islander corporation
10 who is entitled to attend and cast a vote at a general meeting may
11 appoint a person as the member’s proxy to attend and vote for the
12 member at the meeting.

13 *Proxy may be individual or a body corporate*

- 14 (2) The person appointed as the member’s proxy may be an individual
15 or a body corporate.

16 Note: A body corporate may appoint a representative to exercise the powers
17 that the body corporate may exercise as the member’s proxy (see
18 section 201-110).

- 19 (3) The appointment may specify the proportion or number of votes
20 that the proxy may exercise.

21 **201-95 Rights of proxies**

22 *Rights of proxies*

- 23 (1) A proxy appointed to attend and vote for a member has the same
24 rights as the member:
25 (a) to speak at the meeting; and
26 (b) to vote (but only to the extent allowed by the appointment);
27 and
28 (c) join in a demand for a poll.

1 *Proxy's right to vote*

- 2 (2) An Aboriginal and Torres Strait Islander corporation's constitution
3 may provide that a proxy is not entitled to vote on a show of hands.

4 Note: Even if the proxy is not entitled to vote on a show of hands, they may
5 make or join in the demand for a poll.

6 *Effect of member's presence on proxy's authority*

- 7 (3) An Aboriginal and Torres Strait Islander corporation's constitution
8 may provide for the effect that a member's presence at a meeting
9 has on the authority of a proxy appointed to attend and vote for the
10 member. However, if the constitution does not deal with this, a
11 proxy's authority to speak and vote for a member at a meeting is
12 suspended while the member is present at the meeting.

13 *Exercise of proxies*

- 14 (4) A person must not exercise proxies for more than the number of
15 members:
16 (a) prescribed in the regulations for the purposes of this
17 subsection; or
18 (b) worked out using the method prescribed in the regulations for
19 the purposes of this subsection.

20 Penalty: 5 penalty units.

- 21 (5) To avoid doubt, a contravention of subsection (4) does not affect
22 the validity of the votes cast.

23 **201-100 Appointing a proxy**

- 24 (1) An appointment of a proxy is valid if it is signed, or otherwise
25 authenticated in a manner prescribed by the regulations, by the
26 member of the Aboriginal and Torres Strait Islander corporation
27 making the appointment and contains the following information:
28 (a) the member's name and address;
29 (b) the corporation's name;
30 (c) the proxy's name or the name of the office held by the proxy;
31 (d) the meetings at which the appointment may be used.

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-100

- 1 An appointment may be a standing one.
- 2 (2) The regulations made for the purposes of subsection (1) may
3 prescribe different requirements for the authentication of an
4 appointment given to the corporation by different means
5 (electronic or otherwise).
- 6 (3) The corporation's constitution may provide that an appointment is
7 valid even if it contains only some of the information required by
8 subsection (1).
- 9 (4) An undated appointment is taken to have been dated on the day it
10 is given to the corporation.
- 11 (5) An appointment may specify the way the proxy is to vote on a
12 particular resolution. If it does:
- 13 (a) the proxy need not vote on a show of hands, but if the proxy
14 does so, the proxy must vote that way; and
- 15 (b) if the proxy has 2 or more appointments that specify different
16 ways to vote on the resolution—the proxy must not vote on a
17 show of hands; and
- 18 (c) if the proxy is the chair—the proxy must vote on a poll, and
19 must vote that way; and
- 20 (d) if the proxy is not the chair—the proxy need not vote on a
21 poll, but if the proxy does so, the proxy must vote that way.
- 22 If a proxy is also a member, this subsection does not affect the way
23 that the person can cast any votes they hold as a member.
- 24 Note: An Aboriginal and Torres Strait Islander corporation's constitution
25 may provide that a proxy is not entitled to vote on a show of hands
26 (see subsection 201-95(2)).
- 27 (6) A person who contravenes subsection (5) commits an offence, but
28 only if the person's appointment as a proxy resulted from the
29 corporation sending to members:
- 30 (a) a list of persons willing to act as proxies; or
- 31 (b) a proxy appointment form holding the person out as being
32 willing to act as a proxy.
- 33 Penalty: 5 penalty units.
- 34 (7) An offence against subsection (6) is an offence of strict liability.

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

2 (8) An appointment does not have to be witnessed.

3 (9) A later appointment revokes an earlier one if both appointments
4 could not be validly exercised at the meeting.

5 **201-105 Proxy documents**

6 *Documents to be received by corporation before meeting*

7 (1) For an appointment of a proxy for a meeting of members of an
8 Aboriginal and Torres Strait Islander corporation to be effective,
9 the following documents must be received by the corporation at
10 least 48 hours before the meeting:

11 (a) the proxy's appointment;

12 (b) if the appointment is signed, or otherwise authenticated in a
13 manner prescribed by regulations made for the purposes of
14 subsection 201-100(1), by the appointor's attorney—the
15 authority under which the appointment was signed or
16 authenticated or a certified copy of the authority.

17 *Documents received following adjournment of meeting*

18 (2) If a meeting of the corporation's members has been adjourned, an
19 appointment and any authority received by the corporation at least
20 48 hours before the resumption of the meeting are effective for the
21 resumed part of the meeting.

22 *Constitution or notice of meeting may provide for different
23 notification period*

24 (3) The corporation's constitution or the notice of meeting may reduce
25 the period of 48 hours referred to in subsection (1) or (2).

26 **201-110 Body corporate representative**

27 (1) A body corporate may appoint an individual as a representative to
28 exercise all or any of the powers the body corporate may exercise:

29 (a) at meetings of an Aboriginal and Torres Strait Islander
30 corporation's members; or

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-115

- 1 (b) at meetings of creditors; or
2 (c) relating to resolutions to be passed without meetings; or
3 (d) in the capacity of a member's proxy appointed under
4 section 201-90.
5 The appointment may be a standing one.
- 6 (2) The appointment may set out restrictions on the representative's
7 powers. If the appointment is to be by reference to a position held,
8 the appointment must identify the position.
- 9 (3) A body corporate may appoint more than 1 representative but only
10 1 representative may exercise the body's powers at any one time.
- 11 (4) Unless otherwise specified in the appointment, the representative
12 may exercise, on the body corporate's behalf, all of the powers that
13 the body could exercise at a meeting or in voting on a resolution.
- 14 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)

- 18 (1) At a general meeting, each member of an Aboriginal and Torres
19 Strait Islander corporation has 1 vote, both on a show of hands and
20 a poll.
- 21 *Chair's casting vote*
- 22 (2) The chair has a casting vote, and also, if he or she is a member, any
23 vote he or she has as a member.
- 24 Note 1: The chair may be precluded from voting, for example, by a conflict of
25 interest.
- 26 Note 2: For rights to appoint proxies, see section 201-90.

201-120 Objections to right to vote (replaceable rule—see section 60-1)

- 27 A challenge to a right to vote at a general meeting:
28
29 (a) may only be made at the meeting; and
30
-

1 (b) must be determined by the chair, whose decision is final.

2 **201-125 How voting is carried out (replaceable rule—see**
3 **section 60-1)**

- 4 (1) A resolution put to the vote at a general meeting must be decided
5 on a show of hands unless a poll is demanded.
- 6 (2) Before a vote is taken the chair must inform the meeting whether
7 any proxy votes have been received and how the proxy votes are to
8 be cast.
- 9 (3) On a show of hands, a declaration by the chair is conclusive
10 evidence of the result, provided that the declaration reflects the
11 show of hands and the votes of the proxies received. Neither the
12 chair nor the minutes need to state the number or proportion of the
13 votes recorded in favour or against.

14 Note: Even though the chair's declaration is conclusive of the voting results,
15 the members present may demand a poll (see section 201-130).

16 **201-130 Matters on which a poll may be demanded**

- 17 (1) Subject to subsection (2), at a general meeting, a poll may be
18 demanded on any resolution.
- 19 (2) An Aboriginal and Torres Strait Islander corporation's constitution
20 may provide that a poll cannot be demanded on any resolution
21 concerning:
22 (a) the election of the chair of a meeting; or
23 (b) the adjournment of a meeting.
- 24 (3) A demand for a poll may be withdrawn.

25 **201-135 When a poll is effectively demanded**

- 26 (1) At a general meeting, a poll may be demanded by:
27 (a) at least 5 members entitled to vote on the resolution; or
28 (b) members with at least 5% of the votes that may be cast on the
29 resolution on a poll; or
30 (c) the chair.

Chapter 5 Meetings

Part 5-2 General meetings

Division 201 What are the rules concerning general meetings?

Section 201-140

1 Note: A proxy may join in the demand for a poll (see paragraph
2 201-95(1)(c)).

3 (2) An Aboriginal and Torres Strait Islander corporation's constitution
4 may provide that fewer members or members with a lesser
5 percentage of votes may demand a poll.

6 (3) The poll may be demanded:
7 (a) before a vote is taken; or
8 (b) before the voting results on a show of hands are declared; or
9 (c) immediately after the voting results on a show of hands are
10 declared.

11 **201-140 When and how polls must be taken (replaceable rule—see**
12 **section 60-1)**

13 (1) At a general meeting, a poll demanded on a matter other than the
14 election of a chair or the question of an adjournment must be taken
15 when and in the manner the chair directs.

16 (2) At a general meeting, a poll on the election of a chair or on the
17 question of an adjournment must be taken immediately.

18 **Subdivision 201-G—First general meeting and annual general**
19 **meetings**

20 **201-145 Corporation must hold first general meeting within 3**
21 **months of registration**

22 (1) An Aboriginal and Torres Strait Islander corporation must hold a
23 general meeting of members within 3 months after the corporation
24 is registered.

25 Penalty: 10 penalty units.

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

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

1 **201-150 Corporation must hold AGM**

- 2 (1) An Aboriginal and Torres Strait Islander corporation must hold an
3 AGM within 5 months after the end of its financial year.

4 Penalty: 10 penalty units.

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

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

- 7 (3) An AGM is to be held in addition to any other meetings held by an
8 Aboriginal and Torres Strait Islander corporation in the year.

- 9 (4) An Aboriginal and Torres Strait Islander corporation that has only
10 1 member is not required to hold an AGM under this section.

11 **201-155 Extension of time for holding AGM**

- 12 (1) An Aboriginal and Torres Strait Islander corporation may lodge an
13 application with the Registrar to extend the period within which
14 section 201-150 requires the corporation to hold an AGM.

- 15 (2) If the corporation applies before the end of the period within which
16 the corporation would otherwise be required to hold an AGM, the
17 Registrar may, by written notice to the corporation, extend the
18 period. The Registrar must specify the period of the extension.

- 19 (3) An Aboriginal and Torres Strait Islander corporation granted an
20 extension under subsection (2) must hold its AGM within the
21 extended period.

22 Penalty: 10 penalty units.

- 23 (4) The Registrar may impose conditions on the extension and the
24 corporation must comply with those conditions.

25 Penalty: 10 penalty units.

- 26 (5) An offence against subsection (3) or (4) is an offence of strict
27 liability.

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

Section 201-160

1 **201-160 Business of AGM**

2 The business of an AGM may include any of the following, even if
3 not referred to in the notice of meeting:

- 4 (a) the consideration of the reports that under Chapter 7 are
5 required to be laid before the AGM;
6 (b) the election of directors;
7 (c) the appointment and remuneration of the auditor (if any).

8 **201-165 Questions and comments by members on corporation**
9 **management at AGM**

- 10 (1) The chair of an AGM must allow a reasonable opportunity for the
11 members as a whole at the meeting to ask questions about or make
12 comments on the management of the corporation.

13 Penalty: 5 penalty units.

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

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

16 **201-170 Questions by members of auditors at AGM**

- 17 (1) If an Aboriginal and Torres Strait Islander corporation's auditor (if
18 any) or the auditor's representative is at an AGM, the chair of the
19 meeting must allow a reasonable opportunity for the members as a
20 whole at the meeting to ask the auditor or the auditor's
21 representative questions relevant to:

- 22 (a) the conduct of the audit; and
23 (b) the preparation and content of the auditor's report; and
24 (c) the accounting policies adopted by the corporation in relation
25 to the preparation of the financial statements; and
26 (d) the independence of the auditor in relation to the conduct of
27 the audit.

28 Penalty: 5 penalty units.

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

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

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2 **Division 204—Resolutions without a general meeting**

3 **204-1 Circulating resolutions**

4

(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.

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(2) Subsection (1) does not apply to a resolution to remove an auditor.

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(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.

13

(4) The resolution is passed when the last member signs.

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(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:

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(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).

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27

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(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.

29

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(7) This section does not affect any rule of law relating to the assent of members not given at a general meeting.

31

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Note 1: Passage of a resolution under this section must be recorded in the corporation's minute books (see section 220-5).

Chapter 5 Meetings

Part 5-2 General meetings

Division 204 Resolutions without a general meeting

Section 204-5

1 Note 2: A body corporate representative may sign a circulating resolution (see
2 section 201-110).

3 **204-5 Resolutions of 1 member corporations**

4 (1) An Aboriginal and Torres Strait Islander corporation that has only
5 1 member may pass a resolution by the member recording it and
6 signing the record.

7 (2) If this Act requires information or a document relating to the
8 resolution to be lodged with the Registrar, that requirement is
9 satisfied by lodging the information or document with the
10 resolution that is passed.

11 Note 1: Passage of a resolution under this section must be recorded in the
12 corporation's minute books (see section 220-5).

13 Note 2: A body corporate representative may sign such a resolution (see
14 section 201-110).

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2 **Part 5-3—Directors' meetings**

3 **Division 209—Introduction**

4 **209-1 What this Part is about**

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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.

Section 212-1

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2 **Division 212—What are the rules concerning directors'**
3 **meetings?**

4 **212-1 Constitution to provide for meetings**

5 The constitution of an Aboriginal and Torres Strait Islander
6 corporation must specify how often directors' meetings are to be
7 held.

8 **212-5 Calling directors' meetings (replaceable rule—see**
9 **section 60-1)**

10 A directors' meeting may be called by a director giving reasonable
11 notice individually to every other director.

12 Note: A director who has appointed an alternate director may ask for the
13 notice to be given to the alternate director (see subsection 246-30(2)).

14 **212-10 Use of technology**

15 A directors' meeting may be called or held using any technology
16 consented to by all the directors. The consent may be a standing
17 one. A director may only withdraw his or her consent within a
18 reasonable period before the meeting.

19 **212-15 Chairing directors' meetings (replaceable rule—see**
20 **section 60-1)**

21 (1) The directors may elect a director to chair their meetings. The
22 directors may determine the period for which the director is to be
23 the chair.

24 (2) The directors must elect a director present to chair a meeting, or
25 part of it, if:
26 (a) a director has not already been elected to chair the meeting;
27 or
28 (b) a previously elected chair is not available, or declines to act,
29 for the meeting or the part of the meeting.

1 **212-20 Quorum at directors' meetings**

2 The quorum for a directors' meeting is a majority of the directors
3 and the quorum must be present at all times during the meeting.

4 Note: For resolutions of 1 director Aboriginal and Torres Strait Islander
5 corporations without meetings, see section 215-5.

6 **212-25 Passing of directors' resolutions (replaceable rule—see**
7 **section 60-1)**

8 (1) A resolution of the directors must be passed by a majority of the
9 votes cast by directors entitled to vote on the resolution.

10 (2) The chair has a casting vote if necessary in addition to any vote he
11 or she has as a director.

Section 215-1

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Division 215—Resolutions and declarations without meetings

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215-1 Circulating resolutions of corporation with more than 1 director (replaceable rule—see section 60-1)

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Resolutions

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- (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.

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Copies

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- (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.

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When the resolution is passed

18

- (3) The resolution is passed when the last director signs.

19

Note: Passage of a resolution under this section must be recorded in the corporation's minute books (see section 220-5).

20

21

215-5 Resolutions and declarations of 1 director corporation

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Resolutions

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- (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.

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Declarations

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- (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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Section 215-5

1 recording it and signing the record. Recording and signing the
2 declaration satisfies any requirement in this Act that the declaration
3 be made at a directors' meeting.

4 Note: Passage of a resolution or the making of a declaration under this
5 section must be recorded in the corporation's minute books (see
6 section 220-5).

Section 220-1

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Part 5-4—Minutes of meetings

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Division 220—Minutes of meetings

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220-1 What this Part is about

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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.

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Minutes may be kept in writing or by means of an audio or video recording.

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None of the rules in this Part may be modified or replaced by the corporation's constitution.

11

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220-5 Minutes

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(1) An Aboriginal and Torres Strait Islander corporation must keep minute books in which it records within 1 month:

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(a) proceedings and resolutions of general meetings; and

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(b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors); and

17

18

(c) resolutions passed by members without a meeting; and

19

(d) resolutions passed by directors without a meeting; and

20

(e) if the corporation has only 1 director—the making of declarations by the director.

21

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Penalty: 10 penalty units.

23

Note: For resolutions and declarations without meetings, see Divisions 204 and 215.

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(2) The minutes of the whole, or a part, of the meeting may be kept:

26

(a) in writing; or

27

(b) by means of an audio, or audio-visual, recording.

Section 220-5

- 1 (3) If the minutes of the whole, or a part, of the meeting are kept by
2 means of an audio, or audio-visual, recording of the meeting, the
3 corporation must ensure that, on the recording:
4 (a) each person attending the meeting states his or her name; and
5 (b) if a person attending the meeting holds a proxy—the person
6 states the name of the person for whom the person is acting
7 as proxy.

8 Penalty: 10 penalty units.

- 9 (4) If the minutes of the whole, or a part, of the meeting (the *first*
10 *meeting*) are kept in writing, the corporation must ensure that
11 either:
12 (a) the chair of the meeting; or
13 (b) the chair of the next meeting;
14 signs those minutes within a reasonable time after the first meeting.

15 Penalty: 10 penalty units.

- 16 (5) If the minutes of the whole, or a part, of the meeting (the *first*
17 *meeting*) are kept by means of an audio, or audio-visual, recording,
18 the corporation must ensure that either:
19 (a) the chair of the meeting; or
20 (b) the chair of the next meeting;
21 signs a declaration under subsection (6) within a reasonable time
22 after the first meeting.

23 Penalty: 10 penalty units.

- 24 (6) The declaration under this subsection must:
25 (a) identify the audio, or audio-visual, recording; and
26 (b) if the recording is not a recording of the whole of the
27 meeting—identify the part of the meeting that is recorded;
28 and
29 (c) declare that the recording constitutes the minutes of the
30 meeting or that part of the meeting.

- 31 (7) The corporation must ensure that minutes of the passing of a
32 resolution without a meeting are signed by a director within a
33 reasonable time after the resolution is passed.

Section 220-10

1 Penalty: 10 penalty units.

2 (8) The director of an Aboriginal and Torres Strait Islander
3 corporation with only 1 director must sign the minutes of the
4 making of a declaration by the director within a reasonable time
5 after the declaration is made.

6 Penalty: 10 penalty units.

7 (9) An Aboriginal and Torres Strait Islander corporation must keep its
8 minute books at:

- 9 (a) its registered office if it is registered as a large corporation; or
10 (b) its document access address if it is registered as a small or
11 medium corporation.

12 Penalty: 10 penalty units.

13 (10) An offence against subsection (1), (3), (4), (5), (7), (8) or (9) is an
14 offence of strict liability.

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

16 (11) A minute that is recorded and signed in accordance with this
17 section is evidence of the proceeding, resolution or declaration to
18 which it relates, unless the contrary is proved.

19 **220-10 Members' access to minutes**

20 (1) An Aboriginal and Torres Strait Islander corporation that is
21 registered as a large corporation must make available for
22 inspection by members, at its registered office, the minute books
23 for the meetings of its members and for resolutions of members
24 passed without meetings. The books must be made available for
25 inspection each business day from at least 10 am to 12 noon and
26 from at least 2 pm to 4 pm.

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

29 (2) An Aboriginal and Torres Strait Islander corporation that is
30 registered as a small or medium corporation must make available
31 for inspection by members, at its document access address, the
32 minute books for the meetings of its members and for resolutions

Section 220-10

1 of members passed without meetings. The books must be made
2 available within 7 days of a member's written request for
3 inspection.

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

6 (3) A corporation must make minutes available under subsections (1)
7 and (2) free of charge.

8 Penalty: 5 penalty units.

9 (4) A member of an Aboriginal and Torres Strait Islander corporation
10 may ask the corporation in writing for a copy of:

11 (a) any minutes of a meeting of the corporation's members or an
12 extract of the minutes; or

13 (b) any minutes of a resolution passed by members without a
14 meeting.

15 Note: The member may ask the corporation for an English translation under
16 subsection 376-5(3) if the minutes are not in the English language.

17 (5) If the corporation does not require the member to pay for the copy,
18 the corporation must send it:

19 (a) within 14 days after the member asks for it; or

20 (b) within any longer period that the Registrar approves.

21 Penalty: 5 penalty units.

22 (6) If the corporation requires payment for the copy, the corporation
23 must send it:

24 (a) within 14 days after the corporation receives the payment; or

25 (b) within any longer period that the Registrar approves.

26 The amount of any payment the corporation requires cannot exceed
27 the prescribed amount.

28 Penalty: 5 penalty units.

29 (7) An offence against subsection (3), (4) or (5) is an offence of strict
30 liability.

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

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Part 5-5—Exemption from operation of this Chapter

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Division 225—Exemption from operation of this Chapter

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225-1 What this Part is about

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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.

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225-5 Exemption from the provisions of this Chapter

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- (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.

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Note: For the criteria for making orders under this section, see section 225-20.

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- (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.

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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.

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- (4) The Registrar may, in writing, revoke, vary or suspend the determination.

1 (5) The Registrar must give the applicant written notice within 28 days
2 of the making, revocation, variation or suspension of the
3 determination.

4 (6) A determination under subsection (1), or a revocation, variation or
5 suspension under subsection (4), is not a legislative instrument.

6 **225-10 Registrar may make determination even if application is**
7 **incomplete**

8 Despite subsection 225-5(2), the Registrar may make a
9 determination even if the application does not specify the
10 provisions in relation to which the exemption is being sought.

11 **225-15 Registrar's power to make class determinations**

12 (1) The Registrar may determine in writing that:
13 (a) a specified Aboriginal and Torres Strait Islander corporation
14 or a specified class of Aboriginal and Torres Strait Islander
15 corporation; and
16 (b) the directors of a specified Aboriginal and Torres Strait
17 Islander corporation or of a specified class of Aboriginal and
18 Torres Strait Islander corporation (as the case may be);
19 are exempted from the provisions of this Chapter specified in the
20 Registrar's determination.

21 Note: For the criteria for making orders under this section, see
22 section 225-20.

23 (2) The determination may:
24 (a) be expressed to be subject to conditions; and
25 (b) be indefinite or limited to a specified period.

26 (3) The Registrar may, in writing, revoke, vary or suspend the
27 determination.

28 (4) Notice of the making, revocation, variation or suspension of a
29 determination in relation to a specified class of Aboriginal and
30 Torres Strait Islander corporation, or the directors of a specified
31 class of Aboriginal and Torres Strait Islander corporation, must be
32 published in the *Gazette*.

Chapter 5 Meetings

Part 5-5 Exemption from operation of this Chapter

Division 225 Exemption from operation of this Chapter

Section 225-20

- 1 (5) A determination under subsection (1) in relation to:
2 (a) a specified class of Aboriginal and Torres Strait Islander
3 corporation; or
4 (b) the directors of a specified class of Aboriginal and Torres
5 Strait Islander corporation;
6 is a legislative instrument.
- 7 (6) A determination under subsection (1) in relation to:
8 (a) a specified Aboriginal and Torres Strait Islander corporation;
9 or
10 (b) the directors of a specified Aboriginal and Torres Strait
11 Islander corporation;
12 is not a legislative instrument.

13 **225-20 Criteria for determinations**

- 14 (1) In making a determination under section 225-5 or 225-15, the
15 Registrar must be satisfied that the requirements of provisions of
16 this Chapter would:
17 (a) be inappropriate in the circumstances; or
18 (b) impose unreasonable burdens.
- 19 *Unreasonable burden*
- 20 (2) In deciding for the purposes of subsection (1) if the provisions
21 impose an unreasonable burden on the corporation or corporations,
22 the Registrar is to have regard to:
23 (a) the expected costs of complying with the obligations; and
24 (b) the expected benefits of having the corporation or
25 corporations comply with the obligations; and
26 (c) any practical difficulties that the corporation or corporations
27 face in complying effectively with the obligations; and
28 (d) any other matters that the Registrar considers relevant.

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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.

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Part 6-2—Appointment, remuneration and cessation of appointment of directors

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Division 240—Introduction

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240-1 What this Part is about

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

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Division 243 deals with the minimum and maximum number of directors that a corporation may have.

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Divisions 246 and 249 deal with the appointment, resignation and removal of directors.

11

12

Division 252 deals with the remuneration of directors.

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2 **Division 243—Number of directors**

3 **243-1 Minimum number of directors**

4 *Corporations with 1 member*

- 5 (1) An Aboriginal and Torres Strait Islander corporation that has 1
6 member must have at least 1 director.

7 *Corporations with 2 members*

- 8 (2) An Aboriginal and Torres Strait Islander corporation that has 2
9 members must have at least 2 directors.

10 *Corporations with more than 2 members*

- 11 (3) An Aboriginal and Torres Strait Islander corporation that has more
12 than 2 members must have at least 3 directors.

13 **243-5 Maximum number of directors**

14 An Aboriginal and Torres Strait Islander corporation must not have
15 more than:

- 16 (a) 12 directors; or
17 (b) if the regulations prescribe a different number of directors for
18 the purpose of this paragraph—that number of directors.

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2 **Division 246—Appointment of directors**

3 **246-1 Eligibility for appointment as a director**

- 4 (1) Only an individual who is at least 18 years of age may be
5 appointed as a director of an Aboriginal and Torres Strait Islander
6 corporation.
- 7 (2) An individual who is disqualified from managing Aboriginal and
8 Torres Strait Islander corporations under Part 6-5 may only be
9 appointed as a director of an Aboriginal and Torres Strait Islander
10 corporation if the appointment is made:
11 (a) with permission granted by the Registrar under
12 section 279-30; or
13 (b) with leave granted by the Court under section 279-35.
- 14 (3) Unless an Aboriginal and Torres Strait Islander corporation's
15 constitution provides otherwise, the following may be appointed as
16 a director of the corporation:
17 (a) an individual who is not a member of the corporation;
18 (b) an individual who is not an Aboriginal and Torres Strait
19 Islander person.

20 **246-5 Majority of director requirements**

- 21 (1) A majority of the directors of an Aboriginal and Torres Strait
22 Islander corporation must be individuals who are Aboriginal and
23 Torres Strait Islander persons.
- 24 (2) A majority of the directors of the corporation must ordinarily
25 reside in Australia.
- 26 (3) A majority of the directors of the corporation must be members of
27 the corporation.
- 28 (4) A majority of the directors of the corporation must not be
29 employees of the corporation.

- 1 (5) If a person is performing a chief executive officer function in
2 relation to the corporation, the person may be a director of the
3 corporation but cannot chair the directors' meetings. The person
4 counts as an employee for the purposes of determining under
5 subsection (4) whether a majority of directors are employees.

6 Note: For the meaning of *chief executive officer function*, see
7 section 694-85.

8 **246-10 Consent to act as director**

- 9 (1) An Aboriginal and Torres Strait Islander corporation contravenes
10 this subsection if a person does not give the corporation a signed
11 consent to act as a director of the corporation before being
12 appointed.

13 Penalty: 10 penalty units.

- 14 (2) The corporation must keep the consent.

15 Penalty: 5 penalty units.

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

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

19 **246-15 Corporation may appoint a director (replaceable rule—see**
20 **section 60-1)**

21 An Aboriginal and Torres Strait Islander corporation may appoint a
22 person as a director by resolution passed in general meeting.

23 **246-20 Directors may appoint other directors to make up a quorum**
24 **(replaceable rule—see section 60-1)**

25 *Appointment by other directors*

- 26 (1) Subject to section 243-5 (maximum number of directors), the
27 directors of an Aboriginal and Torres Strait Islander corporation
28 may appoint a person as a director.

Chapter 6 Officers

Part 6-2 Appointment, remuneration and cessation of appointment of directors

Division 246 Appointment of directors

Section 246-25

- 1 (2) A person can be appointed under subsection (1) in order to make
2 up a quorum for a directors' meeting even if the total number of
3 directors of the corporation is not enough to make up that quorum.

4 *Confirmation by next AGM*

- 5 (3) If a person is appointed under subsection (1), the corporation must
6 confirm the appointment by resolution at the corporation's next
7 AGM. If the appointment is not confirmed, the person ceases to be
8 a director of the corporation at the end of the AGM.

9 **246-25 Term of appointment**

10 *Directors appointed on registration (replaceable rule—see*
11 *section 60-1)*

- 12 (1) If a director has been identified in the application for registration of
13 an Aboriginal and Torres Strait Islander corporation as a director
14 who is to be appointed for only one year, the director's
15 appointment ends at the first AGM that occurs more than one year
16 after the date of the corporation's registration.

17 *Other directors*

- 18 (2) Subject to subsection (4), a director of an Aboriginal and Torres
19 Strait Islander corporation must not be appointed for a period
20 exceeding 2 years.

21 *Director may be reappointed (replaceable rule—see section 60-1)*

- 22 (3) A director is eligible for reappointment.

23 *Appointments continue to next general meeting*

- 24 (4) If the terms of appointment of all of the directors of an Aboriginal
25 and Torres Strait Islander corporation expire so that there are no
26 directors appointed at a particular time, the terms are extended
27 until the next general meeting occurring after the expiry of the term
28 of the director whose appointment was last to expire.

1 **246-30 Alternate directors (replaceable rule—see section 60-1)**

- 2 (1) With the other directors' approval, a director may appoint an
3 alternate to exercise some or all of the director's powers for a
4 specified period.
- 5 (2) If the appointing director requests the Aboriginal and Torres Strait
6 Islander corporation to give the alternate notice of directors'
7 meetings, the corporation must do so.
- 8 (3) When an alternate exercises the director's powers, the exercise of
9 the powers is just as effective as if the powers were exercised by
10 the director.
- 11 (4) The appointing director may terminate the alternate's appointment
12 at any time.
- 13 (5) An appointment or its termination must be in writing. A copy must
14 be given to the corporation.

15 Note: The Registrar must be given notice of the appointment and
16 termination of appointment of an alternate (see subsections 304-5(3)
17 and (6)).

18 **246-35 Effectiveness of acts by directors**

- 19 (1) An act done by a director is effective even if his or her
20 appointment, or the continuance of the appointment, is invalid
21 because the Aboriginal and Torres Strait Islander corporation or
22 director did not comply with the corporation's constitution or any
23 provision of this Act.
- 24 (2) Subsection (1) does not deal with the question whether an effective
25 act by a director:
26 (a) binds the corporation in its dealings with other people; or
27 (b) makes the corporation liable to another person.

28 Note: The kinds of acts that this section validates are those that are only
29 legally effective if the person doing them is a director (for example,
30 calling a meeting of the corporation's members or signing a document
31 to be lodged with the Registrar or minutes of a meeting). Division 104
32 contains rules about the assumptions people are entitled to make when
33 dealing with an Aboriginal and Torres Strait Islander corporation and
34 its officers.

Section 249-1

1

2 **Division 249—Resignation, retirement or removal of**
3 **directors**

4 **249-1 How does a person cease to be a director?**

5 A person ceases to be a director of an Aboriginal and Torres Strait
6 Islander corporation if:

- 7 (a) the person dies; or
8 (b) the person resigns as a director of the corporation as provided
9 for in section 249-5; or
10 (c) the term of the person's appointment as a director of the
11 corporation expires; or
12 (d) the person is removed as a director of the corporation by the
13 members of the corporation as provided for in
14 section 249-10; or
15 (e) the person is removed as a director of the corporation by the
16 other directors of the corporation as provided for in
17 section 249-15; or
18 (f) the person becomes disqualified from managing corporations
19 under Part 6-5.

20 **249-5 Director may resign**

- 21 (1) A director of an Aboriginal and Torres Strait Islander corporation
22 may resign as a director of the corporation by giving notice of
23 resignation to the corporation.

24 *Written notice to be given (replaceable rule—see section 60-1)*

- 25 (2) The notice must be in writing.

26 **249-10 Removal by members**

27 *Resolution for removal of director*

- 28 (1) An Aboriginal and Torres Strait Islander corporation may, by
29 resolution in general meeting, remove a director from office
30 despite anything in:

- 1 (a) the corporation's constitution; or
2 (b) an agreement between the corporation and the director; or
3 (c) an agreement between any or all members of the corporation
4 and the director.

5 Note: See sections 201-1 and 201-5 for the rules on who may call meetings,
6 sections 201-20 to 201-30 on how to call meetings and
7 sections 201-40 to 201-50 for rules on members' resolutions.

8 *Notice of intention to move resolution for removal of director*

- 9 (2) Notice of intention to move the resolution must be given to the
10 corporation at least 21 days before the meeting is to be held.
11 However, if the corporation calls a meeting after the notice of
12 intention is given under this subsection, the meeting may pass the
13 resolution even though the meeting is held less than 21 days after
14 the notice of intention is given.

15 Note: Short notice of the meeting cannot be given for this resolution (see
16 subsection 201-20(3)).

17 *Director to be informed*

- 18 (3) The corporation must give the director a copy of the notice as soon
19 as practicable after it is received.

20 Penalty: 5 penalty units.

21 *Director's right to put case to members*

- 22 (4) The director is entitled to put his or her case to members by:
23 (a) giving the corporation a written statement for circulation to
24 members (see subsections (5) and (6)); and
25 (b) speaking to the motion at the meeting (whether or not the
26 director is a member of the corporation).

27 *Circulation of statement*

- 28 (5) The written statement is to be circulated by the corporation to
29 members by:
30 (a) sending a copy to everyone to whom notice of the meeting is
31 sent if there is time to do so; or

Chapter 6 Officers

Part 6-2 Appointment, remuneration and cessation of appointment of directors

Division 249 Resignation, retirement or removal of directors

Section 249-15

- 1 (b) if there is not time to comply with paragraph (a)—having the
2 statement distributed to members attending the meeting and
3 read out at the meeting before the resolution is voted on.

4 Penalty: 5 penalty units.

- 5 (6) The written statement does not have to be circulated to members if
6 it is defamatory.

7 *Time of retirement*

- 8 (7) If a person is appointed to replace a director removed under this
9 section, the time at which:
10 (a) the replacement director; or
11 (b) any other director;
12 is to retire is to be worked out as if the replacement director had
13 become director on the day on which the replaced director was last
14 appointed a director.

- 15 (8) An offence against subsection (3) or (5) is an offence of strict
16 liability.

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

18 **249-15 Removal by other directors**

- 19 (1) The only ground on which the directors of an Aboriginal and
20 Torres Strait Islander corporation may remove a director from
21 office is that he or she fails without reasonable excuse to attend 3
22 or more consecutive directors' meetings. The directors may
23 remove the director by resolution.

- 24 (2) Subsection (1) operates despite anything in:
25 (a) the corporation's constitution; or
26 (b) an agreement between the corporation and the director; or
27 (c) an agreement between any or all members of the corporation
28 and the director.

29 *Director to be given notice*

- 30 (3) Before removing the director, the directors must give the director
31 concerned notice in writing:

- 1 (a) stating that the directors intend to remove the director
2 concerned from office because he or she has failed without
3 reasonable excuse to attend 3 or more consecutive directors'
4 meetings; and
5 (b) stating that the director concerned has 14 days to object to
6 the removal; and
7 (c) stating that the objection must be:
8 (i) in writing; and
9 (ii) given to the corporation within the period of 14 days
10 from the day the notice is given.

11 Penalty: 5 penalty units.

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

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

15 *If director does not object*

- 16 (5) If the director does not object as provided for in paragraph (3)(c),
17 the directors must remove the director from the office.

18 *If director does object*

- 19 (6) If the director does object as provided for in paragraph (3)(c), the
20 directors cannot remove the director from office.

21 *Notice of resolution to be given*

- 22 (7) If the director concerned is removed from office, the corporation
23 must give him or her a copy of the resolution as soon as practicable
24 after the applicable resolution has been passed.

25 Penalty: 5 penalty units.

26 *Time of retirement*

- 27 (8) If a person is appointed to replace a director removed under this
28 section, the time at which:
29 (a) the replacement director; or
30 (b) any other director;

Chapter 6 Officers

Part 6-2 Appointment, remuneration and cessation of appointment of directors

Division 249 Resignation, retirement or removal of directors

Section 249-20

1 is to retire is to be worked out as if the replacement director had
2 become director on the day on which the replaced director was last
3 appointed a director.

4 (9) An offence against subsection (7) is a strict liability offence.

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

6 **249-20 Removal by general meeting**

7 (1) If the director objects as provided for in paragraph 249-15(3)(c),
8 the corporation by resolution in general meeting may remove the
9 director from office.

10 *Notice of resolution to be given*

11 (2) If the director concerned is removed from office, the corporation
12 must give him or her a copy of the resolution as soon as practicable
13 after the applicable resolution has been passed.

14 Penalty: 5 penalty units.

15 *Time of retirement*

16 (3) If a person is appointed to replace a director removed under this
17 section, the time at which:

- 18 (a) the replacement director; or
19 (b) any other director;

20 is to retire is to be worked out as if the replacement director had
21 become director on the day on which the replaced director was last
22 appointed a director.

23 (4) An offence against subsection (2) is a strict liability offence.

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

1

2 **Division 252—Remuneration of directors**

3 **252-1 Remuneration**

4 (1) Unless the constitution of an Aboriginal and Torres Strait Islander
5 corporation provides otherwise, the directors of the corporation are
6 not to be paid remuneration.

7 Note: If a director is an employee of the corporation, the director is not
8 precluded from receiving remuneration as an employee.

9 (2) If an Aboriginal and Torres Strait Islander corporation's
10 constitution permits the payment of remuneration, the
11 remuneration is to be determined by the corporation by resolution
12 in general meeting.

13 *Expenses*

14 (3) The corporation may pay the directors' travelling and other
15 expenses that the directors properly incur:
16 (a) in attending directors' meetings or any meetings of
17 committees of directors; and
18 (b) in attending any general meetings of the corporation; and
19 (c) in connection with the corporation's business.

20 **252-5 Members may obtain information about directors'**
21 **remuneration**

22 (1) An Aboriginal and Torres Strait Islander corporation must disclose
23 the remuneration and expenses paid to each director of the
24 corporation or a subsidiary (if any) by the corporation or by an
25 entity controlled by the corporation if the corporation is directed to
26 disclose that information by at least the required number of
27 members under subsection (7).

28 Penalty: 5 penalty units.

29 (2) The corporation must also disclose the remuneration and expenses
30 paid to each director of the corporation or a subsidiary (if any) by
31 the corporation or by an entity controlled by the corporation if the

Chapter 6 Officers

Part 6-2 Appointment, remuneration and cessation of appointment of directors

Division 252 Remuneration of directors

Section 252-5

- 1 Registrar directs the corporation in writing to disclose that
2 information.
- 3 Penalty: 5 penalty units.
- 4 (3) An offence against subsection (1) or (2) is an offence of strict
5 liability.
- 6 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 7 (4) Under subsection (1) or (2), the corporation must disclose all
8 remuneration and expenses paid to the director, regardless of
9 whether it is paid to the director as a director or in another
10 capacity.
- 11 (5) The corporation must comply with the direction under
12 subsection (1) or (2) as soon as practicable by:
- 13 (a) preparing a statement of the remuneration and expenses of
14 each director of the corporation or a subsidiary for the last
15 financial year before the direction was given; and
16 (b) having the statement audited; and
17 (c) either:
- 18 (i) in the case of a direction under subsection (1)—sending
19 a copy of the audited statement to each person entitled
20 to receive notice of general meetings of the corporation;
21 or
22 (ii) in the case of a direction under subsection (2)—sending
23 a copy of the audited statement to each person entitled
24 to receive notice of general meetings of the corporation
25 and to the Registrar.
- 26 (6) If the Registrar directs the corporation under subsection (2) to
27 disclose the remuneration and expenses paid to a director, the
28 remuneration and expenses may be entered on the Register of
29 Aboriginal and Torres Strait Islander Corporations.
- 30 (7) The required number of members for an Aboriginal and Torres
31 Strait Islander corporation is the greater of:
- 32 (a) 5 members of the corporation; or
33 (b) 10% of the members of the corporation.

Section 252-5

- 1 (8) The regulations may prescribe a different number of members for
2 the purposes of applying paragraph (7)(a) to:
3 (a) a particular Aboriginal and Torres Strait Islander corporation;
4 or
5 (b) a particular class of Aboriginal and Torres Strait Islander
6 corporation.
- 7 (9) The regulations may prescribe a different percentage for the
8 purposes of applying paragraph (7)(b) to:
9 (a) a particular Aboriginal and Torres Strait Islander corporation;
10 or
11 (b) a particular class of Aboriginal and Torres Strait Islander
12 corporation.
- 13 (10) A direction under subsection (2) is not a legislative instrument.

Section 257-1

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Part 6-3—Appointment of secretaries and contact persons

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Division 257—Appointment of secretaries and contact persons

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257-1 What this Part is about

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This Part deals with the secretary and contact person of an Aboriginal and Torres Strait Islander corporation.

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9

An Aboriginal and Torres Strait Islander corporation that is registered as a large corporation must have a secretary.

10

11

An Aboriginal and Torres Strait Islander corporation that is registered as a small or medium corporation must have a contact person.

12

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257-5 Requirement to have a secretary or contact person

15

Secretary

16

- (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.

17

18

19

Contact person

20

- (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.

21

22

23

- (3) An Aboriginal and Torres Strait Islander corporation commits an offence if the corporation does not comply with subsection (1) or (2).

24

25

26

Penalty: 5 penalty units.

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

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

3 **257-10 Who may be a secretary or contact person**

4 (1) Only an individual who is at least 18 years of age may be
5 appointed as a secretary or contact person of an Aboriginal and
6 Torres Strait Islander corporation.

7 (2) A person who is disqualified from managing an Aboriginal and
8 Torres Strait Islander corporation under Part 6-5 may only be
9 appointed as a secretary or contact person if the appointment is
10 made:

11 (a) with permission granted by the Registrar under subsection
12 279-30(7); or

13 (b) with leave granted by the Court under section 279-35.

14 **257-15 Consent to act as secretary or contact person**

15 *Secretary*

16 (1) An Aboriginal and Torres Strait Islander corporation contravenes
17 this subsection if a person does not give the corporation a signed
18 consent to act as secretary of the corporation before being
19 appointed.

20 Penalty: 5 penalty units.

21 *Contact person*

22 (2) An Aboriginal and Torres Strait Islander corporation contravenes
23 this subsection if a person does not give the corporation a signed
24 consent to act as contact person of the corporation before being
25 appointed.

26 Penalty: 5 penalty units.

27 (3) The corporation must keep the consent.

28 Penalty: 5 penalty units.

Chapter 6 Officers

Part 6-3 Appointment of secretaries and contact persons

Division 257 Appointment of secretaries and contact persons

Section 257-20

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

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

4 **257-20 How a secretary or contact person is appointed**

5 A secretary or contact person is to be appointed by the directors.

6 Note: An Aboriginal and Torres Strait Islander corporation must notify the
7 Registrar of the appointment within 28 days (see subsection 304-5(1)).

8 **257-25 Director to be contact person in certain circumstances**

9 (1) If the Registrar has not been able to contact the contact person of
10 an Aboriginal and Torres Strait Islander corporation for a period of
11 28 days or longer, the Registrar may determine, by notice in
12 writing given to the corporation:

- 13 (a) that the person who is not contactable ceases to be the
14 contact person from the date specified in the determination;
15 and
16 (b) that the new contact person of the corporation is the director
17 specified in the determination; and
18 (c) that the new contact person's appointment takes effect from
19 the date the person's name is entered on the Register of
20 Aboriginal and Torres Strait Islander Corporations as contact
21 person of the corporation.

22 (2) A notice under subsection (1) is not a legislative instrument.

23 **257-30 Contact person must pass on communications received**

24 A person commits an offence if:

- 25 (a) either:
26 (i) the person has been appointed with his or her consent as
27 contact person of an Aboriginal and Torres Strait
28 Islander corporation; or
29 (ii) the person was determined to be the contact person of
30 an Aboriginal and Torres Strait Islander corporation
31 under section 257-25; and

- 1 (b) while the person is entered on the Register of Aboriginal and
2 Torres Strait Islander Corporations as the contact person of
3 the corporation the person receives a communication for the
4 corporation; and
5 (c) the person fails to pass the communication on to at least one
6 of directors of the corporation within 14 days after receiving
7 the communication.

8 Penalty: 10 penalty units.

9 **257-35 Secretary must pass on communications received**

10 A person commits an offence if:

- 11 (a) the person has been appointed with his or her consent to be
12 the secretary of an Aboriginal and Torres Strait Islander
13 corporation; and
14 (b) while the person is entered on the Register of Aboriginal and
15 Torres Strait Islander Corporations as the secretary of the
16 corporation the person receives a communication for the
17 corporation; and
18 (c) the person fails to pass the communication on to at least one
19 of directors of the corporation within 14 days after receiving
20 the communication.

21 Penalty: 10 penalty units.

22 **257-40 Effectiveness of acts by secretaries**

- 23 (1) An act done by a secretary is effective even if his or her
24 appointment, or the continuance of his or her appointment, is
25 invalid because the Aboriginal and Torres Strait Islander
26 corporation or secretary did not comply with the corporation's
27 constitution or any provision of this Act.
- 28 (2) Subsection (1) does not deal with the question whether an effective
29 act by a secretary:
- 30 (a) binds the corporation in its dealings with other people; or
31 (b) makes the corporation liable to another person.

32 Note: The kinds of acts that this section validates are those that are only
33 legally effective if the person doing them is a secretary (for example,

Chapter 6 Officers

Part 6-3 Appointment of secretaries and contact persons

Division 257 Appointment of secretaries and contact persons

Section 257-45

1 signing and sending out a notice of a meeting of directors if the
2 corporation's constitution authorises the secretary to do so or signing a
3 document to be lodged with the Registrar). Division 104 contains
4 rules about the assumptions people are entitled to make when dealing
5 with an Aboriginal and Torres Strait Islander corporation and its
6 officers.

7 **257-45 Terms and conditions of office for secretaries (replaceable**
8 **rule—see section 60-1)**

9 A secretary holds office on the terms and conditions (including as
10 to remuneration) that the directors determine.

11 **257-50 Terms and conditions of contact person's appointment**
12 **(replaceable rule—see section 60-1)**

13 A contact person's appointment is subject to the terms and
14 conditions (including as to remuneration) that the directors
15 determine.

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2

Part 6-4—Duties and powers of directors and other officers and employees

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Division 262—Introduction

5

262-1 What this Part is about

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This Part sets out some of the most significant duties of directors, secretaries, other officers and employees of Aboriginal and Torres Strait Islander corporations.

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Other duties are imposed by:

10

(a) other provisions of this Act; and

11

(b) the provisions of the Corporations Act that are applied to Aboriginal and Torres Strait Islander corporations; and

12

13

14

(c) other laws (including the general law).

15

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.

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Division 274 deals with the powers of directors.

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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).

Section 265-1

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Division 265—General duties

3

265-1 Care and diligence—civil obligation only

4

Care and diligence—directors and other officers

5

(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:

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- (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.

13

Note 1: This subsection is a civil penalty provision (see section 386-1).

14

15

Note 2: Section 265-20 makes special provision for actions done to comply with Native Title legislation obligations.

16

Business judgment rule

17

(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:

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- (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.

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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.

Section 265-5

1 Note: This subsection only operates in relation to duties under this section
2 and the equivalent duties at common law or in equity (including the
3 duty of care that arises under the common law principles governing
4 liability for negligence). It does not operate in relation to duties under
5 any other provision of this Act or under any other laws.

6 (3) ***Business judgment*** is any decision to take or not take action in
7 respect of a matter relevant to the business operations of the
8 corporation.

9 **265-5 Good faith—civil obligations**

10 *Good faith—directors and other officers*

11 (1) A director or other officer of an Aboriginal and Torres Strait
12 Islander corporation must exercise his or her powers and discharge
13 his or her duties:

- 14 (a) in good faith in the best interests of the corporation; and
15 (b) for a proper purpose.

16 Note 1: This subsection is a civil penalty provision (see section 386-1).

17 Note 2: Section 265-20 makes special provision for actions done to comply
18 with Native Title legislation obligations.

19 Note 3: Section 265-35 deals with the situation of directors of wholly-owned
20 subsidiaries.

21 (2) A person who is involved in a contravention of subsection (1)
22 contravenes this subsection.

23 Note 1: Section 694-55 defines *involved in*.

24 Note 2: This subsection is a civil penalty provision (see section 386-1).

25 **265-10 Use of position—civil obligations**

26 *Use of position—directors, other officers and employees*

27 (1) A director, secretary, other officer or employee of an Aboriginal
28 and Torres Strait Islander corporation must not improperly use his
29 or her position to:

- 30 (a) gain an advantage for himself or herself or someone else; or
31 (b) cause detriment to the corporation.

32 Note 1: This subsection is a civil penalty provision (see section 386-1).

Chapter 6 Officers

Part 6-4 Duties and powers of directors and other officers and employees

Division 265 General duties

Section 265-15

- 1 Note 2: Section 265-20 makes special provision for actions done to comply
2 with Native Title legislation obligations.
- 3 Note 3: The contact person for the corporation is covered by the reference to
4 an employee of the corporation.
- 5 (2) A person who is involved in a contravention of subsection (1)
6 contravenes this subsection.
- 7 Note 1: Section 694-55 defines *involved in*.
- 8 Note 2: This subsection is a civil penalty provision (see section 386-1).

9 **265-15 Use of information—civil obligations**

10 *Use of information—directors, other officers and employees*

- 11 (1) A person who obtains information because he or she is, or has
12 been, a director or other officer or employee of an Aboriginal and
13 Torres Strait Islander corporation must not improperly use the
14 information to:
- 15 (a) gain an advantage for himself or herself or someone else; or
16 (b) cause detriment to the corporation.
- 17 Note 1: This duty continues after the person stops being an officer or
18 employee of the corporation.
- 19 Note 2: This subsection is a civil penalty provision (see section 386-1).
- 20 Note 3: Section 265-20 makes special provision for actions done to comply
21 with Native Title legislation obligations.
- 22 Note 4: The contact person for the corporation is covered by the reference to
23 an employee of the corporation.
- 24 (2) A person who is involved in a contravention of subsection (1)
25 contravenes this subsection.
- 26 Note 1: Section 694-55 defines *involved in*.
- 27 Note 2: This subsection is a civil penalty provision (see section 386-1).

28 **265-20 Acts done to comply with Native Title legislation obligations**

- 29 A person who is a director or other officer, or an employee, of an
30 Aboriginal and Torres Strait Islander corporation that is a
31 registered native title body corporate does not contravene
32 subsection 265-1(1), 265-5(1), 265-10(1) or 265-15(1), and does

- 1 not breach the person's equivalent duties at common law and in
2 equity, merely because of doing (or refraining from doing) a
3 particular act if the person does (or refrains from doing) the act:
4 (a) in good faith; and
5 (b) with the belief that doing (or refraining from doing) the act is
6 necessary to ensure that the corporation complies with a
7 Native Title legislation obligation.

8 **265-25 Good faith, use of position and use of information—criminal**
9 **offences**

10 *Good faith—directors and other officers*

- 11 (1) A director or other officer of an Aboriginal and Torres Strait
12 Islander corporation commits an offence if he or she:
13 (a) is reckless; or
14 (b) is intentionally dishonest;
15 and fails to exercise his or her powers and discharge his or her
16 duties:
17 (c) in good faith in the best interests of the corporation; or
18 (d) for a proper purpose.
- 19 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.
- 20 (2) A director or other officer of an Aboriginal and Torres Strait
21 Islander corporation that is a registered native title body corporate
22 does not contravene subsection (1) merely because of doing (or
23 refraining from doing) a particular act if the director or other
24 officer does (or refrains from doing) the act:
25 (a) in good faith; and
26 (b) with the belief that doing (or refraining from doing) the act is
27 necessary to ensure that the corporation complies with a
28 Native Title legislation obligation.

29 Note: A defendant bears an evidential burden in relation to the matters in
30 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Chapter 6 Officers

Part 6-4 Duties and powers of directors and other officers and employees

Division 265 General duties

Section 265-30

1 *Use of position—directors, other officers and employees*

2 (3) A director, other officer or employee of an Aboriginal and Torres
3 Strait Islander corporation commits an offence if he or she uses his
4 or her position dishonestly:

5 (a) with the intention of directly or indirectly gaining an
6 advantage for himself or herself, or someone else, or causing
7 detriment to the corporation; or

8 (b) recklessly as to whether the use may result in him or her or
9 someone else directly or indirectly gaining an advantage, or
10 in causing detriment to the corporation.

11 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

12 *Use of information—directors, other officers and employees*

13 (4) A person who obtains information because he or she is, or has
14 been, a director or other officer or employee of an Aboriginal and
15 Torres Strait Islander corporation commits an offence if he or she
16 uses the information dishonestly:

17 (a) with the intention of directly or indirectly gaining an
18 advantage for himself or herself, or someone else, or causing
19 detriment to the corporation; or

20 (b) recklessly as to whether the use may result in him or her or
21 someone else directly or indirectly gaining an advantage, or
22 in causing detriment to the corporation.

23 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

24 **265-30 Interaction of sections 265-1 to 265-25 with other laws etc.**

25 (1) Sections 265-1 to 265-25:

26 (a) have effect in addition to, and not in derogation of, any rule
27 of law relating to the duty or liability of a person because of
28 the person's office or employment in relation to an
29 Aboriginal and Torres Strait Islander corporation; and

30 (b) do not prevent the commencement of civil proceedings for a
31 breach of a duty or in respect of a liability referred to in
32 paragraph (a).

- 1 (2) This section:
2 (a) does not apply to subsections 265-1(2) and (3) to the extent
3 to which they operate on the duties at common law and in
4 equity that are equivalent to the requirements of subsection
5 265-1(1); and
6 (b) does not apply to section 265-20 to the extent to which it
7 operates on the duties at common law and in equity that are
8 equivalent to the requirements of subsections 265-1(1),
9 265-5(1), 265-10(1) and 265-15(1).

10 **265-35 Directors of wholly-owned subsidiaries**

11 A director of an Aboriginal and Torres Strait Islander corporation
12 that is a wholly-owned subsidiary of a body corporate is taken to
13 act in good faith in the best interests of the subsidiary if:

- 14 (a) the constitution of the subsidiary expressly authorises the
15 director to act in the best interests of the holding body
16 corporate; and
17 (b) the director acts in good faith in the best interests of the
18 holding body corporate; and
19 (c) the subsidiary is not insolvent at the time the director acts
20 and does not become insolvent because of the director's act.

21 **265-40 Responsibility of secretaries for certain contraventions**

- 22 (1) A secretary of an Aboriginal and Torres Strait Islander corporation
23 commits an offence if the corporation contravenes:
24 (a) subsection 69-20(1) or (2) (requirement to lodge copy of
25 constitutional changes); or
26 (b) section 88-1 (requirement to lodge material about change of
27 name); or
28 (c) subsection 112-5(5), (6) or (7) (requirements about registered
29 office); or
30 (d) section 180-35 (requirement to give copy of register of
31 members); or
32 (d) subsection 304-5(1), (3), (5) or (6) (requirement to lodge
33 details of directors and secretaries); or
34 (e) section 330-10 (requirement to lodge general report); or

Chapter 6 Officers

Part 6-4 Duties and powers of directors and other officers and employees

Division 265 General duties

Section 265-45

- 1 (f) section 348-1 (requirement to lodge annual report).
2 Penalty: 5 penalty units.
- 3 (2) An offence based on subsection (1) is an offence of strict liability.
4 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 5 (3) A person does not contravene subsection (1) if they show that they
6 took all reasonable steps to ensure that the corporation complied
7 with the section.
8 Note: A defendant bears a legal burden in relation to a matter mentioned in
9 subsection (3) (see section 13.4 of the *Criminal Code*).

10 **265-45 Meaning of reasonable reliance on information or advice**
11 **provided by others**

- 12 If:
- 13 (a) a director of an Aboriginal and Torres Strait Islander
14 corporation relies on information, or professional or expert
15 advice, given or prepared by:
16 (i) an employee of the corporation whom the director
17 believes on reasonable grounds to be reliable and
18 competent in relation to the matters concerned; or
19 (ii) a professional adviser or expert in relation to matters
20 that the director believes on reasonable grounds to be
21 within the person's professional or expert competence;
22 or
23 (iii) another director or officer in relation to matters within
24 the director's or officer's authority; or
25 (iv) a committee of directors on which the director did not
26 serve in relation to matters within the committee's
27 authority; and
28 (b) the reliance was made:
29 (i) in good faith; and
30 (ii) after making an independent assessment of the
31 information or advice, having regard to the director's
32 knowledge of the corporation and the complexity of the
33 structure and operations of the corporation; and

- 1 (c) the reasonableness of the director's reliance on the
2 information or advice arises in proceedings brought to
3 determine whether a director has performed a duty under this
4 Part or an equivalent general law duty;
5 the director's reliance on the information or advice is taken to be
6 reasonable unless the contrary is proved.

7 **265-50 Responsibility for actions of delegate**

- 8 (1) If the directors of an Aboriginal and Torres Strait Islander
9 corporation delegate a power under section 274-10, each director is
10 responsible for the exercise of the power by the delegate as if the
11 power had been exercised by the directors themselves.
- 12 (2) A director of an Aboriginal and Torres Strait Islander corporation
13 is not responsible under subsection (1) if:
- 14 (a) the director believed on reasonable grounds at all times that
15 the delegate would exercise the power in conformity with the
16 duties imposed on directors of the corporation by this Act
17 and the corporation's constitution (if any); and
- 18 (b) the director believed:
- 19 (i) on reasonable grounds; and
20 (ii) in good faith; and
21 (iii) after making proper inquiry if the circumstances
22 indicated the need for inquiry;
23 that the delegate was reliable and competent in relation to the
24 power delegated.

Section 268-1

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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

Section 268-1

- 1 (v) arises merely because the director has a right of
2 subrogation in relation to a guarantee or indemnity
3 referred to in subparagraph (iv); or
4 (vi) relates to a contract that insures, or would insure, the
5 director against liabilities the director incurs as an
6 officer of the corporation (but only if the contract does
7 not make the corporation or a related body corporate the
8 insurer); or
9 (vii) is in a contract, or proposed contract, with, or for the
10 benefit of, or on behalf of, a related body corporate and
11 arises merely because the director is a director of the
12 related body corporate; or
13 (b) all the following conditions are satisfied:
14 (i) the director has already given notice of the nature and
15 extent of the interest and its relation to the affairs of the
16 corporation under subsection (1);
17 (ii) if a person who was not a director of the corporation at
18 the time when the notice under subsection (1) was given
19 is appointed as a director of the corporation—the notice
20 is given to that person;
21 (iii) the nature or extent of the interest has not materially
22 increased above that disclosed in the notice; or
23 (c) the director has given a standing notice of the nature and
24 extent of the interest under section 268-10 and the notice is
25 still effective in relation to the interest.

26 Note: Subparagraph (b)(ii)—the notice may be given to the person referred
27 to in this subparagraph by someone other than the director to whose
28 interests it relates (for example, by the secretary).

- 29 (4) The notice required by subsection (1) must:
30 (a) give details of:
31 (i) the nature and extent of the interest; and
32 (ii) the relation of the interest to the affairs of the
33 corporation; and
34 (b) be given at a directors' meeting as soon as practicable after
35 the director becomes aware of the director's interest in the
36 matter.

37 The details must be recorded in the minutes of the meeting.

Chapter 6 Officers

Part 6-4 Duties and powers of directors and other officers and employees

Division 268 Duties in relation to disclosure of, and voting on matters involving, material personal interests

Section 268-5

1 *Effect of contravention by director*

2 (5) A contravention of this section by a director does not affect the
3 validity of any act, transaction, agreement, instrument, resolution
4 or other thing.

5 *Section does not apply to single director corporation*

6 (6) This section does not apply to an Aboriginal and Torres Strait
7 Islander corporation that has only 1 director.

8 **268-5 Interest as common law holder of native title**

9 (1) This section applies if:

- 10 (a) an Aboriginal and Torres Strait Islander corporation is a
11 registered native title body corporate; and
12 (b) a director of the corporation has a particular interest as one of
13 the common law holders of native title, being native title:
14 (i) which the corporation holds in trust for the common law
15 holders of the native title; or
16 (ii) for which the corporation acts as agent or representative
17 for the common law holders of the native title.

18 (2) The director does not need to give the other directors notice of the
19 interest under subsection 268-1(1).

20 (3) A failure to give the other directors notice of the interest does not
21 breach any general law rule about conflicts of interest.

22 **268-10 Director may give other directors standing notice about an**
23 **interest**

24 *Power to give notice*

25 (1) A director of an Aboriginal and Torres Strait Islander corporation
26 who has an interest in a matter may give the other directors
27 standing notice of the nature and extent of the interest in the matter
28 in accordance with subsection (2). The notice may be given at any
29 time and whether or not the matter relates to the affairs of the
30 corporation at the time the notice is given.

Section 268-10

1 Note: The standing notice may be given to the other directors before the
2 interest becomes a material personal interest.

- 3 (2) The notice under subsection (1) must:
4 (a) give details of the nature and extent of the interest; and
5 (b) be given:
6 (i) at a directors' meeting (either orally or in writing); or
7 (ii) to the other directors individually in writing.

8 The standing notice is given under subparagraph (b)(ii) when it has
9 been given to every director.

10 *Standing notice must be tabled at meeting if given to directors*
11 *individually*

- 12 (3) If the standing notice is given to the other directors individually in
13 writing, it must be tabled at the next directors' meeting after it is
14 given.

15 *Nature and extent of interest must be recorded in minutes*

- 16 (4) The director must ensure that the nature and extent of the interest
17 disclosed in the standing notice is recorded in the minutes of the
18 meeting at which the standing notice is given or tabled.

19 *Dates of effect and expiry of standing notice*

- 20 (5) The standing notice:
21 (a) takes effect as soon as it is given; and
22 (b) ceases to have effect if a person who was not a director of the
23 corporation at the time when the notice was given is
24 appointed as a director of the corporation.

25 A standing notice that ceases to have effect under paragraph (b)
26 commences to have effect again if it is given to the person referred
27 to in that paragraph.

28 Note: The notice may be given to the person referred to in paragraph (b) by
29 someone other than the director to whose interests it relates (for
30 example, by the secretary).

Chapter 6 Officers

Part 6-4 Duties and powers of directors and other officers and employees

Division 268 Duties in relation to disclosure of, and voting on matters involving, material personal interests

Section 268-15

1 *Effect of material increase in nature or extent of interest*

- 2 (6) The standing notice ceases to have effect in relation to a particular
3 interest if the nature or extent of the interest materially increases
4 above that disclosed in the notice.

5 *Effect of contravention by director*

- 6 (7) A contravention of this section by a director does not affect the
7 validity of any act, transaction, agreement, instrument, resolution
8 or other thing.

9 **268-15 Interaction of sections 268-1 and 268-10 with other laws etc.**

10 Sections 268-1 and 268-10 have effect in addition to, and not in
11 derogation of:

- 12 (a) any general law rule about conflicts of interest; and
13 (b) any provision in an Aboriginal and Torres Strait Islander
14 corporation's constitution (if any) that restricts a director
15 from:
16 (i) having a material personal interest in a matter; or
17 (ii) holding an office or possessing property;
18 involving duties or interests that conflict with the director's
19 duties or interests as a director.

20 **268-20 Restrictions on voting**

21 *Restrictions on voting and being present*

- 22 (1) A director of an Aboriginal and Torres Strait Islander corporation
23 who has a material personal interest in a matter that is being
24 considered at a directors' meeting must not:
25 (a) be present while the matter is being considered at the
26 meeting; or
27 (b) vote on the matter.

28 Penalty: 5 penalty units.

- 29 (2) Subsection (1) does not apply if:
30 (a) subsection (4) or (5) allows the director to be present; or

Section 268-20

1 (b) subsection 268-5(2) applies in relation to the interest; or

2 (c) for any other reason, the interest does not need to be
3 disclosed under section 268-1.

4 Note 1: A defendant bears an evidential burden in relation to the matter in
5 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

6 Note 2: Because section 268-5 provides that certain interests a director has as
7 a common law holder of native title do not need to be disclosed, those
8 interests will not prevent the director from being present and voting.

9 (3) An offence against subsection (1) is an offence of strict liability.

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

11 *Participation with approval of other directors*

12 (4) The director may be present and vote if directors who do not have
13 a material personal interest in the matter have passed a resolution
14 that:

15 (a) identifies the director, the nature and extent of the director's
16 interest in the matter and its relation to the affairs of the
17 corporation; and

18 (b) states that those directors are satisfied that the interest should
19 not disqualify the director from voting or being present.

20 *Participation with Registrar's approval*

21 (5) The director may be present and vote if he or she is so entitled
22 under a declaration or order made by the Registrar under
23 section 268-25.

24 *Director may consider or vote on resolution to deal with matter at*
25 *general meeting*

26 (6) If there are not enough directors to form a quorum for a directors'
27 meeting because of subsection (1), 1 or more of the directors
28 (including those who have a material personal interest in that
29 matter) may call a general meeting and the general meeting may
30 pass a resolution to deal with the matter.

31 *Effect of contravention by director*

32 (7) A contravention by a director of:

Chapter 6 Officers

Part 6-4 Duties and powers of directors and other officers and employees

Division 268 Duties in relation to disclosure of, and voting on matters involving, material personal interests

Section 268-25

- 1 (a) this section; or
2 (b) a condition attached to a declaration or order made by the
3 Registrar under section 268-25;
4 does not affect the validity of any resolution.

5 **268-25 Registrar's power to make declarations and class orders**

6 *Registrar's power to make specific declarations*

- 7 (1) The Registrar may declare in writing that a director of an
8 Aboriginal and Torres Strait Islander corporation who has a
9 material personal interest in a matter that is being, or is to be,
10 considered at a directors' meeting may, despite the director's
11 interest:
12 (a) be present while the matter is being considered at the
13 meeting; or
14 (b) vote on the matter; or
15 (c) both be present and vote.
- 16 (2) A declaration under subsection (1) is not a legislative instrument.
- 17 (3) However, the Registrar may only make the declaration if:
18 (a) the number of directors entitled to be present and vote on the
19 matter would be less than the quorum for a directors' meeting
20 if the director were not allowed to vote on the matter at the
21 meeting; and
22 (b) the matter needs to be dealt with urgently, or there is some
23 other compelling reason for the matter being dealt with at the
24 directors' meeting, rather than by a general meeting called
25 under subsection 268-20(6).
- 26 (4) A declaration under subsection (1) may:
27 (a) apply to all or only some of the directors; or
28 (b) specify conditions that the corporation or director must
29 comply with.

30 *Registrar's power to make class orders*

- 31 (5) The Registrar may make an order in writing that enables directors
32 who have a material personal interest in a matter to be present

Section 268-25

- 1 while the matter is being considered at a directors' meeting, vote
2 on that matter, or both be present and vote. The order may be made
3 in respect of a specified class of Aboriginal and Torres Strait
4 Islander corporation, directors, resolutions or interests.
- 5 (6) An order made under subsection (5) in respect of a class of
6 Aboriginal and Torres Strait Islander corporation is a legislative
7 instrument.
- 8 (7) The order may be expressed to be subject to conditions.
- 9 (8) Notice of the making, revocation or suspension of the order must
10 be published in the *Gazette*.

Section 271-1

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Division 271—Duty to discharge certain trust liabilities

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271-1 Directors liable for debts and other obligations incurred by corporation as trustee

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(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:

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(a) has not discharged, and cannot discharge, the liability or that part of it; and

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(b) is not entitled to be fully indemnified against the liability out of trust assets solely because of one or more of the following:

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(i) a breach of trust by the corporation;

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(ii) the corporation's acting outside the scope of its powers as trustee;

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(iii) a term of the trust denying, or limiting, the corporation's right to be indemnified against the liability.

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The person is liable both individually and jointly with the corporation and anyone else who is liable under this subsection.

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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.

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(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.

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(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:

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(a) in good faith; and

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(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.

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2 **Division 274—Powers of directors**

3 **274-1 Powers of directors (replaceable rule—see section 60-1)**

- 4 (1) The business of an Aboriginal and Torres Strait Islander
5 corporation is to be managed by or under the direction of the
6 directors.
- 7 (2) The directors may exercise all the powers of the corporation except
8 any powers that this Act or the corporation's constitution requires
9 the corporation to exercise in general meeting.

10 Note: For example, the directors may enter into contracts and borrow
11 money.

12 **274-5 Negotiable instruments (replaceable rule—see section 60-1)**

- 13 (1) Any 2 directors of an Aboriginal and Torres Strait Islander
14 corporation that has 2 or more directors, or the director of an
15 Aboriginal and Torres Strait Islander corporation that has only 1
16 director, may sign, draw, accept, endorse or otherwise execute a
17 negotiable instrument.
- 18 (2) The directors may determine that a negotiable instrument may be
19 signed, drawn, accepted, endorsed or otherwise executed in a
20 different way.

21 **274-10 Delegation**

- 22 (1) Unless the corporation's constitution provides otherwise, the
23 directors of an Aboriginal and Torres Strait Islander corporation
24 may by resolution delegate any of their powers to:
- 25 (a) a committee of directors; or
26 (b) a director; or
27 (c) an employee of the corporation; or
28 (d) any other person.
- 29 (2) The delegate must exercise the powers delegated in accordance
30 with any directions of the directors.

Chapter 6 Officers

Part 6-4 Duties and powers of directors and other officers and employees

Division 274 Powers of directors

Section 274-15

- 1 (3) The exercise of the power by the delegate is as effective as if the
2 directors had exercised it.

3 **274-15 Right of access to corporation books**

4 *Right while director*

- 5 (1) A person who is a director of an Aboriginal and Torres Strait
6 Islander corporation may inspect the books of the corporation
7 (other than its financial records) for the purposes of a legal
8 proceeding:
9 (a) to which the person is a party; or
10 (b) that the person proposes in good faith to bring; or
11 (c) that the person has reason to believe will be brought against
12 him or her.

13 Note 1: Section 322-25 gives the director a right of access to financial records.

14 Note 2: See also section 376-1.

15 *Right during 7 years after ceasing to be director*

- 16 (2) A person who has ceased to be a director of an Aboriginal and
17 Torres Strait Islander corporation may inspect the books of the
18 corporation (including its financial records) for the purposes of a
19 legal proceeding:
20 (a) to which the person is a party; or
21 (b) that the person proposes in good faith to bring; or
22 (c) that the person has reason to believe will be brought against
23 them.

24 This right continues for 7 years after the person ceased to be a
25 director of the corporation.

26 Note: See also section 376-1.

27 *Right to take copies*

- 28 (3) A person authorised to inspect books under this section for the
29 purposes of a legal proceeding may make copies of the books for
30 the purposes of those proceedings.

1 *Corporation not to refuse access*

2 (4) An Aboriginal and Torres Strait Islander corporation must allow a
3 person to exercise the person's rights to inspect or take copies of
4 the books under this section.

5 *Interaction with other rules*

6 (5) This section does not limit any right of access to corporation books
7 that a person has apart from this section.

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Part 6-5—Disqualification from managing corporations

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Division 279—Disqualification from managing corporations

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279-1 Disqualified person not to manage corporations

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(1) A person who is disqualified from managing Aboriginal and Torres Strait corporations under this Part commits an offence if:

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(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

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(b) the person exercises the capacity to affect significantly an Aboriginal and Torres Strait Islander corporation's financial standing; or

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(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:

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(i) knowing that the directors are accustomed to act in accordance with the person's instructions or wishes; or

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(ii) intending that the directors will act in accordance with those instructions or wishes.

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

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(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.

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

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(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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1 contravene subsection (1) merely because the directors of the
2 corporation do (or refrain from doing) a particular act:

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

7 Note: A defendant bears an evidential burden in relation to the matters in
8 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- 9 (4) It is a defence to a contravention of subsection (1) if the person had
10 permission to manage the corporation under either section 279-30
11 or 279-35 and the person's conduct was within the terms of that
12 permission.

13 Note: A defendant bears an evidential burden in relation to the matters in
14 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- 15 (5) A person ceases to be a director, alternate director or a secretary of
16 an Aboriginal and Torres Strait Islander corporation if:

- 17 (a) the person becomes disqualified from managing Aboriginal
18 and Torres Strait Islander corporations under this Part; and
19 (b) the person is not given permission to manage the corporation
20 under section 279-30 or 279-35.

21 Note: If a person ceases to be a director, alternate director or a secretary
22 under subsection (5), the corporation must notify the Registrar (see
23 subsection 304-5(5)).

24 **279-5 Automatic disqualification**

25 *Convictions*

- 26 (1) A person becomes disqualified from managing Aboriginal and
27 Torres Strait Islander corporations if the person:
28 (a) is convicted on indictment of an offence that:
29 (i) concerns the making, or participation in making, of
30 decisions that affect the whole or a substantial part of
31 the business of an Aboriginal and Torres Strait Islander
32 corporation; or
33 (ii) concerns an act that has the capacity to affect
34 significantly the financial standing of an Aboriginal and
35 Torres Strait Islander corporation; or

Chapter 6 Officers

Part 6-5 Disqualification from managing corporations

Division 279 Disqualification from managing corporations

Section 279-5

- 1 (b) is convicted of an offence that:
2 (i) is a contravention of this Act and is punishable by
3 imprisonment for a period greater than 12 months; or
4 (ii) involves dishonesty and is punishable by imprisonment
5 for at least 3 months; or
6 (c) is convicted of an offence against the law of a foreign
7 country that is punishable by imprisonment for a period
8 greater than 12 months.

9 The offences covered by paragraph (a) and subparagraph (b)(ii)
10 include offences against the law of a foreign country.

- 11 (2) The period of disqualification under subsection (1) starts on the
12 day the person is convicted and lasts for:
13 (a) if the person does not serve a term of imprisonment—5 years
14 after the day on which the person is convicted; or
15 (b) if the person serves a term of imprisonment—5 years after
16 the day on which the person is released from prison.

17 *Bankruptcy or personal insolvency agreement*

18 (3) A person is disqualified from managing Aboriginal and Torres
19 Strait Islander corporations if the person is an undischarged
20 bankrupt under the law of Australia, its external territories or
21 another country.

- 22 (4) A person is disqualified from managing Aboriginal and Torres
23 Strait Islander corporations if:
24 (a) the person has executed a personal insolvency agreement
25 under:
26 (i) Part X of the *Bankruptcy Act 1966*; or
27 (ii) a similar law of an external Territory or a foreign
28 country; and
29 (b) the terms of the agreement have not been fully complied
30 with.

31 *Disqualification under Corporations Act*

32 (5) A person is disqualified from managing Aboriginal and Torres
33 Strait Islander corporations at a particular time if the person is, at

1 that time, disqualified from managing Corporations Act
2 corporations under Part 2D.6 of the Corporations Act.

3 **279-10 Extension of period of automatic disqualification**

- 4 (1) This section applies if:
- 5 (a) under subsection 279-5(1); or
- 6 (b) as a result of the operation of subsection 206B(1) of the
7 Corporations Act and subsection 279-5(5) of this Act;
- 8 a person is disqualified from managing Aboriginal and Torres
9 Strait Islander corporations on being convicted of an offence.
- 10 (2) On application by the Registrar, the Court may extend by up to an
11 additional 15 years the period of disqualification.
- 12 (3) The Registrar must apply:
- 13 (a) before the period of disqualification begins; or
- 14 (b) before the end of the first year of the disqualification.
- 15 (4) The Registrar may apply only once in relation to the
16 disqualification.
- 17 (5) In determining whether an extension is justified (and if so, for how
18 long), the Court may have regard to any matters that the Court
19 considers appropriate.

20 **279-15 Court power of disqualification—contravention of civil**
21 **penalty provision**

- 22 (1) On application by the Registrar, the Court may disqualify a person
23 from managing Aboriginal and Torres Strait Islander corporations
24 for a period that the Court considers appropriate if:
- 25 (a) a declaration is made under:
- 26 (i) section 386-1 (civil penalty provision) that the person
27 has contravened a civil penalty provision; or
- 28 (ii) section 1317E of the Corporations Act (civil penalty
29 provision) that the person has contravened a
30 corporation/scheme civil penalty provision (within the
31 meaning of that Act); and
- 32 (b) the Court is satisfied that the disqualification is justified.

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Division 279 Disqualification from managing corporations

Section 279-20

- 1 (2) In determining whether the disqualification is justified, the Court
2 may have regard to:
3 (a) the person's conduct in relation to the management, business
4 or property of any Aboriginal and Torres Strait Islander
5 corporation or Corporations Act corporation; and
6 (b) any other matters that the Court considers appropriate.

7 **279-20 Court power of disqualification—insolvency and**
8 **non-payment of debts**

- 9 (1) On application by the Registrar, the Court may disqualify a person
10 from managing Aboriginal and Torres Strait Islander corporations
11 for up to 20 years if:
12 (a) within the last 7 years, the person has been an officer of 2 or
13 more corporations when they have failed in the
14 circumstances referred to in subsection (2); and
15 (b) each of those corporations was either an Aboriginal and
16 Torres Strait Islander corporation or Corporations Act
17 corporation; and
18 (c) the Court is satisfied that:
19 (i) the manner in which each of the corporations was
20 managed was wholly or partly responsible for the
21 corporation failing; and
22 (ii) the disqualification is justified.
- 23 (2) For the purposes of subsection (1), the circumstances are:
24 (a) a Court orders the corporation to be wound up under:
25 (i) section 526-1 of this Act; or
26 (ii) section 459B of the Corporations Act;
27 because the Court is satisfied that the corporation is
28 insolvent; or
29 (b) the corporation enters into voluntary liquidation and creditors
30 are not fully paid or are unlikely to be fully paid; or
31 (c) the corporation executes:
32 (i) a deed of corporation arrangement; or
33 (ii) a deed of company arrangement (within the meaning of
34 the Corporations Act);

- 1 and creditors are not fully paid or are unlikely to be fully
2 paid; or
3 (d) the corporation ceases to carry on business and creditors are
4 not fully paid or are unlikely to be fully paid; or
5 (e) a levy of execution against the corporation is not satisfied; or
6 (f) a receiver, receiver and manager, or provisional liquidator is
7 appointed in relation to the corporation; or
8 (g) the corporation enters into a compromise or arrangement
9 with its creditors under Part 5.1 of the Corporations Act; or
10 (h) the corporation is wound up and a liquidator lodges a report
11 under subsection 533(1) of the Corporations Act (including
12 that section as applied by section 526-35 of this Act) about
13 the corporation's inability to pay its debts.

14 Note: To satisfy paragraph (h), the corporation must begin to be wound up
15 while the person is an officer or within 12 months after the person
16 ceases to be an officer. However, the report under subsection 533(1)
17 of the Corporations Act may be lodged by the liquidator at a time that
18 is more than 12 months after the person ceases to be an officer.
19 Sections 513A to 513D of the Corporations Act contain rules about
20 when a winding up begins.

- 21 (3) For the purposes of subsection (1), a person is an *officer* of a
22 Corporations Act corporation if the person is an officer of that
23 corporation for the purposes of the Corporations Act.
- 24 (4) In determining whether the disqualification is justified, the Court
25 may have regard to:
26 (a) the person's conduct in relation to the management, business
27 or property of any Aboriginal and Torres Strait Islander
28 corporation or Corporations Act corporation; and
29 (b) any other matters that the Court considers appropriate.

30 **279-25 Court power of disqualification—repeated contraventions of**
31 **Act**

- 32 (1) On application by the Registrar, the Court may disqualify a person
33 from managing Aboriginal and Torres Strait Islander corporations
34 for the period that the Court considers appropriate if:
35 (a) the person:

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Division 279 Disqualification from managing corporations

Section 279-30

- 1 (i) has at least twice been an officer of a body corporate
2 that has contravened this Act or the Corporations Act
3 while the person was an officer of the body corporate
4 and each time the person has failed to take reasonable
5 steps to prevent the contravention; or
6 (ii) has at least twice contravened this Act or the
7 Corporations Act while the person was an officer of a
8 body corporate; or
9 (iii) has been an officer of a body corporate and has done
10 something that would have contravened subsection
11 265-1(1) or section 265-5 if the body corporate had
12 been an Aboriginal and Torres Strait Islander
13 corporation; or
14 (b) the Court is satisfied that the disqualification is justified.
- 15 (2) For the purposes of subsection (1), a person is an *officer* of a
16 Corporations Act corporation if the person is an officer of that
17 corporation for the purposes of the Corporations Act.
- 18 (3) In determining whether the disqualification is justified, the Court
19 may have regard to:
20 (a) the person's conduct in relation to the management, business
21 or property of any Aboriginal and Torres Strait Islander
22 corporation or Corporations Act corporation; and
23 (b) any other matters that the Court considers appropriate.

24 **279-30 Registrar's power of disqualification**

25 *Power to disqualify*

- 26 (1) The Registrar may disqualify a person from managing Aboriginal
27 and Torres Strait Islander corporations for up to 5 years if:
28 (a) within 7 years immediately before the Registrar gives a
29 notice under subparagraph (b)(i):
30 (i) the person has been an officer of 2 corporations; and
31 (ii) each of those corporations was either an Aboriginal and
32 Torres Strait Islander corporation or a Corporations Act
33 corporation; and

- 1 (iii) while the person was an officer, or within 12 months
2 after the person ceased to be an officer of those
3 corporations, each of the corporations was wound up
4 and a liquidator lodged a report under subsection 533(1)
5 of the Corporations Act (including that section as
6 applied by section 526-35 of this Act) about the
7 corporation's inability to pay its debts; and
8 (b) the Registrar has given the person:
9 (i) a written notice requiring them to demonstrate why the
10 person should not be disqualified; and
11 (ii) an opportunity to be heard on the question; and
12 (c) the Registrar is satisfied that the disqualification is justified.
- 13 (2) A notice under subsection (1) is not a legislative instrument.
- 14 (3) For the purposes of subsection (1), a person is an *officer* of a
15 Corporations Act corporation if the person is an officer of that
16 corporation for the purposes of the Corporations Act.

17 *Grounds for disqualification*

- 18 (4) In determining whether disqualification is justified, the Registrar:
19 (a) must have regard to whether any of the Aboriginal and
20 Torres Strait Islander corporations or Corporations Act
21 corporations mentioned in subsection (1) were related to one
22 another; and
23 (b) may have regard to:
24 (i) the person's conduct in relation to the management,
25 business or property of any Aboriginal and Torres Strait
26 Islander corporation or Corporations Act corporation;
27 and
28 (ii) whether the disqualification would be in the public
29 interest; and
30 (iii) any other matters that the Registrar considers
31 appropriate.

32 *Notice of disqualification*

- 33 (5) If the Registrar disqualifies a person from managing Aboriginal
34 and Torres Strait Islander corporations under this section, the

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Division 279 Disqualification from managing corporations

Section 279-35

1 Registrar must give a written notice to the person advising the
2 person of the disqualification.

3 *Start of disqualification*

4 (6) The disqualification takes effect from the time when a notice
5 referred to in subsection (5) is served on the person.

6 *Registrar power to grant leave*

7 (7) The Registrar may give a person whom:

8 (a) the Registrar has disqualified from managing Aboriginal and
9 Torres Strait Islander corporations under this Part; or

10 (b) ASIC has disqualified from managing corporations under
11 Part 2D.6 of the Corporations Act;

12 written permission to manage a particular Aboriginal and Torres
13 Strait Islander corporation or corporations. The permission may be
14 expressed to be subject to conditions and exceptions determined by
15 the Registrar.

16 (8) A permission under subsection (7) is not a legislative instrument.

17 **279-35 Court power to grant leave**

18 (1) A person who is disqualified from managing Aboriginal and Torres
19 Strait Islander corporations may apply to the Court for leave to
20 manage:

21 (a) Aboriginal and Torres Strait Islander corporations; or

22 (b) a particular class of Aboriginal and Torres Strait Islander
23 corporation; or

24 (c) a particular Aboriginal and Torres Strait Islander corporation.

25 (2) Subsection (1) does not apply if the person:

26 (a) was disqualified by the Registrar under section 279-30; or

27 (b) was disqualified under subsection 279-5(5) because ASIC
28 disqualified the person from managing corporations under
29 section 206F of the Corporations Act.

30 (3) The person must lodge a notice with the Registrar at least 21 days
31 before commencing the proceedings.

- 1 (4) The order granting leave may be expressed to be subject to
2 exceptions and conditions determined by the Court.
- 3 Note: If the Court grants the person leave to manage the corporation, the
4 person may be appointed as a director (see subsection 246-1(2)) or
5 secretary (see subsection 257-10(2)) of the corporation.
- 6 (5) The person must lodge with the Registrar a copy of any order
7 granting leave within 14 days after the order is made.
- 8 (6) On application by the Registrar, the Court may revoke the leave.
9 The order revoking leave does not take effect until it is served on
10 the person.

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Part 6-6—Member approval needed for related party benefit

3

4

Division 284—Need for member approval

5

284-1 Need for member approval for financial benefit

6

(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:

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(a) the corporation or entity must:

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(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.

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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*.

18

(2) If:

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(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.

29

284-5 Consequences of breach

30

(1) If the corporation or entity contravenes section 284-1:

Section 284-5

1 (a) the contravention does not affect the validity of any contract
2 or transaction connected with the giving of the benefit; and

3 (b) the corporation or entity does not commit an offence.

4 Note: A Court may order an injunction to stop the corporation or entity
5 giving the benefit to the related party (see section 576-25).

6 (2) A person contravenes this subsection if they are involved in a
7 contravention of section 284-1 by a corporation or entity.

8 Note 1: This subsection is a civil penalty provision (see section 386-1).

9 Note 2: Section 694-55 defines *involved in*.

10 (3) A person commits an offence if they are involved in a
11 contravention of section 284-1 by a corporation or entity and the
12 involvement is dishonest.

13 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

Section 287-1

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2

Division 287—Exceptions to the requirement for member approval

3

4

287-1 Remuneration and reimbursement for officer or employee

5

Benefits that are reasonable remuneration to employees

6

(1) Member approval is not needed to give a financial benefit if:

7

(a) the benefit is remuneration to a related party as an employee of the following:

8

9

(i) the corporation;

10

(ii) an entity that the corporation controls;

11

(iii) an entity that controls the corporation;

12

(iv) an entity that is controlled by an entity that controls the corporation; and

13

14

(b) to give the remuneration would be reasonable given:

15

(i) the circumstances of the corporation or entity giving the remuneration; and

16

17

(ii) the related party's circumstances (including the responsibilities involved in the employment, the

18

19

employee's experience and performance record and the employee's length of service).

20

21

Remuneration of officers

22

(2) If an Aboriginal and Torres Strait Islander corporation's

23

constitution provides for the remuneration of officers, member

24

approval is not needed to give a financial benefit if:

25

(a) the benefit is remuneration to a related party as a director or officer of the following:

26

27

(i) the corporation;

28

(ii) an entity that the corporation controls;

29

(iii) an entity that controls the corporation;

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(iv) an entity that is controlled by an entity that controls the corporation; and

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32

(b) to give the remuneration would be reasonable given:

Section 287-5

- 1 (i) the circumstances of the corporation or entity giving the
2 remuneration; and
3 (ii) the related party's circumstances (including the
4 responsibilities involved in the office, the officer's
5 experience and performance record and the officer's
6 length of service).

7 *Benefits that are payments of expenses incurred*

- 8 (3) Member approval is not needed to give a financial benefit if:
9 (a) the benefit is payment of expenses incurred or to be incurred,
10 or reimbursement for expenses incurred, by a related party in
11 performing duties as an officer or employee of the following:
12 (i) the corporation;
13 (ii) an entity that the corporation controls;
14 (iii) an entity that controls the corporation;
15 (iv) an entity that is controlled by an entity that controls the
16 corporation; and
17 (b) to give the benefit would be reasonable in the circumstances
18 of the corporation or entity giving the remuneration.
- 19 (4) For the purposes of this section:
20 (a) a contribution made by an Aboriginal and Torres Strait
21 Islander corporation or related body corporate to a fund for
22 the purpose of making provision for, or obtaining,
23 superannuation benefits for an officer of the corporation or
24 related body corporate, or for dependants of an officer of the
25 corporate or related body corporate, is remuneration provided
26 by the body to the officer of the body; and
27 (b) a financial benefit given to a person because of the person
28 ceasing to hold an office or employment as an officer or
29 employee of a body corporate is remuneration paid or
30 provided to the person in a capacity as an officer of the body.

31 **287-5 Benefit to or by closely-held subsidiary**

- 32 (1) Member approval is not needed to give a financial benefit if the
33 benefit is given:

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Part 6-6 Member approval needed for related party benefit

Division 287 Exceptions to the requirement for member approval

Section 287-10

- 1 (a) by a body corporate to a closely-held subsidiary of the body;
2 or
3 (b) by a closely-held subsidiary of a body corporate to the body
4 or an entity it controls.
- 5 (2) For the purposes of this section, a body corporate is a ***closely-held***
6 ***subsidiary*** of another body corporate if, and only if, no member of
7 the first-mentioned body is a person other than:
8 (a) the other body; or
9 (b) a nominee of the other body; or
10 (c) a body corporate that is a closely-held subsidiary of the other
11 body because of any other application or applications of this
12 subsection; or
13 (d) a nominee of a body referred to in paragraph (c).
- 14 (3) For the purposes of subsection (2), disregard shares that are not
15 voting shares.

16 **287-10 Benefits to members that do not discriminate unfairly**

- 17 Member approval is not needed to give a financial benefit if:
18 (a) the benefit is given to the related party in the related party's
19 capacity as a member of the corporation; and
20 (b) giving the benefit does not discriminate unfairly against the
21 other members of the corporation.

22 **287-15 Court order**

- 23 Member approval is not needed to give a financial benefit under an
24 order of a court.

1

2 **Division 290—Procedure for obtaining member approval**

3 **290-1 Resolution may specify matters by class or kind**

4 A resolution under this Division may specify anything either in
5 particular or by reference to class or kind.

6 **290-5 Corporation must lodge material that will be put to members**
7 **with the Registrar**

8 (1) At least 14 days before the notice convening the relevant meeting
9 is given, the Aboriginal and Torres Strait Islander corporation must
10 lodge:

- 11 (a) a proposed notice of meeting setting out the text of the
12 proposed resolution; and
13 (b) a proposed explanatory statement satisfying section 290-10;
14 and
15 (c) any other document that is proposed to accompany the notice
16 convening the meeting and that relates to the proposed
17 resolution; and
18 (d) any other document that any of the following proposes to
19 give to members of the corporation before or at the meeting:
20 (i) the corporation;
21 (ii) a related party of the corporation to whom the proposed
22 resolution would permit a financial benefit to be given;
23 (iii) an associate of the corporation or of such a related
24 party;
25 and can reasonably be expected to be material to a member in
26 deciding how to vote on the proposed resolution.

27 Penalty: 5 penalty units.

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

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

30 (3) If, when the notice convening the meeting is given, the Registrar:

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Section 290-10

- 1 (a) has approved in writing a period of less than 14 days for the
2 purposes of subsection (1); and
3 (b) has not revoked the approval by written notice to the
4 corporation;
5 subsection (1) applies as if the reference to 14 days were a
6 reference to the approved period.
- 7 (4) An approval under subsection (3) is not a legislative instrument.
- 8 (5) The Registrar may give and revoke approvals for the purposes of
9 subsection (3).

10 **290-10 Requirements for explanatory statement to members**

- 11 (1) The proposed explanatory statement lodged under section 290-5
12 must be in writing and set out:
13 (a) the related parties to whom the proposed resolution would
14 permit financial benefits to be given; and
15 (b) the nature of the financial benefits; and
16 (c) in relation to each director of the corporation:
17 (i) if the director wanted to make a recommendation to
18 members about the proposed resolution—the
19 recommendation and his or her reasons for it; or
20 (ii) if not—why not; or
21 (iii) if the director was not available to consider the
22 proposed resolution—why not; and
23 (d) in relation to each such director:
24 (i) whether the director had an interest in the outcome of
25 the proposed resolution; and
26 (ii) if so—what it was; and
27 (e) all other information that:
28 (i) is reasonably required by members in order to decide
29 whether or not it is in the corporation's interests to pass
30 the proposed resolution; and
31 (ii) is known to the corporation or to any of its directors.
- 32 (2) An example of the kind of information referred to in
33 paragraph (1)(e) is information about what, from an economic and
34 commercial point of view, are the true potential costs and

1 detriments of, or resulting from, giving financial benefits as
2 permitted by the proposed resolution, including (without
3 limitation):

- 4 (a) opportunity costs; and
5 (b) taxation consequences (such as liability to fringe benefits
6 tax); and
7 (c) benefits forgone by whoever would give the benefits.

8 Note: Sections 265-1 and 265-5 require an officer of a corporation to act
9 honestly and to exercise care and diligence. These duties extend to
10 preparing an explanatory statement under this section. Section 561-5
11 creates offences where false and misleading material relating to a
12 corporation's affairs is made available or furnished to members.

13 **290-15 Registrar may comment on proposed resolution**

- 14 (1) Within 14 days after the corporation lodges documents under
15 section 290-5, the Registrar may give to the corporation written
16 comments on those documents (other than comments about
17 whether the proposed resolution is in the corporation's best
18 interests).
- 19 (2) Comments under subsection (1) are not legislative instruments.
- 20 (3) The Registrar must keep a copy of the written comments it gives to
21 a corporation under subsection (1) and sections 421-1 and 421-5
22 apply to the copy as if it were a document lodged with the
23 Registrar.
- 24 (4) The fact that the Registrar has given particular comments, or has
25 declined to give comments, under subsection (1) does not in any
26 way affect the performance or exercise of any of the Registrar's
27 functions and powers.

28 **290-20 Requirements for notice of meeting**

- 29 (1) The notice convening the meeting:
30 (a) must be the same, in all material respects, as the proposed
31 notice lodged under section 290-5; and
32 (b) must be accompanied by an explanatory statement that is the
33 same, in all material respects, as the proposed explanatory
34 statement lodged under that section; and

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Section 290-25

- 1 (c) must be accompanied by a document that is, or documents
2 that are, the same, in all material respects, as the document or
3 documents (if any) lodged under paragraph 290-5(1)(c); and
4 (d) if the Registrar has given to the corporation, under
5 section 290-15, comments on the documents lodged under
6 section 290-5—must be accompanied by a copy of those
7 comments; and
8 (e) must not be accompanied by any other documents.

9 Penalty: 5 penalty units.

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

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

12 **290-25 Other material put to members**

- 13 (1) Each document (if any) that:
14 (a) did not accompany the notice convening the meeting; and
15 (b) was given to members of the corporation before or at the
16 meeting by:
17 (i) the corporation; or
18 (ii) a related party of the corporation to whom the proposed
19 resolution would permit a financial benefit to be given;
20 or
21 (iii) an associate of the corporation or of such a related
22 party; and
23 (c) can reasonably be expected to have been material to a
24 member in deciding how to vote on the proposed resolution;
25 must be the same, in all material respects, as a document lodged
26 under paragraph 290-5(1)(d).

27 Penalty: 5 penalty units.

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

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

1 **290-30 Proposed resolution cannot be varied**

2 The resolution must be the same as the proposed resolution set out
3 in the proposed notice lodged under section 290-5.

4 **290-35 Voting by or on behalf of related party interested in**
5 **proposed resolution**

- 6 (1) At a general meeting, a vote on a proposed resolution under this
7 Division must not be cast (in any capacity) by or on behalf of:
8 (a) a related party of the corporation to whom the resolution
9 would permit a financial benefit to be given; or
10 (b) an associate of such a related party.
- 11 (2) Subsection (1) does not prevent the casting of a vote if:
12 (a) it is cast by a person as a proxy appointed by writing that
13 specifies how the proxy is to vote on the proposed resolution;
14 and
15 (b) it is not cast on behalf of a related party or associate of a kind
16 referred to in subsection (1).
- 17 (3) The regulations may prescribe cases where subsection (1) does not
18 apply.
- 19 (4) The Registrar may by writing declare that:
20 (a) subsection (1) does not apply to a specified proposed
21 resolution; or
22 (b) subsection (1) does not prevent the casting of a vote, on a
23 specified proposed resolution, by a specified entity, or on
24 behalf of a specified entity;
25 but may only do so if satisfied that the declaration will not cause
26 unfair prejudice to the interests of any member of the corporation.
- 27 (5) A declaration in force under subsection (4) has effect accordingly.
- 28 (6) A declaration under subsection (4) is not a legislative instrument.
- 29 (7) If a vote is cast in contravention of subsection (1), the related party
30 or associate, as the case may be, contravenes this subsection,
31 whether or not the proposed resolution is passed.

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Section 290-40

- 1 Penalty: 200 penalty units or imprisonment for 5 years, or both.
- 2 (8) For the purposes of this section, a vote is cast on behalf of an entity
- 3 if, and only if, it is cast:
- 4 (a) as proxy for the entity; or
- 5 (b) otherwise on behalf of the entity; or
- 6 (c) in respect of a share in respect of which the entity has:
- 7 (i) power to vote; or
- 8 (ii) power to exercise, or control the exercise of, a right to
- 9 vote.
- 10 (9) Subject to subsection 290-40(1), a contravention of this section
- 11 does not affect the validity of a resolution.
- 12 (10) This section has effect despite:
- 13 (a) anything else in:
- 14 (i) this Act; or
- 15 (ii) any other law (including the general law) of a State or
- 16 Territory; or
- 17 (b) anything in a body corporate's constitution.

290-40 Voting on the resolution

- 18
- 19 (1) If any votes on the resolution are cast in contravention of
- 20 subsection 290-35(1), it must be the case that the resolution would
- 21 still be passed even if those votes were disregarded.
- 22 (2) If a poll was duly demanded on the question that the resolution be
- 23 passed, subsections (3) and (4) apply in relation to voting on the
- 24 poll.
- 25 (3) In relation to each member of the corporation who voted on the
- 26 resolution in person, the corporation must record in writing:
- 27 (a) the member's name; and
- 28 (b) how many votes the member cast for the resolution and how
- 29 many against.
- 30 Penalty: 5 penalty units.

- 1 (4) In relation to each member of the corporation who voted on the
2 resolution by proxy, or by a representative authorised under
3 section 201-110, the corporation must record in writing:
4 (a) the member's name; and
5 (b) in relation to each person who voted as proxy, or as such a
6 representative, for the member:
7 (i) the person's name; and
8 (ii) how many votes the person cast on the resolution as
9 proxy, or as such a representative, for the member; and
10 (iii) how many of those votes the person cast for the
11 resolution and how many against.

12 Penalty: 5 penalty units.

- 13 (5) For 7 years after the day when a resolution under this Division is
14 passed, the corporation must retain the records it made under this
15 section in relation to the resolution.

16 Penalty: 5 penalty units.

- 17 (6) An offence against subsection (3), (4) or (5) is an offence of strict
18 liability.

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

20 **290-45 Notice of resolution to be lodged**

21 The corporation must lodge a notice setting out the text of the
22 resolution within 28 days after the resolution is passed.

23 **290-50 Declaration by court of substantial compliance**

- 24 (1) The Court may declare that the conditions provided for in this
25 Division have been satisfied if it finds that they have been
26 substantially satisfied.
27 (2) A declaration may be made only on the application of an interested
28 person.

1

2

Division 293—Related parties and financial benefits

3

293-1 Related parties

4

Controlling entities

5

- (1) An entity that controls an Aboriginal and Torres Strait Islander corporation is a **related party** of the corporation.

6

7

Directors and their spouses

8

- (2) The following persons are **related parties** of an Aboriginal and Torres Strait Islander corporation:

9

10

(a) directors of the corporation;

11

(b) directors (if any) of an entity that controls the corporation;

12

(c) if the corporation is controlled by an entity that is not a body corporate—each of the persons making up the controlling entity;

13

14

15

(d) spouses and de facto spouses of the persons referred to in paragraphs (a), (b) and (c).

16

17

Relatives of directors and spouses

18

- (3) The following relatives of persons referred to in subsection (2) are **related parties** of the Aboriginal and Torres Strait Islander corporation:

19

20

(a) parents;

21

22

(b) children.

23

Entities controlled by other related parties

24

- (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.

25

26

27

1 *Related party in previous 6 months*

- 2 (5) An entity is a **related party** of an Aboriginal and Torres Strait
3 Islander corporation at a particular time if the entity was a related
4 party of the corporation of a kind referred to in subsection (1), (2),
5 (3) or (4) at any time within the previous 6 months.

6 *Entity has reasonable grounds to believe it will become related*
7 *party in future*

- 8 (6) An entity is a **related party** of an Aboriginal and Torres Strait
9 Islander corporation at a particular time if the entity believes or has
10 reasonable grounds to believe that it is likely to become a related
11 party of the corporation of a kind referred to in subsection (1), (2),
12 (3) or (4) at any time in the future.

13 *Acting in concert with related party*

- 14 (7) An entity is a **related party** of an Aboriginal and Torres Strait
15 Islander corporation if the entity acts in concert with a related party
16 of the corporation on the understanding that the related party will
17 receive a financial benefit if the corporation gives the entity a
18 financial benefit.

19 **293-5 Giving a financial benefit**

- 20 (1) In determining what constitutes **giving a financial benefit**:
21 (a) give a broad interpretation to financial benefits being given,
22 even if criminal or civil penalties may be involved; and
23 (b) the economic and commercial substance of conduct is to
24 prevail over its legal form; and
25 (c) disregard any consideration that is or may be given for the
26 benefit, even if the consideration is adequate.
- 27 (2) **Giving a financial benefit** includes the following:
28 (a) giving a financial benefit indirectly, for example, through 1
29 or more interposed entities;
30 (b) giving a financial benefit by making an informal agreement,
31 oral agreement or an agreement that has no binding force;

Chapter 6 Officers

Part 6-6 Member approval needed for related party benefit

Division 293 Related parties and financial benefits

Section 293-5

- 1 (c) giving a financial benefit that does not involve paying money
2 (for example by conferring a financial advantage).
- 3 (3) The following are examples of *giving a financial benefit* to a
4 related party:
- 5 (a) giving or providing the related party finance or property;
6 (b) buying an asset from or selling an asset to the related party;
7 (c) leasing an asset from or to the related party;
8 (d) supplying services to or receiving services from the related
9 party;
10 (e) issuing securities or granting an option to the related party;
11 (f) taking up or releasing an obligation of the related party.

1

2 **Division 296—Interaction with other rules**

3 **296-1 General duties still apply**

4 A director is not relieved from any of his or her duties under this
5 Act (including sections 265-1 and 265-25), or his or her fiduciary
6 duties, in connection with a transaction merely because the
7 transaction is authorised by a provision of this Part or is approved
8 by a resolution of members under a provision of this Part.

Chapter 6 Officers

Part 6-7 Public information about directors, secretaries and contact persons

Division 301 Introduction

Section 301-1

1

2

**Part 6-7—Public information about directors,
secretaries and contact persons**

3

4

Division 301—Introduction

5

301-1 What this Part is about

6

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).

7

8

9

This information is entered on the Register of Aboriginal and Torres Strait Islander Corporations and is publicly available.

10

1

2 **Division 304—Information to be provided**

3 **304-1 Director, alternate director, secretary or contact person may**
4 **notify the Registrar of resignation or retirement**

- 5 (1) If a director, alternate director, secretary or contact person of an
6 Aboriginal and Torres Strait Islander corporation retires or resigns,
7 he or she may give the Registrar written notice of the retirement or
8 resignation.
- 9 (2) To be effective, a notice of resignation must be accompanied by a
10 copy of the letter of resignation given to the corporation.
- 11 (3) Nothing in this section affects the corporation's obligations to
12 notify the Registrar of the resignation or retirement.

13 **304-5 Notice of name and address of directors and secretaries to the**
14 **Registrar**

15 *New directors or secretaries*

- 16 (1) An Aboriginal and Torres Strait Islander corporation must lodge
17 with the Registrar a notice of the personal details of a director,
18 secretary or contact person within 28 days after he or she is
19 appointed.

20 Note 1: If a person becomes a director, secretary or contact person under
21 section 42-10 there is no appointment and no notice is required under
22 this subsection.

23 Note 2: If a person who was appointed as an alternate director becomes a
24 director under the terms of his or her appointment as an alternate
25 director, there is no appointment as a director and no notice is required
26 under this subsection.

27 Penalty: 10 penalty units.

- 28 (2) Subsection (1) does not apply if a contact person is appointed by
29 the Registrar under section 257-25.

Chapter 6 Officers

Part 6-7 Public information about directors, secretaries and contact persons

Division 304 Information to be provided

Section 304-5

1

New alternate directors

2

- (3) An Aboriginal and Torres Strait Islander corporation must lodge with the Registrar a notice of:

3

(a) the personal details of a person who is appointed as an alternate director; and

4

5

(b) the terms of his or her appointment (including terms about when the alternate director is to act as a director);

6

7

within 28 days after his or her appointment as an alternate director.

8

9

Penalty: 10 penalty units.

10

Personal details

11

- (4) The personal details of a director, alternate director, secretary or contact person are:

12

13

(a) his or her given and family names; and

14

(b) all of his or her former given and family names; and

15

(c) all other names by which he or she is or was known; and

16

(d) his or her date and place of birth; and

17

(e) his or her address.

18

Note: For *address* see section 304-15.

19

Changes in details

20

- (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.

21

22

23

Penalty: 10 penalty units.

24

Notice required if person stops being a director etc.

25

- (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.

26

27

28

Penalty: 10 penalty units.

1 (7) Subsection (6) does not apply if the person was an alternate
2 director who stopped being a director in accordance with the terms
3 of his or her appointment as an alternate director.

4 Note: A defendant bears an evidential burden in relation to the matter in
5 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

6 (8) An offence against subsection (1), (3), (5) or (6) is an offence of
7 strict liability.

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

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

11 **304-10 Director, alternate director, secretary and contact person**
12 **must give information to corporation**

13 (1) A director, alternate director, secretary or contact person must give
14 the corporation any information the corporation needs to comply
15 with subsection 304-5(1) or (3) within 14 days after his or her
16 initial appointment unless he or she has previously given the
17 information to the corporation.

18 Penalty: 10 penalty units.

19 (2) A director, alternate director, secretary or contact person must give
20 the corporation any information the corporation needs to comply
21 with subsection 304-5(5) within 14 days after any change in his or
22 her personal details.

23 Penalty: 10 penalty units.

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

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

27 **304-15 Address for officers**

28 *Address is normally residential address*

29 (1) A person's address for the purposes of an application under
30 section 21-1 or notice under subsection 304-5(1), (3) or (5) must be
31 his or her usual residential address unless he or she is entitled to

Chapter 6 Officers

Part 6-7 Public information about directors, secretaries and contact persons

Division 304 Information to be provided

Section 304-15

1 have an alternative address substituted for his or her usual
2 residential address under subsection (2).

3 *Entitlement to have alternative address*

4 (2) The person is entitled to have an alternative address substituted for
5 his or her usual residential address if:

6 (a) his or her name, but not his or her residential address, is on
7 an electoral roll under the *Commonwealth Electoral Act 1918*
8 because of section 104 of that Act; or

9 (b) his or her name is not on an electoral roll under that Act and
10 the Registrar determines, in writing, that including his or her
11 residential address in the notice or application would put at
12 risk his or her personal safety or the personal safety of
13 members of his or her family.

14 This alternative address must be in Australia and be one at which
15 documents can be served on the person. At any particular time, a
16 person is entitled to have only 1 alternative address under this
17 section.

18 (3) A determination under paragraph (2)(b) is not a legislative
19 instrument.

20 (4) A person who takes advantage of subsection (2) must:

21 (a) before or at the same time as the alternative address is first
22 included in an application or notice, lodge with the Registrar
23 notice of the person's usual residential address; and

24 (b) lodge with the Registrar notice of any change in the person's
25 usual residential address within 14 days after the change.

26 Penalty: 5 penalty units.

27 (5) If a court gives a judgment for payment of a sum of money against
28 a person who is taking advantage of subsection (2), the Registrar
29 may give details of the person's usual residential address to an
30 officer of the court for the purposes of enforcing the judgment
31 debt.

32 (6) An offence against subsection (4) is an offence of strict liability.

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

1

2 **Division 307—Registrar may ask for information**

3 **307-1 Registrar's power to ask for information about person's**
4 **position as director, secretary or contact person**

- 5 (1) The Registrar may ask a person, in writing, to inform the Registrar:
6 (a) whether the person is a director, secretary or contact person
7 of a particular Aboriginal and Torres Strait Islander
8 corporation; and
9 (b) if the person is no longer a director, secretary or contact
10 person of the corporation—the date on which the person
11 stopped being a director, secretary or contact person.

- 12 (2) The person must give the information to the Registrar in writing by
13 the date specified in the request.

14 Penalty: 10 penalty units.

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

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

- 17 (4) A request under subsection (1) is not a legislative instrument.

1

2

Chapter 7—Record keeping, reporting requirements and books

3

4

Part 7-1—Introduction

5

Division 317—Introduction

6

317-1 What this Chapter is about

7

An Aboriginal and Torres Strait Islander corporation must keep particular records (see Part 7-2).

8

9

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.

10

11

12

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. These determinations can also relieve officers and auditors from obligations imposed by this Chapter.

13

14

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16

17

The regulations may modify the operation of Parts 7-2 and 7-3 (see Part 7-7).

18

19

Part 7-8 deals with the books kept by an Aboriginal and Torres Strait Islander corporation.

20

1

2 **Part 7-2—Record keeping requirements**

3 **Division 322—Record keeping requirements**

4 **322-1 What this Part is about**

5

This Part sets out:

6

- 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

7

8

9

10

- how the records are required to be kept.

11

12

13

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:

14

15

- a member may apply to the Court for an order to inspect the records (see section 175-1);

16

17

- the auditor has a right of access to the records (see section 339-85);

18

19

20

21

22

- 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));

23

24

- the Registrar has certain powers in relation to the records under Chapter 10.

Section 322-5

1 **322-5 Obligation to keep copy of constitution and records about**
2 **officers, contact person, etc.**

3 An Aboriginal and Torres Strait Islander corporation must keep:

4 (a) an up-to-date copy of its constitution (incorporating changes
5 to the constitution); and

6 (b) written records relating to:

7 (i) the names and addresses of the corporation's current
8 officers and secretary or contact person (as the case may
9 be); and

10 (ii) the corporation's registered office (if any); and

11 (iii) the corporation's document access address (if any); and

12 (iv) such other matters about the corporation as are set out in
13 the regulations.

14 Note: An Aboriginal and Torres Strait Islander corporation is also required
15 to maintain a register of members and a register of former members
16 under Part 4-5.

17 **322-10 Obligation to keep financial records**

18 (1) An Aboriginal and Torres Strait Islander corporation must keep
19 written financial records that:

20 (a) correctly record and explain its transactions and financial
21 position and performance; and

22 (b) would enable true and fair financial reports to be prepared
23 and audited.

24 The obligation to keep financial records of transactions extends to
25 transactions undertaken as trustee.

26 Penalty: 25 penalty units or imprisonment for 6 months, or both.

27 Note: Section 700-1 defines *financial records*.

28 *Period for which records must be retained*

29 (2) The financial records must be retained for 7 years after the
30 transactions covered by the records are completed.

31 Penalty: 25 penalty units or imprisonment for 6 months, or both.

1 *Strict liability offences*

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

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

5 **322-15 Physical format**

6 (1) If the records that an Aboriginal and Torres Strait Islander
7 corporation is required to keep under this Division are kept in
8 electronic form, the records must be convertible into hard copy.
9 Hard copy must be made available, within a reasonable time, to a
10 person who is entitled to inspect the records.

11 Penalty: 25 penalty units or imprisonment for 6 months, or both.

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

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

14 **322-20 Place where records are kept**

15 (1) If an Aboriginal and Torres Strait Islander corporation is registered
16 as a large corporation, the records that the corporation is required
17 to keep under this Division must be kept at the corporation's
18 registered office.

19 Penalty: 25 penalty units or imprisonment for 6 months, or both.

20 (2) If an Aboriginal and Torres Strait Islander corporation is registered
21 as a small or medium corporation, the records that the corporation
22 is required to keep under this Division must be kept at the
23 corporation's document access address.

24 Penalty: 25 penalty units or imprisonment for 6 months, or both.

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

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

Section 322-25

1 **322-25 Director access**

2 *Personal access*

3 (1) A director of an Aboriginal and Torres Strait Islander corporation
4 has a right of access to the records that the corporation is required
5 to keep under this Division.

6 Note: See also section 376-1.

7 *Court order for inspection on director's behalf*

8 (2) On application by a director, the Court may authorise a person to
9 inspect the records on the director's behalf.

10 (3) A person authorised to inspect records may make copies of the
11 records unless the Court orders otherwise.

12 (4) The Court may make any other orders it considers appropriate,
13 including either or both of the following:

14 (a) an order limiting the use that a person who inspects the
15 records may make of information obtained during the
16 inspection;

17 (b) an order limiting the right of a person who inspects the
18 records to make copies in accordance with subsection (3).

1

2 **Part 7-3—Reporting requirements**

3 **Division 327—Overview of reporting obligations**

4 **327-1 Reports that an Aboriginal and Torres Strait Islander**
5 **corporation must prepare and lodge**

- 6 (1) The reports that an Aboriginal and Torres Strait Islander
7 corporation has to prepare are:
- 8 (a) a general report in relation to each financial year (see
9 Division 330); and
 - 10 (b) any reports (which might include a financial report, or
11 directors' report, for a financial year) that are required by the
12 regulations (see Division 333); and
 - 13 (c) any reports that are required by the Registrar (see
14 Division 336).
- 15 (2) All these reports must be lodged with the Registrar (see
16 Division 348).
- 17 (3) A financial report may need to be audited (see paragraphs
18 333-15(2)(a), 336-1(7)(a) and 336-5(7)(a)). If it does:
- 19 (a) Division 339 makes provision in relation to the conduct of
20 the audit; and
 - 21 (b) the auditor's report must be lodged with the Registrar.
22 Subdivision 339-F allows regulations to be made in relation to the
23 appointment and removal of auditors.
- 24 (4) Financial reports, directors' reports and auditors' reports must be
25 given to members (see Division 342).
- 26 (5) Other reports that the corporation is required to prepare may also
27 have to be given to members (see subsection 333-15(3) and
28 paragraphs 336-1(6)(a) and 336-5(6)(a)).

Section 330-1

1

2

Division 330—General report for each financial year

3

**330-1 Aboriginal and Torres Strait Islander corporation must
prepare a general report each financial year**

4

5

An Aboriginal and Torres Strait Islander corporation must prepare
a general report in respect of each financial year.

6

7

Note 1: The corporation may be exempted from this requirement under
Part 7-4.

8

9

Note 2: Unless exempted, failure to lodge the general report with the Registrar
is an offence (see section 330-10).

10

11

330-5 Contents of general report

12

(1) A general report must:

13

(a) set out the following details as at the end of the financial
year:

14

15

(i) the names and addresses of each of the corporation's
members;

16

17

(ii) the names and addresses of each of the corporation's
directors;

18

19

(iii) the name and address of the corporation's secretary if
the corporation is registered as a large corporation;

20

21

(iv) the name and address of the corporation's contact
person if the corporation is registered as a small or
medium corporation;

22

23

24

(v) the address of the corporation's registered office if the
corporation is registered as a large corporation;

25

26

(vi) the address of the corporation's document access
address if the corporation is registered as a small or
medium corporation; and

27

28

29

(b) contain any other information required by the regulations;
and

30

31

(c) comply with any further requirements imposed by the
regulations.

32

33

(2) Without limiting paragraph (1)(c), the regulations:

- 1 (a) may require that the general report be accompanied by a
2 declaration by a particular officer, or officers, of the
3 corporation; and
4 (b) may require that a declaration in relation to the report be
5 based on a resolution of the corporation's directors; and
6 (c) may require the general report to be prepared in a particular
7 manner.

8 **330-10 General report to be lodged with Registrar**

- 9 (1) The corporation must lodge the general report with the Registrar.

10 Penalty: 25 penalty units or imprisonment for 6 months, or both.

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

- 13 (2) The time for lodgment is:

- 14 (a) within 3 months after the end of the financial year; or
15 (b) such longer period as is prescribed by the regulations.

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

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

Section 333-1

1

2

Division 333—Financial and other reports required by the regulations

3

4

333-1 What this Division is about

5

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.

6

7

8

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.

9

10

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15

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).

16

17

18

19

333-5 Regulations may require financial reports, directors' reports and other reports to be prepared

20

21

(1) The regulations may require reports to be prepared by:

22

(a) a specified Aboriginal and Torres Strait Islander corporation;

23

or

24

(b) a specified class of Aboriginal and Torres Strait Islander

25

corporation.

26

(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:

27

28

29

30

31

(a) for a particular period or periods; or

1 (b) in relation to circumstances as they exist at a particular date
2 or dates.

3 This subsection does not limit subsection (1).

4 (3) Regulations made for the purposes of subsection (1) may require
5 an Aboriginal and Torres Strait Islander corporation, or each
6 Aboriginal and Torres Strait Islander corporation included in a
7 class of Aboriginal and Torres Strait Islander corporation, to
8 prepare either or both of the following:

9 (a) a financial report for a financial year;

10 (b) a directors' report for a financial year.

11 This subsection does not limit subsection (1).

12 *First financial year*

13 (4) The first **financial year** for an Aboriginal and Torres Strait Islander
14 corporation starts on the day on which it is registered and ends:

15 (a) on the 30 June next following that day if the corporation is
16 registered between 1 July and 31 December; and

17 (b) on the second 30 June next following that day if the
18 corporation is registered between 1 January and 30 June.

19 *Financial year after the first*

20 (5) Subsequent **financial years** must:

21 (a) start at the end of the previous financial year; and

22 (b) be 12 months long.

23 **333-10 Contents of reports**

24 *General*

25 (1) A section 333-5 report must contain the information required by
26 the regulations.

27 (2) Regulations made for the purposes of subsection (1) may impose a
28 requirement by applying, adopting or incorporating (with or
29 without modification) provisions of the accounting standards as in
30 force from time to time. This subsection does not limit
31 subsection (1).

Section 333-15

Financial reports

- 1
- 2 (3) If a section 333-5 report is a financial report for a financial year,
3 regulations made for the purposes of subsection (1) may impose
4 one or more of the following requirements:
- 5 (a) a requirement that the financial report is to consist of the
6 financial statements, financial notes and declarations
7 specified in:
- 8 (i) the regulations; or
9 (ii) the accounting standards as in force from time to time
10 (with the modifications (if any) specified in the
11 regulations);
- 12 (b) a requirement that the financial report deal with the financial
13 affairs of another corporation or entity or a consolidated
14 entity of which the corporation is a member;
- 15 (c) a requirement that the financial report give a true and fair
16 view of:
- 17 (i) the financial position and performance of the
18 corporation; and
19 (ii) the financial position and performance of any other
20 corporation or entity whose financial affairs are required
21 to be reported on in the financial report or a
22 consolidated entity of which the corporation is a
23 member.

24 This subsection does not limit subsection (1).

25 **333-15 Other requirements in relation to report**

26 *Manner of preparing report*

- 27 (1) The regulations may require a section 333-5 report to be prepared
28 in the manner required by the regulations.

29 *Manner of preparing financial report*

- 30 (2) If a section 333-5 report is a financial report, regulations made for
31 the purposes of subsection (1) of this section may do one or more
32 of the following:
- 33 (a) require that the financial report, or a part of it, be audited;

- 1 (b) require that the auditor be:
2 (i) an individual auditor who has particular qualifications
3 or experience; or
4 (ii) an audit firm that has a member or members who have
5 particular qualifications or experience; or
6 (iii) an authorised audit company;
7 (c) require that a person may only participate in the conduct of
8 the audit in a particular capacity if the person has the
9 qualifications or experience specified in the regulations;
10 (d) require that the audit of the financial report, or a part of it, be
11 conducted in accordance with the auditing standards;
12 (e) require that the financial report, or a part of it, must be
13 prepared in compliance with the accounting standards;
14 (f) require that the corporation's directors make a declaration of
15 the kind specified in the regulations in respect of the financial
16 report;
17 (g) require that a declaration by the directors in relation to the
18 financial report must only be made after each person who
19 performs a particular function in relation to the corporation
20 has given the directors a declaration of a kind specified in the
21 regulations in respect of the financial report;
22 (h) require that specified officers of the corporation sign the
23 financial report.

24 This subsection does not limit subsection (1).

25 Note: Paragraph (a)—Division 339 deals with the audit of a financial report.

26 *Giving report to members*

- 27 (3) If a section 333-5 report is not a financial report or a directors'
28 report for a financial year, the regulations may:
29 (a) require the corporation to give a copy of the report to each of
30 its members; and
31 (b) specify the time within which, and the manner in which, the
32 report is to be given to the members.

33 Note: An Aboriginal and Torres Strait Islander corporation is required to
34 provide copies of a financial report or a directors' report to members
35 under Division 342.

Section 333-20

1 **333-20 Aboriginal and Torres Strait Islander corporation to obtain**
2 **audit report if audit required**

3 If:

4 (a) a section 333-5 report in relation to an Aboriginal and Torres
5 Strait Islander corporation is a financial report; and

6 (b) the corporation is required by:

7 (i) regulations made for the purposes of section 333-15; or

8 (ii) a determination by the Registrar under section 336-1 or
9 336-5;

10 to have the report, or a part of the report, audited;

11 the corporation must obtain an auditor's report in relation to the
12 report or that part of the report.

1
2 **Division 336—Registrar may increase reporting**
3 **requirements**

4 **336-1 Registrar may require additional report, or otherwise increase**
5 **reporting requirements, for particular corporation**

6 *Additional report or additional reporting requirements*

- 7 (1) The Registrar may:
- 8 (a) determine, in writing, that a particular Aboriginal and Torres
9 Strait Islander corporation must prepare a report in addition
10 to any general report or section 333-5 reports the corporation
11 is required to prepare; or
 - 12 (b) determine, in writing, that a particular Aboriginal and Torres
13 Strait Islander corporation must:
 - 14 (i) include particular additional information in a general
15 report or section 333-5 report; or
 - 16 (ii) meet particular additional requirements in relation to the
17 manner in which a general report or section 333-5 report
18 is to be prepared; or
 - 19 (iii) provide a general report or section 333-5 report to its
20 members; or
 - 21 (iv) provide a general report or section 333-5 report to its
22 members within the time, and in the manner, specified
23 in the determination.

24 Note: See Part 7-5 for the criteria the Registrar must apply in deciding
25 whether to make a determination under this subsection.

- 26 (2) A determination under subsection (1) is not a legislative
27 instrument.

28 *Additional reports*

- 29 (3) A determination under paragraph (1)(a) must specify:
- 30 (a) the information to be included in the report; and
 - 31 (b) any other requirements to be met in relation to the manner in
32 which the report is prepared.

Section 336-1

- 1 (4) A determination under paragraph (1)(a) may require the report to
2 be prepared:
3 (a) for a particular period or periods; or
4 (b) in relation to circumstances as they exist as at particular date
5 or dates.

6 This subsection does not limit subsection (3).

- 7 (5) The determination may require the report to be prepared for all
8 periods of a particular kind that start or end on or after a date
9 specified in the determination. This subsection does not limit
10 subsection (3).

- 11 (6) A determination under paragraph (1)(a) may:

12 (a) specify that the report is to be provided to the corporation's
13 members; and

14 (b) specify the time by which, and the manner in which, the
15 report is to be provided to the corporation's members.

16 *Additional requirements for financial report*

- 17 (7) If a section 333-5 report is a financial report, the Registrar may
18 determine under paragraph (1)(b) that one or more of the following
19 requirements must be met in relation to the report:

20 (a) a requirement that the report, or a part of it, be audited;

21 (b) a requirement that the auditor be:

22 (i) an individual auditor who has particular qualifications
23 or experience; or

24 (ii) an audit firm that has a member or members who have
25 particular qualifications or experience; or

26 (iii) an authorised audit company;

27 (c) a requirement that a person may only participate in the
28 conduct of the audit in a particular capacity if the person has
29 the qualifications or experience specified in the regulations;

30 (d) a requirement that the audit of the report, or a part of it, be
31 conducted in accordance with the auditing standards.

32 This subsection does not limit paragraph (1)(b).

1

Determination

2

(8) A determination under subsection (1) may be in respect of a past or
3 future period but if it is in respect of a past period, the
4 determination must be made no later than 6 years after the end of
5 that period.

6

(9) The Registrar may, in writing, revoke, vary or suspend a
7 determination under subsection (1).

8

(10) A revocation, variation or suspension under subsection (9) is not a
9 legislative instrument.

10

Notice of determination

11

(11) The Registrar must give the corporation written notice of the
12 making, revocation, variation or suspension of the determination.

13

**336-5 Registrar may require additional reports, or otherwise
14 increase reporting requirements, for class of corporation**

15

Additional reports or additional reporting requirement

16

(1) The Registrar may:

17

(a) make a determination in writing requiring a particular class
18 of Aboriginal and Torres Strait Islander corporation to
19 prepare a report in addition to any general report or
20 section 333-5 report the corporations are required to prepare;
21 or

22

(b) make a determination in writing requiring a particular class
23 of Aboriginal and Torres Strait Islander corporation to:

24

(i) include particular additional information in a general
25 report or section 333-5 report; or

26

(ii) meet particular additional requirements in relation to the
27 manner in which a general report or section 333-5 report
28 is prepared; or

29

(iii) provide a general report or section 333-5 report to their
30 members; or

Section 336-5

- 1 (iv) provide a general report or section 333-5 report to their
2 members within the time, and in the manner, specified
3 in the determination.

4 Note: See Part 7-5 for the criteria the Registrar must apply in deciding
5 whether to make a determination under this subsection.

- 6 (2) A determination under subsection (1) is a legislative instrument.

7 *Additional reports*

- 8 (3) A determination under paragraph (1)(a) must specify:

- 9 (a) the information to be included in the report; and
10 (b) any other requirements to be met in relation to the manner in
11 which the report is prepared.

- 12 (4) A determination under paragraph (1)(a) may require the report to
13 be prepared:

- 14 (a) for a particular period or periods; or
15 (b) in relation to circumstances as they exist as at a particular
16 date or dates.

17 This subsection does not limit subsection (3).

- 18 (5) The determination may require the report to be prepared for all
19 periods of a particular kind that start or end on or after a date
20 specified in the determination. This subsection does not limit
21 subsection (4).

- 22 (6) A determination under paragraph (1)(a) may:

- 23 (a) specify that the report is to be provided to the corporations'
24 members; and
25 (b) specify the time within which, and manner in which, the
26 report is to be provided to the members.

27 *Additional requirements for financial report*

- 28 (7) If the section 333-5 report is a financial report, the Registrar may
29 determine under paragraph (1)(b) that one or more of the following
30 requirements are to be met in relation to the report:

- 31 (a) a requirement that the financial report, or a part of it, be
32 audited;

- 1 (b) a requirement that the auditor be:
2 (i) an individual auditor who has particular qualifications
3 or experience; or
4 (ii) an audit firm that has a member or members who have
5 particular qualifications or experience; or
6 (iii) an authorised audit company;
7 (c) a requirement that a person may only participate in the
8 conduct of the audit in a particular capacity if the person has
9 the qualifications or experience specified in the regulations;
10 (d) a requirement that the audit of the report, or a part of it, be
11 conducted in accordance with the auditing standards.

12 This subsection does not limit paragraph (1)(b).

13 *Determinations*

- 14 (8) A determination under subsection (1):
15 (a) may be expressed to be subject to conditions; and
16 (b) may be in respect of a past or future period but if it is in
17 respect of a past period, the determination must be made no
18 later than 6 years after the end of that period.
- 19 (9) The Registrar may, in writing, revoke, vary or suspend a
20 determination under subsection (1).

21 *Notice of determinations*

- 22 (10) Notice of the making, revocation, variation or suspension of a
23 determination under subsection (1) must be published in the
24 *Gazette*.

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1

2 **Division 339—Audit of financial reports**

3 **Subdivision 339-A—Introduction**

4 **339-1 What this Division is about**

5

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)).

6

7

8

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.

9

10

11

The auditor's report must cover the matters set out in section 339-40.

12

13

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).

14

15

16 **339-5 Application of Division**

17

(1) This Division applies if:

18

(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

19

20

21

(b) one of the following requires the report, or that part of the report, to be audited:

22

23

(i) this Act;

24

(ii) regulations made for the purposes of section 333-15;

25

(iii) a determination by the Registrar under section 336-1 or 336-5.

26

27

(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.

28

29

1 **339-10 When financial report required to comply with accounting**
2 **standards**

3 A financial report is *required to comply with the accounting*
4 *standards* if one of the following requires the report to comply
5 with the accounting standards:

- 6 (a) an applied provision of the Corporations Act;
7 (b) regulations made for the purposes of section 333-15;
8 (c) a determination by the Registrar under section 336-1 or
9 336-5.

10 **339-15 When audit required to be conducted in accordance with**
11 **auditing standards**

12 An audit is *required to be conducted in accordance with the*
13 *auditing standards* if one of the following requires the audit to be
14 conducted in accordance with the auditing standards:

- 15 (a) an applied provision of the Corporations Act;
16 (b) regulations made for the purposes of section 333-15;
17 (c) a determination by the Registrar under section 336-1 or
18 336-5.

19 **339-20 Lead and review auditors**

20 *Lead auditor*

- 21 (1) If an audit firm or audit company conducts an audit of a financial
22 report of an Aboriginal and Torres Strait Islander corporation, the
23 *lead auditor* for the audit is the registered company auditor who is
24 primarily responsible to the audit firm or the audit company for the
25 conduct of the audit.

26 *Review auditor*

- 27 (2) If an individual auditor, audit firm or audit company conducts an
28 audit of a financial report of an Aboriginal and Torres Strait
29 Islander corporation, the *review auditor* for the audit is the
30 registered company auditor (if any) who is primarily responsible to

Section 339-25

1 the individual auditor, the audit firm or the audit company for
2 reviewing the conduct of the audit.

3 **339-25 Professional members of the audit team**

4 If an individual auditor, audit firm or audit company conducts an
5 audit of a financial report of an Aboriginal and Torres Strait
6 Islander corporation, the *professional members of the audit team*
7 are:

- 8 (a) any registered company auditor who participates in the
9 conduct of the audit; and
10 (b) any other person who participates in the conduct of the audit
11 and, in the course of doing so, exercises professional
12 judgment in relation to the application of or compliance with:
13 (i) accounting standards; or
14 (ii) auditing standards; or
15 (iii) the provisions of this Act dealing with financial
16 reporting and the conduct of audits; and
17 (c) any other person who is in a position to directly influence the
18 outcome of the audit because of the role they play in the
19 design, planning, management, supervision or oversight of
20 the audit.

21 **Subdivision 339-B—Conduct of the audit**

22 **339-30 Auditor to form opinion**

23 The auditor of a financial report must form an opinion about:

- 24 (a) whether the financial report is in accordance with:
25 (i) this Act; and
26 (ii) any applicable regulations made for the purposes of
27 sections 333-10 and 333-15; and
28 (iii) any applicable determinations made by the Registrar
29 under section 336-1 or 336-5; and
30 (b) whether the auditor has been given all information,
31 explanations and assistance necessary for the conduct of the
32 audit; and

- 1 (c) whether the corporation has kept financial records sufficient
2 to enable the financial report to be prepared and audited; and
3 (d) whether the corporation has kept other records and registers
4 as required by this Act; and
5 (e) any other matter specified in the regulations.

6 **339-35 Auditor obligations in relation to auditing standards**

- 7 (1) This section applies if the audit of a financial report is required to
8 be conducted in accordance with the auditing standards.
- 9 (2) If an individual auditor, or an audit company, conducts the audit of
10 the financial report, the individual auditor or audit company must
11 conduct the audit in accordance with the auditing standards.
- 12 Penalty: 50 penalty units.
- 13 (3) If an audit firm, or an audit company, conducts the audit of the
14 financial report, the lead auditor for the audit must ensure that the
15 audit is conducted in accordance with the auditing standards.
- 16 Penalty: 50 penalty units.
- 17 (4) An offence against subsection (2) or (3) is an offence of strict
18 liability.

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

20 **339-40 Auditor's report**

- 21 (1) The auditor of a financial report must prepare a report for the
22 corporation's members on whether the auditor is of the opinion that
23 the financial report is in accordance with:
24 (a) this Act; and
25 (b) any applicable regulations made for the purposes of
26 sections 333-10 and 333-15; and
27 (c) any applicable determinations made by the Registrar under
28 section 336-1 or 336-5.
- 29 If not of that opinion, the auditor's report must say why.
- 30 Penalty: 50 penalty units.

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- 1 (2) If:
- 2 (a) the financial report is required to comply with the accounting
- 3 standards; and
- 4 (b) the auditor is of the opinion that the financial report does not
- 5 comply with an accounting standard;
- 6 the auditor's report must, to the extent it is practicable to do so,
- 7 quantify the effect that non-compliance has on the financial report.
- 8 If it is not practicable to quantify the effect fully, the report must
- 9 say why.

10 Penalty: 50 penalty units.

- 11 (3) The auditor's report must describe:
- 12 (a) any defect or irregularity in the financial report; and
- 13 (b) any deficiency, failure or shortcoming in respect of the
- 14 matters referred to in paragraph 339-30(b), (c) or (d).

15 Penalty: 50 penalty units.

- 16 (4) If the audit of the financial report is required to be conducted in
- 17 accordance with some or all of the auditing standards, the auditor's
- 18 report must include any statements or disclosures required by those
- 19 auditing standards.

20 Penalty: 50 penalty units.

- 21 (5) The auditor's report must contain any other information required
- 22 by the regulations.

- 23 (6) The report must specify the date on which it is made.

24 Penalty: 50 penalty units.

- 25 (7) An offence against subsection (1), (3), (4) or (6) is an offence of
- 26 strict liability.

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

28 **339-45 Other requirements in relation to auditor's report**

29 The auditor's report must be prepared in the manner required by

30 the regulations.

1 **339-50 Auditor's independence declaration**

2 *Application of section*

3 (1) This section applies if:

- 4 (a) section 339-75 applies in relation to the audit of a financial
5 report of the Aboriginal and Torres Strait Islander
6 corporation; or
7 (b) regulations made for the purposes of section 339-80 provide
8 for auditor independence requirements to be met in relation
9 to the audit of a financial report of the Aboriginal and Torres
10 Strait Islander corporation.

11 *Contravention by individual auditor*

12 (2) If the auditor is an individual auditor, the auditor must give the
13 directors of the corporation either:

- 14 (a) a written declaration that, to the best of the auditor's
15 knowledge and belief, there have been:
16 (i) no contraventions of the auditor independence
17 requirements of this Act in relation to the audit; and
18 (ii) no contraventions of any applicable code of professional
19 conduct in relation to the audit; or
20 (b) a written declaration that, to the best of the individual
21 auditor's knowledge and belief, the only contraventions of:
22 (i) the auditor independence requirements of this Act in
23 relation to the audit; or
24 (ii) any applicable code of professional conduct in relation
25 to the audit;
26 are those contraventions the details of which are set out in the
27 declaration.

28 Penalty: 10 penalty units.

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

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

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1

Contravention by lead auditor

2

(4) If the auditor is an audit firm or audit company, the lead auditor for the audit must give the directors of the corporation:

3

4

(a) a written declaration that, to the best of the lead auditor's knowledge and belief, there have been:

5

6

(i) no contraventions of the auditor independence requirements of this Act in relation to the audit; and

7

8

(ii) no contraventions of any applicable code of professional conduct in relation to the audit; or

9

10

(b) a written declaration that, to the best of the lead auditor's knowledge and belief, the only contraventions of:

11

12

(i) the auditor independence requirements of this Act in relation to the audit; or

13

14

(ii) any applicable code of professional conduct in relation to the audit;

15

16

are those contraventions details of which are set out in the declaration.

17

18

Penalty: 10 penalty units.

19

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

20

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

21

(6) The declaration under subsection (2) or (4):

22

(a) must be given when the audit report is given to the directors of the corporation; and

23

24

(b) must be signed by the person making the declaration.

25

Self-incrimination

26

(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.

27

28

29

30

Use/derivative use indemnity

31

(8) However, neither:

32

(a) the information included in the declaration; nor

- 1 (b) any information, document or thing obtained as a direct or
2 indirect consequence of including the information in the
3 declaration;
4 is admissible in evidence against the individual in any criminal
5 proceedings, or in any proceedings that would expose the person to
6 a penalty, other than:
7 (c) proceedings for an offence against section 561-1 or 561-5 in
8 relation to the declaration; or
9 (d) proceedings for an offence against section 137.1 or 137.2 of
10 the *Criminal Code* (false or misleading information or
11 documents) in relation to the declaration.

12 **339-55 Audit working papers to be retained for 7 years**

13 *Application of section*

- 14 (1) This section applies if the audit is required to be conducted in
15 accordance with the auditing standards.

16 *Offence by individual auditor or audit company*

- 17 (2) The auditor commits an offence if:
18 (a) the auditor is an individual auditor or an audit company; and
19 (b) the auditor does not retain all audit working papers prepared
20 by or for, or considered or used by, the auditor in accordance
21 with the requirements of the auditing standards until:
22 (i) the end of 7 years after the date of the audit report
23 prepared in relation to the audit to which the audit
24 working papers relate; or
25 (ii) an earlier date determined for the audit working papers
26 by the Registrar under subsection (7).

27 Penalty: 50 penalty units.

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

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

30 *Offence by member of audit firm*

- 31 (4) A person (the *defendant*) commits an offence if:

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- 1 (a) the auditor is an audit firm; and
2 (b) the audit firm fails, at a particular time, to retain all audit
3 working papers prepared by or for, or considered or used by,
4 the audit firm in accordance with the requirements of the
5 auditing standards until:
6 (i) the end of 7 years after the date of the audit report
7 prepared in relation to the audit to which the documents
8 relate; or
9 (ii) the earlier date determined by the Registrar for the audit
10 working papers under subsection (7); and
11 (c) the defendant is a member of the firm at that time.

12 Penalty: 50 penalty units.

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

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

15 Note 2: Subsection (6) provides a defence.

16 *Defence*

- 17 (6) A member of an audit firm does not commit an offence at a
18 particular time under subsection (4) if the member either:
19 (a) does not know at that time of the circumstances that
20 constitute the contravention of subsection (4); or
21 (b) knows of those circumstances at that time but takes all
22 reasonable steps to correct the contravention as soon as
23 possible after the member becomes aware of those
24 circumstances.

25 Note: A defendant bears an evidential burden in relation to the matters in
26 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

27 *Earlier retention date for audit working papers*

- 28 (7) The Registrar may, on application by a person, determine, in
29 writing, an earlier date for the audit working papers for the
30 purposes of paragraphs (2)(b) and (4)(b) if:
31 (a) the auditor is an individual auditor and the auditor:
32 (i) dies; or
33 (ii) ceases to be a registered company auditor; or

- 1 (b) the auditor is an audit firm and the firm is dissolved
2 (otherwise than simply as part of a reconstitution of the firm
3 because of the death, retirement or withdrawal of a member
4 or members or because of the admission of a new member or
5 members); or
6 (c) the auditor is an audit company and the company:
7 (i) is wound up; or
8 (ii) ceases to be an authorised audit company.
- 9 (8) A determination under subsection (7) is not a legislative
10 instrument.
- 11 (9) In deciding whether to make a determination under subsection (7),
12 the Registrar must have regard to:
13 (a) whether the Registrar or ASIC is inquiring into or
14 investigating any matters in respect of:
15 (i) the auditor; or
16 (ii) the audited body for the audit to which the documents
17 relate; and
18 (b) whether the professional accounting bodies have any
19 investigations or disciplinary action pending in relation to the
20 auditor; and
21 (c) whether civil or criminal proceedings in relation to:
22 (i) the conduct of the audit; or
23 (ii) the contents of the financial report to which the audit
24 working papers relate;
25 have been, or are about to be, commenced; and
26 (d) any other relevant matter.
- 27 *Audit working papers kept in electronic form*
- 28 (10) For the purposes of this section, if audit working papers are in
29 electronic form they are taken to be retained only if they are
30 convertible into hard copy.

Section 339-60

1 **Subdivision 339-C—Qualification, experience and registration**

2 **339-60 Qualification and experience: individual auditor**

- 3 (1) An individual contravenes this section if:
- 4 (a) one of the following imposes a requirement in relation to the
- 5 audit of a financial report of an Aboriginal and Torres Strait
- 6 Islander corporation:
- 7 (i) an applied provision of the Corporations Act;
- 8 (ii) regulations made for the purposes of section 333-15;
- 9 (iii) a determination by the Registrar under section 336-1 or
- 10 336-5; and
- 11 (b) the requirement is that, if the auditor is an individual auditor,
- 12 the auditor must have particular qualification or experience;
- 13 and
- 14 (c) the individual acts as auditor in relation to the financial report
- 15 or that part of it; and
- 16 (d) the individual does not have the qualification or experience
- 17 referred to in paragraph (b).

18 Penalty: 25 penalty units or imprisonment for 6 months, or both.

- 19 (2) An individual contravenes this section if:
- 20 (a) one of the following requires that a person may only
- 21 participate in a particular capacity in the conduct of the audit
- 22 of a financial report of an Aboriginal and Torres Strait
- 23 Islander corporation if the person has particular qualifications
- 24 or experience:
- 25 (i) an applied provision of the Corporations Act;
- 26 (ii) regulations made for the purposes of section 333-15;
- 27 (iii) a determination by the Registrar under section 336-1 or
- 28 336-5; and
- 29 (b) the individual participates in that capacity in the conduct of
- 30 the audit of the financial report; and
- 31 (c) the individual does not have those qualifications or that
- 32 experience.

33 Penalty: 25 penalty units or imprisonment for 6 months, or both.

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

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

3 **339-65 Qualification and experience: audit firm**

4 (1) A person (the *defendant*) contravenes this subsection if:

5 (a) one of the following imposes a requirement in relation to the
6 audit of a financial report of an Aboriginal and Torres Strait
7 Islander corporation:

8 (i) an applied provision of the Corporations Act;

9 (ii) regulations made for the purposes of section 333-15;

10 (iii) a determination by the Registrar under section 336-1 or
11 336-5; and

12 (b) the requirement is that, if the auditor is an audit firm, the
13 audit firm must have a member or members who have
14 particular qualifications or experience; and

15 (c) at a particular time, a firm acts as auditor in relation to the
16 financial report or a part of it; and

17 (d) at that time, the firm does not have a member or members
18 who satisfy the requirement referred to in paragraph (b); and

19 (e) the defendant is a member of the firm at that time; and

20 (f) the defendant is aware of the circumstances referred to in
21 paragraphs (c) and (d) at that time.

22 Penalty: 25 penalty units or imprisonment for 6 months, or both.

23 (2) A person (the *defendant*) contravenes this subsection if:

24 (a) one of the following imposes a requirement in relation to the
25 audit of a financial report of an Aboriginal and Torres Strait
26 Islander corporation:

27 (i) an applied provision of the Corporations Act;

28 (ii) regulations made for the purposes of section 333-15;

29 (iii) a determination by the Registrar under section 336-1 or
30 336-5; and

31 (b) the requirement is that, if the auditor is an audit firm, the
32 audit firm must have a member or members who have
33 particular qualifications or experience; and

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- 1 (c) at a particular time, a firm acts as auditor in relation to the
2 financial report or a part of it; and
3 (d) at that time, the firm does not satisfy the requirement referred
4 to in paragraph (b); and
5 (e) the defendant is a member of the firm at that time.

6 Penalty: 10 penalty units.

- 7 (3) For the purposes of an offence based on subsection (2), strict
8 liability applies to the physical elements of the offence specified in
9 paragraphs (2)(a) and (b).

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

11 Note 2: Subsection (4) provides a defence.

- 12 (4) A member of an audit firm does not commit an offence at a
13 particular time because of a contravention of subsection (2) if the
14 member either:

- 15 (a) does not know at that time of the circumstances that
16 constitute the contravention of subsection (2); or
17 (b) does know of those circumstances at that time but takes all
18 reasonable steps to correct the contravention as soon as
19 possible after the member becomes aware of those
20 circumstances.

21 Note: A defendant bears an evidential burden in relation to the matters in
22 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

23 **339-70 Registration requirements for appointment of company as**
24 **auditor**

- 25 (1) A company contravenes this subsection if:
26 (a) one of the following imposes a requirement in relation to the
27 audit of a financial report of an Aboriginal and Torres Strait
28 Islander corporation:
29 (i) an applied provision of the Corporations Act;
30 (ii) regulations made for the purposes of section 333-15;
31 (iii) a determination by the Registrar under section 336-1 or
32 336-5; and
33 (b) the requirement is that, if the auditor is a company, the
34 company must be an authorised audit company; and
-

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1 (c) the company acts as auditor in relation to the report or a part
2 of it; and

3 (d) the company is not an authorised audit company.

4 Penalty: 25 penalty units or imprisonment for 6 months, or both.

5 (2) A person (the *defendant*) contravenes this subsection if:

6 (a) one of the following imposes a requirement in relation to the
7 audit of a financial report of an Aboriginal and Torres Strait
8 Islander corporation:

9 (i) an applied provision of the Corporations Act;

10 (ii) regulations made for the purposes of section 333-15;

11 (iii) a determination by the Registrar under section 336-1 or
12 336-5; and

13 (b) the requirement is that, if the auditor is a company, the
14 company must be an authorised audit company; and

15 (c) at a particular time, a company acts as auditor in relation to
16 the report or a part of it; and

17 (d) at that time, the company is not an authorised audit company;
18 and

19 (e) the defendant is a director of the company at that time; and

20 (f) the defendant is aware of the circumstances referred to in
21 paragraphs (c) and (d) at that time.

22 Penalty: 25 penalty units or imprisonment for 6 months, or both.

23 (3) A person (the *defendant*) contravenes this subsection if:

24 (a) one of the following imposes a requirement in relation to the
25 audit of a financial report of an Aboriginal and Torres Strait
26 Islander corporation:

27 (i) an applied provision of the Corporations Act;

28 (ii) regulations made for the purposes of section 333-15;

29 (iii) a determination by the Registrar under section 336-1 or
30 336-5; and

31 (b) the requirement is that, if the auditor is a company, the
32 company must be an authorised audit company; and

33 (c) at a particular time, a company acts as auditor in relation to
34 the report or that part of it; and

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- 1 (d) at that time, the company is not an authorised audit company;
2 and
3 (e) the defendant is a director of the company at that time.

4 Penalty: 10 penalty units.

- 5 (4) For the purposes of an offence based on subsection (3), strict
6 liability applies to the physical elements of the offence specified in
7 paragraphs (3)(c) and (d).

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

9 Note 2: Subsection (5) provides a defence.

- 10 (5) A director of a company does not commit an offence at a particular
11 time because of a contravention of subsection (3) if the director
12 either:

- 13 (a) does not know at that time of the circumstances that
14 constitute the contravention of subsection (3); or
15 (b) knows of those circumstances at that time but takes all
16 reasonable steps to correct the contravention of
17 subsection (3) as soon as possible after the director becomes
18 aware of those circumstances.

19 Note: A defendant bears an evidential burden in relation to the matters in
20 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

21 **Subdivision 339-D—Auditor independence**

22 **339-75 Independence of auditors: application of Corporations Act**
23 **auditor independence provisions**

24 *Application of section*

- 25 (1) This section applies in relation to the audit of a financial report of
26 an Aboriginal and Torres Strait Islander corporation if:
27 (a) one of the following imposes a requirement in relation to the
28 audit:
29 (i) an applied provision of the Corporations Act;
30 (ii) regulations made for the purposes of section 333-15;
31 (iii) a determination by the Registrar under section 336-1 or
32 336-5; and

- 1 (b) the requirement is that the auditor be:
2 (i) an individual auditor who is a registered company
3 auditor; or
4 (ii) an audit firm that has at least one member who is a
5 registered company auditor who is ordinarily resident in
6 Australia; or
7 (iii) an authorised audit company.
- 8 (2) The Corporations Act auditor independence provisions apply in
9 relation to the audit as if:
10 (a) references in those provisions to an audited body were
11 references to an Aboriginal and Torres Strait Islander
12 corporation; and
13 (b) references in those provisions to a company were references
14 to an Aboriginal and Torres Strait Islander corporation.
15 The Corporations Act auditor independence provisions apply with
16 the modifications set out in the regulations.
- 17 (3) Regulations made for the purposes of subsection (2) must not:
18 (a) increase, or have the effect of increasing, the maximum
19 penalty for any offence; or
20 (b) widen, or have the effect of widening, the scope of any
21 offence.
- 22 (4) In this Act:
23 ***Corporations Act auditor independence provisions*** means:
24 (a) Division 3 of Part 2M.4 of the Corporations Act; and
25 (b) the provisions of that Act (including Parts 1.2 and 9.4 and
26 Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the
27 extent to which they relate to the operation of Part 2M.4 of
28 that Act; and
29 (c) the regulations made under that Act for the purposes of
30 Part 2M.4 of that Act and the provisions referred to in
31 paragraph (b).

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1 **339-80 Independence of auditors: alternative independence**
2 **requirements**

- 3 (1) This section applies in relation to the audit of a financial report of
4 an Aboriginal and Torres Strait Islander corporation if
5 section 339-75 does not apply to the audit.
- 6 (2) The regulations may provide for auditor independence
7 requirements to be met in relation to the audit.
- 8 (3) Without limiting subsection (2), the regulations may:
9 (a) specify as a requirement that a person comply with any
10 applicable code of professional conduct in relation to the
11 audit; or
12 (b) provide that a person commits an offence in particular
13 circumstances if the auditor independence requirements are
14 not met.
- 15 (4) Regulations made for the purposes of paragraph (3)(b) must not
16 prescribe penalties exceeding 50 penalty units for contraventions of
17 the regulations.

18 **Subdivision 339-E—Auditor’s powers and duties**

19 **339-85 Auditor’s power to obtain information**

20 The auditor:

- 21 (a) has a right of access at all reasonable times to the books of
22 the corporation; and
23 (b) may require any officer to give the auditor information,
24 explanations or other assistance for the purposes of the audit.

25 A request under paragraph (b) must be a reasonable one.

26 **339-90 Reporting to the Registrar**

27 *Contravention by individual auditor*

- 28 (1) If the auditor is an individual, the auditor commits an offence if:
29 (a) the auditor is aware of circumstances that:

- 1 (i) the auditor has reasonable grounds to suspect amount to
2 a contravention of this Act; or
3 (ii) amount to an attempt, in relation to the audit, by any
4 person to unduly influence, coerce, manipulate or
5 mislead a person involved in the conduct of the audit
6 (see subsection (6)); or
7 (iii) amount to an attempt, by any person, to otherwise
8 interfere with the proper conduct of the audit; and
9 (b) if subparagraph (a)(i) applies:
10 (i) the contravention is a significant one; or
11 (ii) the contravention is not a significant one and the auditor
12 believes that the contravention has not been or will not
13 be adequately dealt with by commenting on it in the
14 auditor's report or bringing it to the attention of the
15 directors; and
16 (c) the auditor does not notify the Registrar in writing of those
17 circumstances as soon as practicable, and in any case within
18 28 days, after the auditor becomes aware of those
19 circumstances.

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

21 *Contravention by audit company*

- 22 (2) If the auditor is an audit company, the auditor commits an offence
23 if:
24 (a) the lead auditor for the audit is aware of circumstances that:
25 (i) the lead auditor has reasonable grounds to suspect
26 amount to a contravention of this Act; or
27 (ii) amount to an attempt, in relation to the audit, by any
28 person to unduly influence, coerce, manipulate or
29 mislead a person involved in the conduct of the audit
30 (see subsection (6)); or
31 (iii) amount to an attempt, by any person, to otherwise
32 interfere with the proper conduct of the audit; and
33 (b) if subparagraph (a)(i) applies:
34 (i) the contravention is a significant one; or

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- 1 (ii) the contravention is not a significant one and the lead
2 auditor believes that the contravention has not been or
3 will not be adequately dealt with by commenting on it in
4 the auditor's report or bringing it to the attention of the
5 directors; and
6 (c) the lead auditor does not notify the Registrar in writing of
7 those circumstances as soon as practicable, and in any case
8 within 28 days, after the lead auditor becomes aware of those
9 circumstances.

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

11 *Contravention by lead auditor*

- 12 (3) A person commits an offence if:
13 (a) the person is the lead auditor for the audit; and
14 (b) the person is aware of circumstances that:
15 (i) the person has reasonable grounds to suspect amount to
16 a contravention of this Act; or
17 (ii) amount to an attempt, in relation to the audit, by any
18 person to unduly influence, coerce, manipulate or
19 mislead a person involved in the conduct of the audit
20 (see subsection (6)); or
21 (iii) amount to an attempt, by any person, to otherwise
22 interfere with the proper conduct of the audit; and
23 (c) if subparagraph (b)(i) applies:
24 (i) the contravention is a significant one; or
25 (ii) the contravention is not a significant one and the person
26 believes that the contravention has not been or will not
27 be adequately dealt with by commenting on it in the
28 auditor's report or bringing it to the attention of the
29 directors; and
30 (d) the person does not notify the Registrar in writing of those
31 circumstances as soon as practicable, and in any case within
32 28 days, after the person becomes aware of those
33 circumstances.

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

1 *Significant contraventions*

- 2 (4) In determining for the purposes of this section whether a
3 contravention of this Act is a significant one, have regard to:
4 (a) the level of penalty provided for in relation to the
5 contravention; and
6 (b) the effect that the contravention has, or may have, on:
7 (i) the overall financial position of the corporation; or
8 (ii) the adequacy of the information available about the
9 overall financial position of the corporation; and
10 (c) any other relevant matter.
- 11 (5) Without limiting paragraph (4)(a), a penalty provided for in
12 relation to a contravention of a provision of Part 7-2 or 7-3,
13 includes a penalty imposed on a director, because of the operation
14 of section 363-1, for failing to take reasonable steps to comply
15 with, or to secure compliance with, that provision.

16 *Person involved in an audit*

- 17 (6) A *person involved in the conduct of an audit* is:
18 (a) the auditor; or
19 (b) the lead auditor for the audit; or
20 (c) the review auditor for the audit; or
21 (d) a professional member of the audit team for the audit; or
22 (e) any other person involved in the conduct of the audit.

23 **339-95 Assisting auditor**

- 24 (1) An officer of an Aboriginal and Torres Strait Islander corporation
25 must:
26 (a) allow the auditor access to the books of the corporation; and
27 (b) give the auditor any information, explanation or assistance
28 required under section 339-85.

29 Penalty: 25 penalty units or imprisonment for 6 months, or both.

30 Note: *Books* include registers and documents generally (not only the
31 accounting “books”) (see the definition of *books* in section 700-1).

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

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

3 **Subdivision 339-F—Appointment and removal of auditors**

4 **339-100 Appointment and removal of auditors**

5 (1) The regulations may make provision in relation to the appointment
6 and removal of auditors for Aboriginal and Torres Strait Islander
7 corporations.

8 (2) Without limiting subsection (1), the regulations:

9 (a) may impose an obligation to replace an auditor who ceases to
10 be auditor; and

11 (b) may give the Registrar the power to appoint an auditor in
12 particular circumstances; and

13 (c) may provide for the process by which an auditor is
14 appointed; and

15 (d) may provide for the process by which an auditor's
16 appointment may be terminated; and

17 (e) may provide that an auditor may resign only with the consent
18 of the Registrar.

1

2 **Division 342—Financial reporting to members**

3 **342-1 What this Division is about**

4

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.

5

6

7

The corporation must also give members a copy of the auditor's
report if the corporation has to obtain one.

8

9 **342-5 Annual financial reporting to members**

10

(1) An Aboriginal and Torres Strait Islander corporation that is
required to prepare:

11

12

(a) a financial report for a financial year; or

13

(b) a directors' report for a financial year;

14

must give each member of the corporation a copy of the report.

15

Penalty: 10 penalty units.

16

(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 each member of the
corporation a copy of the auditor's report.

17

18

19

20

Penalty: 10 penalty units.

21

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

22

23

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

24

Sending reports

25

(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

26

27

Section 342-10

- 1 by which the member may be sent reports referred to in that
2 subsection.
- 3 (5) If a member of an Aboriginal and Torres Strait Islander corporation
4 nominates:
- 5 (a) an electronic means (the *nominated notification means*) by
6 which the member may be notified that reports referred to in
7 subsection (1) or (2) are available; and
- 8 (b) an electronic means (the *nominated access means*) the
9 member may use to access those reports;
10 the corporation may send a report referred to in that subsection to
11 the member by notifying the member (using the nominated
12 notification means):
- 13 (c) that the report is available; and
14 (d) how the member may make use of the nominated access
15 means to access the report.
- 16 (6) Subsections (4) and (5) do not limit subsection (1) or (2).

17 **342-10 Deadline for reporting to members**

- 18 An Aboriginal and Torres Strait Islander corporation must send the
19 reports referred to in subsections 342-5(1) and (2) to members by
20 the earlier of:
- 21 (a) 21 days before the next AGM after the end of the financial
22 year; or
23 (b) 4 months after the end of the financial year.
- 24 Note: For the deadline for holding an AGM, see section 201-150.

1

2 **Division 345—Consolidated financial report**

3 **345-1 Directors and officers of controlled entity to give information**

4 (1) If an Aboriginal and Torres Strait Islander corporation has to
5 prepare a consolidated financial report, a director or officer of a
6 controlled entity must give the corporation all information
7 requested that is necessary to prepare the consolidated financial
8 report.

9 Penalty: 25 penalty units or imprisonment for 6 months, or both.

10 (2) An offence based on subsection (1) is an offence of strict liability.

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

12 **345-5 Auditor's power to obtain information from controlled entity**

13 (1) An auditor who audits a consolidated financial report:
14 (a) has a right of access at all reasonable times to the books of
15 any controlled entity; and
16 (b) may require any officer of the entity to give the auditor
17 information, explanations or other assistance for the purposes
18 of the audit.

19 A request under paragraph (b) must be a reasonable one.

20 (2) The information, explanations or other assistance required under
21 paragraph (1)(b) is to be given at the expense of the Aboriginal and
22 Torres Strait Islander corporation whose financial report is being
23 audited.

24 **345-10 Controlled entity to assist auditor**

25 (1) If an Aboriginal and Torres Strait Islander corporation has to
26 prepare a consolidated financial report, an officer or auditor of a
27 controlled entity must:
28 (a) allow the auditor for the corporation access to the controlled
29 entity's books; and

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1 (b) give the auditor any information, explanation or assistance
2 required under section 345-5.

3 Penalty: 25 penalty units or imprisonment for 6 months, or both.

4 (2) An offence based on subsection (1) is an offence of strict liability.

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

6 **345-15 Application of sections 345-1 to 345-10 to entity that has**
7 **ceased to be controlled**

8 Sections 345-1, 345-5 and 345-10 apply to the preparation or audit
9 of a financial report that covers a controlled entity even if the entity
10 is no longer controlled by the Aboriginal and Torres Strait Islander
11 corporation whose financial report is being prepared or audited.

1

2 **Division 348—Lodging reports**

3 **348-1 Lodging annual reports with the Registrar**

4 (1) An Aboriginal and Torres Strait Islander corporation that has to
5 prepare or obtain a report under this Part (other than a general
6 report) must lodge the report with the Registrar.

7 Penalty: 25 penalty units or imprisonment for 6 months, or both.

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

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

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

12 (3) The time for lodgment is:

13 (a) within 3 months after the end of the financial year if the
14 report is:

15 (i) a financial report for a financial year; or

16 (ii) a directors' report for a financial year; or

17 (iii) an auditor's report on a financial report for a financial
18 year; or

19 (b) the time provided for by:

20 (i) the regulations if the report is any other section 333-5
21 report; or

22 (ii) the determination by the Registrar under section 336-1
23 or 336-5 if the report is not a section 333-5 report.

24 **348-5 Relodgment if report amended after lodgment**

25 (1) If a financial report or a directors' report is amended after it is
26 lodged with the Registrar, the corporation must:

27 (a) lodge the amended report with the Registrar within 14 days
28 after the amendment; and

29 (b) give a copy of the amended report free of charge to any
30 member who asks for it.

31 Penalty: 10 penalty units.

Chapter 7 Record keeping, reporting requirements and books

Part 7-3 Reporting requirements

Division 348 Lodging reports

Section 348-5

- 1 (2) If the amendment is a material one, the corporation must also
2 notify each member as soon as practicable of:
3 (a) the nature of the amendment; and
4 (b) the member's right to obtain a copy of the amended report
5 under subsection (1).

6 Penalty: 10 penalty units.

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

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

1

2 **Part 7-4—Registrar may exempt from record**
3 **keeping and reporting requirements**

3

4

4 **Division 353—Registrar may exempt from record keeping**
5 **and reporting requirements**

5

6

6 **353-1 Registrar's power to make specific exemption order**

7

(1) On an application made in accordance with subsection (4) in
8 relation to an Aboriginal and Torres Strait Islander corporation, the
9 Registrar may make an order in writing relieving any of the
10 following from specified requirements of Part 7-2 or 7-3:

11

(a) the directors;

12

(b) the corporation;

13

(c) the auditor.

14

Note: See Part 7-5 for the criteria the Registrar must apply in deciding
15 whether to make a determination under this subsection.

16

(2) An order under subsection (1) is not a legislative instrument.

17

(3) The order may:

18

(a) be expressed to be subject to conditions; and

19

(b) be indefinite or limited to a specified period.

20

(4) The application must:

21

(a) specify the provision or provisions in relation to which the
22 exemption is being sought; and

23

(b) be authorised by a resolution of the directors; and

24

(c) be in writing and signed by a director; and

25

(d) be lodged with the Registrar.

26

(5) The Registrar may, in writing, revoke, vary or suspend the order.

27

(6) A revocation, variation or suspension under subsection (5) is not a
28 legislative instrument.

28

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- 1 (7) The Registrar must give the applicant written notice of the making,
2 revocation, variation or suspension of the order.

3 **353-5 Registrar may make determination even if application is**
4 **incomplete**

5 Despite subsection 353-1(4), the Registrar may make a
6 determination under section 353-1 even if the application does not
7 specify the provisions in relation to which the exemption is being
8 sought.

9 **353-10 Registrar's power to make class orders**

- 10 (1) The Registrar may make an order in writing in respect of a
11 specified class of Aboriginal and Torres Strait Islander corporation
12 relieving any of the following from all or specified requirements of
13 Part 7-2 or 7-3:
14 (a) directors;
15 (b) the corporations themselves;
16 (c) auditors of the corporations.
- 17 Note: See Part 7-5 for the criteria the Registrar must apply in deciding
18 whether to make a determination under this subsection.
- 19 (2) An order under subsection (1) in relation to a specified class of
20 Aboriginal and Torres Strait Islander corporation is a legislative
21 instrument.
- 22 (3) The order may:
23 (a) be expressed to be subject to conditions; and
24 (b) be indefinite or limited to a specified period.
- 25 (4) The Registrar may, in writing, revoke, vary or suspend the order.
- 26 (5) Notice of the making, revocation, variation or suspension of the
27 order must be published in the *Gazette*.

1
2 **Part 7-5—Criteria for determining level of**
3 **reporting requirements**

4 **Division 358—Criteria for determining level of reporting**
5 **requirements**

6 **358-1 What this Part is about**

7 This Part sets out the criteria that the Registrar must apply in
8 deciding whether to make certain determinations in relation to an
9 Aboriginal and Torres Strait Islander corporation or a class of
10 Aboriginal and Torres Strait Islander corporation.

11 **358-5 Criteria for determinations about level of reporting**
12 **requirements**

13 *Criteria*

- 14 (1) The Registrar must have regard to:
- 15 (a) whether the current reporting obligations make a financial
16 report or other report misleading; and
- 17 (b) whether the current reporting obligations are, or the proposed
18 reporting obligations would be, appropriate in the
19 circumstances (see subsection (2)); and
- 20 (c) whether the current reporting obligations impose, or the
21 proposed reporting obligations would impose, unreasonable
22 burdens (see subsection (3)).

23 *Appropriateness of obligations in the circumstances*

- 24 (2) In deciding for the purposes of subsection (1) whether the current
25 reporting obligations are, or the proposed reporting requirements
26 would be, appropriate in the circumstances, the Registrar is to have
27 regard to:
- 28 (a) the services (if any) provided by the corporation or
29 corporations; and

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- 1 (b) the consequences if the corporation or corporations stopped
2 providing those services; and
3 (c) whether the corporation or corporations are regarded by the
4 Registrar as being of a high risk of becoming insolvent or of
5 failing to comply with the reporting requirements under the
6 Act (because of the corporation's or corporations' purposes,
7 structures, or compliance histories); and
8 (d) any other matter the Registrar considers relevant.

9 *Unreasonable burden*

- 10 (3) In deciding for the purposes of subsection (1) whether the current
11 reporting obligations impose, or the proposed reporting obligations
12 would impose, an unreasonable burden on the corporation or
13 corporations, the Registrar is to have regard to:
14 (a) the expected costs of complying with the obligations; and
15 (b) the expected benefits of having the corporation or
16 corporations comply with the obligations; and
17 (c) any practical difficulties that the corporation or corporations
18 face in complying effectively with the obligations; and
19 (d) any unusual aspects of the operation of the corporation or
20 corporations during the financial year concerned; and
21 (e) any other matters that the Registrar considers relevant.
- 22 (4) In assessing expected benefits under paragraph (3)(b), the Registrar
23 is to take account of:
24 (a) the number of creditors and potential creditors; and
25 (b) the position of creditors and potential creditors (in particular,
26 their ability to independently obtain financial information
27 about the corporation or corporations); and
28 (c) the nature and extent of the liabilities of the corporation or
29 corporations.

30 **358-10 Reporting obligations**

- 31 (1) The *current reporting obligations* are the obligations that the
32 corporation or corporations would have under Part 7-2 or 7-3 if the
33 determination were not to be made.

- 1 (2) The *proposed reporting obligations* are the obligations that the
2 corporation or corporations would have under Part 7-2 or 7-3 if the
3 determination were to be made.

Chapter 7 Record keeping, reporting requirements and books

Part 7-6 Sanctions for contraventions of record keeping and reporting requirements

Division 363 Sanctions for contraventions of record keeping and reporting requirements

Section 363-1

1

2

Part 7-6—Sanctions for contraventions of record keeping and reporting requirements

3

4

Division 363—Sanctions for contraventions of record keeping and reporting requirements

5

6

363-1 Sanctions

7

- (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.

8

9

10

11

Note: This section is a civil penalty provision (see section 386-1).

12

- (2) A person commits an offence if he or she contravenes subsection (1) and the contravention is dishonest.

13

14

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

15

- (3) Subsection (1) does not apply to section 339-85, 339-95, 345-5 or 345-10.

16

17

- (4) This section does not affect the application of the provisions of this Chapter to a director as an officer.

18

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2

**Part 7-7—Modifications of record keeping and
reporting requirements by regulations**

3

4

**Division 368—Modifications of record keeping and
reporting requirements by regulations**

5

6

368-1 Modification by regulations

7

The regulations may modify the operation of Parts 7-2 and 7-3 in
relation to:

8

9

(a) a specified Aboriginal and Torres Strait Islander corporation;

10

or

11

(b) all Aboriginal and Torres Strait Islander corporations of a
specified class.

12

1

2 **Part 7-8—Books**

3 **Division 373—Introduction**

4 **373-1 What this Part is about**

5

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).

6

7

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9

Books, and copies of them, have a certain evidentiary value (see section 376-30).

10

1

2 **Division 376—When and where may books be inspected?**

3 **376-1 Inspection of books**

4 (1) This section applies if:

5 (a) this Act requires that a book of an Aboriginal and Torres
6 Strait Islander corporation is to be available for inspection
7 generally; or

8 (b) a person has a right under this Act to inspect a book of an
9 Aboriginal and Torres Strait Islander corporation.

10 (2) If the book is required to be kept at the corporation's registered
11 office, the corporation must make the book available for inspection
12 at the registered office each business day from at least 10 am to 12
13 noon and from at least 2 pm to 4 pm.

14 Penalty: 5 penalty units.

15 (3) If the book is required to be kept at the corporation's document
16 access address, the corporation must make the book available for
17 inspection at the document access address within 7 days after the
18 person seeking to inspect the book asks the corporation in writing
19 to inspect the book.

20 Penalty: 10 penalty units.

21 (4) An offence against subsection (2) or (3) is an offence of strict
22 liability.

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

24 (5) A person permitted by this Act to inspect a book may make copies
25 of, or take extracts from, the book and any person who refuses or
26 fails to allow a person so permitted to make a copy of, or take an
27 extract from, the book commits an offence.

28 Penalty: 5 penalty units.

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

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

Section 376-5

1 **376-5 Translations of instruments and books**

2 (1) If:

3 (a) this Act requires a person to lodge an instrument (including
4 any certificate, contract or other document) or a certified
5 copy of such an instrument; and

6 (b) the instrument is not written in English;

7 the person must lodge at the same time a certified translation of the
8 instrument into English.

9 Penalty: 5 penalty units.

10 (2) If under this Act:

11 (a) an Aboriginal and Torres Strait Islander corporation is
12 required to make an instrument (including any certificate,
13 contract or other document) available for inspection; and

14 (b) the instrument is not written in English;

15 the corporation must keep a certified translation of the instrument
16 into English at:

17 (c) its registered office if it is registered as a large corporation; or

18 (d) its document access address if it is registered as a small or
19 medium corporation.

20 Penalty: 5 penalty units.

21 (3) If:

22 (a) a person has a right to inspect a book of an Aboriginal and
23 Torres Strait Islander corporation; and

24 (b) the book, or a part of the book, is not in English; and

25 (c) the person asks the corporation to give the person an English
26 translation of the book or that part of the book;

27 the corporation must give the person (free of charge) an English
28 translation of the book, or that part of the book, within a reasonable
29 time after the person asks for it.

30 Penalty: 5 penalty units.

31 (4) To avoid doubt, subsection (3) applies even if the book concerned
32 includes minutes that are kept by means of an audio, or
33 audio-visual, recording.

1 (5) An offence against subsection (3) is an offence of strict liability.

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

3 **376-10 Court may compel compliance**

4 (1) If any person in contravention of this Act refuses to permit the
5 inspection of any book or to supply a copy of any book, the Court
6 may by order compel an immediate inspection of the book or order
7 the copy to be supplied.

8 (2) The reference in subsection (1) to a copy of a book includes a
9 reference to an English translation of a book or a part of a book.

10 **376-15 Admissibility of books in evidence**

11 (1) A book kept by an Aboriginal and Torres Strait Islander
12 corporation under a requirement of this Act is:

- 13 (a) admissible in evidence in any proceeding; and
14 (b) prima facie evidence of any matter stated or recorded in the
15 book.

16 (2) A document purporting to be a book kept by an Aboriginal and
17 Torres Strait Islander corporation is, unless the contrary is proved,
18 taken to be a book kept as mentioned in subsection (1).

19 **376-20 Form of books**

20 (1) A book that is required by this Act to be kept or prepared may be
21 kept or prepared:

- 22 (a) by making entries in a bound or loose-leaf book; or
23 (b) by recording or storing the matters concerned by means of a
24 mechanical, electronic or other device; or
25 (c) in any other manner approved by the Registrar.

26 (2) Subsection (1) does not authorise a book to be kept or prepared by
27 a mechanical, electronic or other device unless:

- 28 (a) the matters recorded or stored will be capable, at any time, of
29 being reproduced in a written form; or
30 (b) a reproduction of those matters is kept in a written form
31 approved by the Registrar.

Section 376-25

1 **376-25 Protection of books**

- 2 (1) An Aboriginal and Torres Strait Islander corporation must take all
3 reasonable precautions for guarding against damage to, destruction
4 of or falsification of or in, and for discovery of falsification of or
5 in, any book or part of a book required by this Act to be kept or
6 prepared by the corporation.
- 7 (2) The regulations may prescribe further precautions that an
8 Aboriginal and Torres Strait Islander corporation must take for the
9 purposes of subsection (1).
- 10 (3) If an Aboriginal and Torres Strait Islander corporation records or
11 stores any matters by means of a mechanical, electronic or other
12 device, any duty imposed by this Act:
- 13 (a) to make a book containing those matters available for
14 inspection; or
- 15 (b) to provide copies of the whole or a part of a book containing
16 those matters;
- 17 is to be construed as a duty:
- 18 (c) to make the matters available for inspection in written form;
19 or
- 20 (d) to provide a document containing a clear reproduction in
21 writing of the whole or part of them.
- 22 (4) The regulations may provide for how up to date the information
23 contained in an instrument prepared for the purposes of
24 subsection (3) must be.

25 **376-30 Evidentiary value**

- 26 (1) If:
- 27 (a) because of this Act, a book that this Act requires to be kept or
28 prepared is prima facie evidence of a matter; and
- 29 (b) the book, or a part of the book, is kept or prepared by
30 recording or storing matters (including that matter) by means
31 of a mechanical, electronic or other device;
- 32 a written reproduction of that matter as so recorded or stored is
33 prima facie evidence of that matter.

- 1 (2) A writing that purports to reproduce a matter recorded or stored by
2 means of a mechanical, electronic or other device is, unless the
3 contrary is established, taken to be a reproduction of that matter.

4 **376-35 Falsification of books**

- 5 (1) A person commits an offence if the person:
6 (a) is an officer, former officer, employee, former employee,
7 member or former member of an Aboriginal and Torres Strait
8 Islander corporation; and
9 (b) engages in conduct that results in the concealment,
10 destruction, mutilation or falsification of any books of or
11 belonging to the corporation.

12 Penalty: 100 penalty units or imprisonment for 2 years, or both.

- 13 (2) If matter that is used or intended to be used in connection with the
14 affairs of an Aboriginal and Torres Strait Islander corporation is
15 recorded or stored in an illegible form by means of a mechanical
16 device, an electronic device or any other device, a person who:
17 (a) records or stores by means of that device matter that the
18 person knows to be false or misleading in a material
19 particular; or
20 (b) engages in conduct that results in the destruction, removal or
21 falsification of matter that is recorded or stored by means of
22 that device, or has been prepared for the purpose of being
23 recorded or stored, or for use in compiling or recovering
24 other matter to be recorded or stored by means of that device;
25 or
26 (c) having a duty to record or store matter by means of that
27 device, fails to record or store the matter by means of that
28 device:
29 (i) with intent to falsify any entry made or intended to be
30 compiled, wholly or in part, from matter so recorded or
31 stored; or
32 (ii) knowing that the failure so to record or store the matter
33 will render false or misleading in a material particular
34 other matter so recorded or stored;
35 contravenes this subsection.

Chapter 7 Record keeping, reporting requirements and books

Part 7-8 Books

Division 376 When and where may books be inspected?

Section 376-35

1 Penalty: 100 penalty units or imprisonment for 2 years, or both.

2 (3) It is a defence to a charge arising under subsection (1) or (2) if the
3 defendant proves that the defendant acted honestly and that in all
4 the circumstances the act or omission constituting the offence
5 should be excused.

6 Note: A defendant bears a legal burden in relation to the matter mentioned in
7 subsection (3) (see section 13.4 of the *Criminal Code*).

1
2 **Chapter 8—Civil consequences of**
3 **contravening civil penalty provisions**
4

5 **Division 386—Civil consequences of contravening civil**
6 **penalty provisions**

7 **386-1 Declarations of contravention**

8 *Meaning of civil penalty provisions and declarations*

- 9 (1) If a Court is satisfied that a person has contravened 1 of the
10 following provisions, it must make a declaration of contravention:
11 (a) subsections 265-1(1), 265-5(1) and (2), 265-10(1) and (2)
12 and 265-15(1) and (2) (officers' duties);
13 (b) subsection 284-5(2) (related parties rules);
14 (c) subsection 363-1(1) (requirements for record keeping and
15 reports);
16 (d) subsection 588G(2) of the Corporations Act (as applied by
17 section 531-1 of this Act) (insolvent trading).

18 These provisions are the *civil penalty provisions*.

19 Note: Once a declaration has been made, the Registrar can then seek a
20 pecuniary penalty order (section 386-10) or a disqualification order
21 (section 279-15).

22 *Declarations to specify certain matters*

- 23 (2) A declaration of contravention must specify the following:
24 (a) the Court that made the declaration;
25 (b) the civil penalty provision that was contravened;
26 (c) the person who contravened the provision;
27 (d) the conduct that constituted the contravention;
28 (e) the Aboriginal and Torres Strait Island corporation affected
29 by the contravention.

1 **386-5 Declaration of contravention is conclusive evidence**

2 A declaration of contravention is conclusive evidence of the
3 matters referred to in subsection 386-1(2).

4 **386-10 Pecuniary penalty orders**

5 *Pecuniary penalties*

6 (1) A Court may order a person to pay the Commonwealth a pecuniary
7 penalty of up to \$200,000 if:

8 (a) a declaration of contravention by the person has been made
9 under section 386-1; and

10 (b) the contravention:

11 (i) materially prejudices the interests of the Aboriginal and
12 Torres Strait Islander corporation affected by the
13 contravention or the interests of its members; or

14 (ii) materially prejudices the ability of the Aboriginal and
15 Torres Strait Islander corporation affected by the
16 contravention to pay its creditors; or

17 (iii) is serious.

18 *Penalty a civil debt etc.*

19 (2) The penalty is a civil debt payable to the Commonwealth. The
20 Registrar, or the Commonwealth, may enforce the order as if it
21 were an order made in civil proceedings against the person to
22 recover a debt due by the person. The debt arising from the order is
23 taken to be a judgment debt.

24 **386-15 Compensation orders—civil penalty provisions**

25 *Compensation for damage suffered*

26 (1) A Court may order a person to compensate an Aboriginal and
27 Torres Strait Islander corporation for damage suffered by the
28 corporation if:

29 (a) the person has contravened a civil penalty provision in
30 relation to the corporation; and

31 (b) the damage resulted from the contravention.

1 The order must specify the amount of the compensation.

2 Note: An order may be made under this subsection whether or not a
3 declaration of contravention has been made under section 386-1.

4 *Damage includes profits*

5 (2) In determining the damage suffered by the corporation for the
6 purposes of making a compensation order, include profits made by
7 any person resulting from the contravention.

8 *Recovery of damage*

9 (3) A compensation order may be enforced as if it were a judgment of
10 the Court.

11 **386-20 Who may apply for a declaration or order**

12 *Application by Registrar*

13 (1) The Registrar may apply for a declaration of contravention, a
14 pecuniary penalty order or a compensation order.

15 *Application by corporation*

16 (2) The Aboriginal and Torres Strait Islander corporation affected by
17 the contravention of a civil penalty provision may apply for a
18 compensation order.

19 Note: An application for a compensation order may be made whether or not
20 a declaration of contravention has been made under section 386-1.

21 (3) The Aboriginal and Torres Strait Islander corporation affected by
22 the contravention of a civil penalty provision may intervene in an
23 application for a declaration of contravention or a pecuniary
24 penalty order in relation to the corporation. The corporation is
25 entitled to be heard on all matters other than whether the
26 declaration or order should be made.

27 *No one else may apply*

28 (4) No person may apply for a declaration of contravention, a
29 pecuniary penalty order or a compensation order unless permitted
30 by this section.

Chapter 8 Civil consequences of contravening civil penalty provisions

Division 386 Civil consequences of contravening civil penalty provisions

Section 386-25

1 Note: In certain circumstances, a person may bring proceedings in the name
2 of an Aboriginal and Torres Strait Islander corporation (see
3 Division 169).

4 (5) Subsection (4) does not exclude the operation of the *Director of*
5 *Public Prosecutions Act 1983*.

6 **386-25 Time limit for application for a declaration or order**

7 Proceedings for a declaration of contravention, a pecuniary penalty
8 order or a compensation order, may be started no later than 6 years
9 after the contravention.

10 **386-30 Civil evidence and procedure rules for declarations of**
11 **contravention and civil penalty orders**

12 The Court must apply the rules of evidence and procedure for civil
13 matters when hearing proceedings for:

- 14 (a) a declaration of contravention; or
15 (b) a pecuniary penalty order.

16 **386-35 Civil proceedings after criminal proceedings**

17 A court must not make a declaration of contravention or a
18 pecuniary penalty order against a person for a contravention if the
19 person has been convicted of an offence constituted by conduct
20 that is substantially the same as the conduct constituting the
21 contravention.

22 **386-40 Criminal proceedings during civil proceedings**

23 (1) Proceedings for a declaration of contravention or pecuniary penalty
24 order against a person are stayed if:

- 25 (a) criminal proceedings are started or have already been started
26 against the person for an offence; and
27 (b) the offence is constituted by conduct that is substantially the
28 same as the conduct alleged to constitute the contravention.

29 (2) The proceedings for the declaration or order may be resumed if the
30 person is not convicted of the offence. Otherwise, the proceedings
31 for the declaration or order are dismissed.

1 **386-45 Criminal proceedings after civil proceedings**

2 Criminal proceedings may be started against a person for conduct
3 that is substantially the same as conduct constituting a
4 contravention of a civil penalty provision regardless of whether:

- 5 (a) a declaration of contravention has been made against the
6 person; or
7 (b) a pecuniary penalty order has been made against the person;
8 or
9 (c) a compensation order has been made against the person; or
10 (d) the person has been disqualified from managing an
11 Aboriginal and Torres Strait Islander corporation under
12 Part 6-5.

13 **386-50 Evidence given in proceedings for penalty not admissible in**
14 **criminal proceedings**

15 Evidence of information given or evidence of production of
16 documents by an individual is not admissible in criminal
17 proceedings against the individual if:

- 18 (a) the individual previously gave the evidence or produced the
19 documents in proceedings for a pecuniary penalty order
20 against the individual for a contravention of a civil penalty
21 provision (whether or not the order was made); and
22 (b) the conduct alleged to constitute the offence is substantially
23 the same as the conduct that was claimed to constitute the
24 contravention.

25 However, this does not apply to a criminal proceeding in respect of
26 the falsity of the evidence given by the individual in the
27 proceedings for the pecuniary penalty order.

28 **386-55 Registrar requiring person to assist**

- 29 (1) The Registrar may require a person to give all reasonable
30 assistance in connection with:
31 (a) an application for a declaration of contravention or a
32 pecuniary penalty order; or
33 (b) criminal proceedings for an offence against this Act.

- 1 (2) A requirement under subsection (1) is not a legislative instrument.
- 2 (3) The Registrar can require the person to assist in connection with an
3 application for a declaration or order if, and only if:
- 4 (a) it appears to the Registrar that someone other than the person
5 required to assist may have contravened a civil penalty
6 provision; and
- 7 (b) the Registrar suspects or believes that the person required to
8 assist can give information relevant to the application.
- 9 (4) The Registrar can require the person to assist in connection with
10 criminal proceedings if, and only if:
- 11 (a) it appears to the Registrar that the person required to assist is
12 unlikely to be a defendant in the proceedings; and
- 13 (b) the person required to assist is, in relation to a person who is
14 or should be a defendant in the proceedings:
- 15 (i) an employee or agent (including a banker or auditor) of
16 the other person; or
- 17 (ii) if the other person is a body corporate—an officer or
18 employee of the other person; or
- 19 (iii) if the other person is an individual—a partner of the
20 other person.
- 21 (5) The Registrar can require the person to assist regardless of
22 whether:
- 23 (a) an application for the declaration or penalty order has
24 actually been made; or
- 25 (b) criminal proceedings for the offence have actually begun.
- 26 (6) The person cannot be required to assist if they are or have been a
27 lawyer for:
- 28 (a) in an application for a declaration or penalty order—the
29 person suspected of the contravention; or
- 30 (b) in criminal proceedings—a defendant or likely defendant in
31 the proceedings.
- 32 (7) The requirement to assist must be given in writing.

1 (8) The Court may order the person to comply with the requirement in
2 a specified way. Only the Registrar may apply to the Court for an
3 order under this subsection.

4 Note: The person must comply with the requirement and may commit an
5 offence if they do not, even if there is no order under this
6 subsection (see section 694-100).

7 **386-60 Relief from liability for contravention of civil penalty**
8 **provision**

9 (1) This section:

10 (a) applies to proceedings for a contravention of a civil penalty
11 provision, including proceedings under:

12 (i) section 386-15; or

13 (ii) section 588M or 588W of the Corporations Act (as
14 applied by section 531-1 of this Act); and

15 (b) does not apply to proceedings for an offence, except so far as
16 the proceedings relate to the question whether the court
17 should make an order under section 588K of the
18 Corporations Act (as applied by section 531-1 of this Act).

19 (2) If:

20 (a) proceedings to which this section applies are brought against
21 a person; and

22 (b) in the proceedings it appears to the court that the person has,
23 or may have, contravened a civil penalty provision but that:

24 (i) the person has acted honestly; and

25 (ii) having regard to all the circumstances of the case
26 (including, where applicable, those connected with the
27 person's appointment as an officer, or employment as
28 an employee, of an Aboriginal and Torres Strait Islander
29 corporation), the person ought fairly to be excused for
30 the contravention;

31 the court may relieve the person either wholly or partly from a
32 liability to which the person would otherwise be subject, or that
33 might otherwise be imposed on the person, because of the
34 contravention.

Section 386-60

- 1 (3) In determining under subsection (2) whether a person ought fairly
2 to be excused for a contravention of section 588G of the
3 Corporations Act (as applied by section 531-1 of this Act), the
4 matters to which regard is to be had include, but are not limited to:
5 (a) any action the person took with a view to:
6 (i) appointing an administrator of the Aboriginal and
7 Torres Strait Islander corporation; or
8 (ii) having a special administrator for the Aboriginal and
9 Torres Strait Islander corporation appointed; and
10 (b) when that action was taken; and
11 (c) the results of that action.
- 12 (4) If a person thinks that proceedings to which this section applies
13 will or may be begun against them, they may apply to the Court for
14 relief.
- 15 (5) On an application under subsection (4), the Court may grant relief
16 under subsection (2) as if the proceedings had been begun in the
17 Court.
- 18 (6) For the purposes of subsection (2) as applying for the purposes of a
19 case tried by a judge with a jury:
20 (a) a reference in that subsection to the court is a reference to the
21 judge; and
22 (b) the relief that may be granted includes withdrawing the case
23 in whole or in part from the jury and directing judgment to be
24 entered for the defendant on such terms as to costs as the
25 judge thinks appropriate.
- 26 (7) Nothing in this section limits, or is limited by, section 576-1.

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2

Chapter 9—Lodgments and registers

3

Part 9-1—Introduction

4

Division 396—Introduction

5

396-1 What this Chapter is about

6

This Chapter provides for the lodging of documents with the Registrar and the registers kept by the Registrar.

7

8

Part 9-2 deals with lodging of documents and the powers that the Registrar and the court have in relation to lodging documents.

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10

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.

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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).

1
2 **Division 404—What is the form in which documents may**
3 **be lodged?**

4 **404-1 Forms for documents to be lodged with the Registrar**

5 *Documents in approved form*

- 6 (1) A document that this Act requires to be lodged with the Registrar
7 in the approved form must:
8 (a) be in the approved form; and
9 (b) include the information, statements, explanations or other
10 matters required by the form; and
11 (c) be accompanied by any other material required by the form.

12 *Meaning of document that has been lodged*

- 13 (2) A reference in this Act to a *document that has been lodged* (being
14 a document to which subsection (1) applies), includes a reference
15 to any other material lodged with the document as required by the
16 relevant approved form.

17 **404-5 Signing documents lodged with the Registrar**

- 18 (1) A document lodged with the Registrar in writing by, or on behalf
19 of, a body must be signed by a director or secretary of the body.
20 (2) An individual who lodges a document with the Registrar in writing
21 must sign it.
22 (3) The person's name must be printed next to the signature.

23 **404-10 Documents lodged with the Registrar electronically**

24 *This section sets out the only circumstances in which a document*
25 *may be lodged electronically*

- 26 (1) This section sets out the only circumstances in which a document
27 may be lodged electronically with the Registrar.

Section 404-15

1 *If there is an agreement*

2 (2) A document may be lodged with the Registrar electronically if the
3 Registrar and the person seeking to lodge it (either on his or her
4 own behalf or as agent) have agreed, in writing, that it may be
5 lodged electronically.

6 *Document of a kind approved for electronic lodgment*

7 (3) A document may also be lodged with the Registrar electronically if
8 the Registrar has approved, in writing, the electronic lodgment of
9 documents of that kind.

10 *Document of a kind by particular class of Aboriginal and Torres
11 Strait Islander corporation*

12 (4) A document may also be lodged with the Registrar electronically
13 if:

14 (a) the Registrar has approved, in writing, the electronic
15 lodgment of documents of that kind by, or in respect of, a
16 particular class of Aboriginal and Torres Strait Islander
17 corporation; and

18 (b) the document is lodged by or in respect of an Aboriginal and
19 Torres Strait Islander corporation in that class.

20 (5) The document is taken to be lodged with the Registrar if it is
21 lodged in accordance with the agreement or approval (including
22 any requirements of the agreement or approval as to
23 authentication).

24 **404-15 Relodging of lost registered documents**

25 (1) If:

26 (a) a document forming part of the constitution of an Aboriginal
27 and Torres Strait Islander corporation; or

28 (b) any other document relating to an Aboriginal and Torres
29 Strait Islander corporation;

30 has, since being lodged, been lost or destroyed, a person may apply
31 to the Registrar for leave to lodge a copy of the document as
32 originally lodged.

- 1 (2) The Registrar may direct that notice of the application be given to
2 such persons and in such manner as the Registrar thinks fit.
- 3 (3) A direction under subsection (2) is not a legislative instrument.
- 4 (4) If the Registrar is satisfied:
- 5 (a) that a document (the *original*) that was lodged has been lost
6 or destroyed; and
- 7 (b) of the date of the lodging of the original; and
- 8 (c) that a copy of the original produced to the Registrar is a
9 correct copy;
- 10 the Registrar may:
- 11 (d) certify on the copy that he or she is so satisfied; and
- 12 (e) grant leave for the copy to be lodged in the manner required
13 by law in respect of the original.
- 14 (5) Subsection (4) operates whether or not an application has been
15 made under subsection (1).
- 16 (6) Upon the lodgment, the copy has, and is taken to have had from the
17 date specified in the certificate as the date of the lodging of the
18 original, the same force and effect for all purposes as the original.
- 19 (7) A decision of the AAT varying or setting aside a decision of the
20 Registrar to certify and grant leave under subsection (4) may be
21 lodged with the Registrar and is to be registered by the Registrar.
22 However, no payments, contracts, dealings, acts or things made,
23 had or done in good faith before the registration of the AAT's
24 decision, and upon the faith of and in reliance upon the certificate,
25 are to be invalidated or affected by the AAT's decision.
- 26 (8) A certification under subsection (4) is not a legislative instrument.

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2

Division 407—Registrar's powers

3

407-1 Registrar may refuse to receive or register documents

4

(1) If the Registrar is of the opinion that a document submitted for lodgment:

5

(a) contains matter contrary to law; or

6

7

(b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or

8

9

(c) because of an omission or misdescription has not been duly completed; or

10

11

(d) contravenes this Act; or

12

(e) contains an error, alteration or erasure;

13

the Registrar may refuse to receive or register the document and may request:

14

15

(f) that the document be appropriately amended or completed and resubmitted; or

16

17

(g) that a fresh document be submitted in its place; or

18

19

(h) if the document has not been duly completed—that a supplementary document in the approved form be lodged.

20

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

21

407-5 Registrar may require additional information

22

(1) The Registrar may require a person who submits a document for lodgment to:

23

24

(a) produce to the Registrar such other document; or

25

(b) give the Registrar such information;

26

as the Registrar thinks necessary in order to form an opinion whether he or she may refuse to receive or register the submitted document.

27

28

29

(2) A person must comply with a requirement under subsection (1).

30

(3) A person commits an offence if the person contravenes subsection (2).

31

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

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

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

4 **407-10 Registrar may require information from persons on a**
5 **register**

6 (1) If information about a person is included on a register kept by the
7 Registrar, the Registrar may at any time, in writing, require that
8 person to give the Registrar specified information about the person
9 if information of that kind is included on that register in relation to
10 the person.

11 (2) The person must provide the information within such reasonable
12 period, and in such form, as is specified by the Registrar.

13 (3) A person commits an offence if the person contravenes
14 subsection (2).

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

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

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

18 **407-15 Telephone or email notice of certain changes**

19 (1) The Registrar may, in his or her discretion, accept telephone or
20 email notice of a change to a detail in relation to an Aboriginal and
21 Torres Strait Islander corporation if:

22 (a) either:

23 (i) the change relates to a misspelling or other minor
24 typographical error; or

25 (ii) the change is to a detail included on a list published by
26 the Registrar on the Internet for the purposes of this
27 section; and

28 (b) the notice satisfies the authentication requirements published
29 by the Registrar on the Internet for the purposes of this
30 section.

Section 407-20

- 1 (2) If the Registrar accepts telephone or email notice of a change to a
2 detail, any obligation elsewhere in this Act to lodge an approved
3 form in relation to the change is satisfied by the telephone or email
4 notice, as the case may be. However, this does not affect the
5 corporation's liability for late lodgment fees incurred before the
6 notice is given or that corporation's continuing offences committed
7 before that time.
- 8 (3) The requirements referred to in paragraph (1)(b) are not legislative
9 instruments.

10 **407-20 Registrar may destroy or dispose of lodged documents**

- 11 (1) The Registrar may destroy or dispose of any document relating to
12 an Aboriginal and Torres Strait Islander corporation (other than the
13 constitution or a document affecting the corporation's constitution)
14 if:
15 (a) the Registrar is of the opinion that it is no longer necessary or
16 desirable to retain the document; and
17 (b) the document was lodged more than 15 years before or has
18 been registered for 15 years or longer.
- 19 (2) The Registrar may also destroy or dispose of a document if:
20 (a) the Registrar is of the opinion that it is no longer necessary or
21 desirable to retain the document; and
22 (b) an image of the document has been incorporated with a
23 register kept by the Registrar.

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2 **Division 410—Courts power if documents not lodged**

3 **410-1 Court may make certain orders**

4

(1) If:

5

(a) an individual fails to comply with a requirement to which subsection (7) applies; and

6

7

(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

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(c) the Registrar applies to a court;

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the court may make an order directing the individual to comply with the requirement within the time specified in the order.

12

13

(2) If:

14

(a) a body corporate fails to comply with a requirement to which subsection (7) applies; and

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(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

17

18

19

(c) the Registrar or any member or creditor of the body applies to a court;

20

21

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.

22

23

24

(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).

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(4) A person commits an offence if the person contravenes an order made under subsection (1) or (2).

29

30

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

31

32

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

Chapter 9 Lodgments and registers
Part 9-2 Lodgments with the Registrar
Division 410 Courts power if documents not lodged

Section 410-1

- 1 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 2 (6) Nothing in this Part or Part 9-3 (dealing with registers) prejudices
- 3 the operation of any law imposing penalties on an individual or a
- 4 body or its officers in respect of a failure to comply with a relevant
- 5 requirement.
- 6 (7) This subsection applies to the following:
- 7 (a) a requirement under any provision of this Act or other law
- 8 that requires the lodging in any manner of any return,
- 9 account, report or other document with, or the giving of
- 10 notice to, the Registrar of any matter;
- 11 (b) a requirement to comply with any request of the Registrar to
- 12 amend or complete and resubmit any document or to submit
- 13 a fresh document.

1

2 **Part 9-3—Registers**

3 **Division 415—Introduction**

4 **415-1 What this Part is about**

5

This Part deals with:

6

• 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);

7

8

9

• the information that may be obtained from the Registrar (see Division 421);

10

11

• the validity and use of information so obtained (see Division 424).

12

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2 **Division 418—Registers to be kept**

3 **418-1 Registers**

4 The Registrar must keep the following registers:

- 5 (a) the Register of Aboriginal and Torres Strait Islander
6 Corporations;
- 7 (b) the Register of Disqualified Officers;
- 8 (c) such other registers as the Registrar considers necessary.

9 **418-5 Form of registers**

10 A register may be kept in such form as the Registrar thinks fit.

11 **418-10 Register of Aboriginal and Torres Strait Islander**
12 **Corporations**

13 The Register of Aboriginal and Torres Strait Islander Corporations
14 is to include the information or documents specified in the
15 regulations in relation to each Aboriginal and Torres Strait Islander
16 corporation.

17 **418-15 Register of Disqualified Officers**

- 18 (1) The Register of Disqualified Officers is a register of persons who
19 have been disqualified from managing Aboriginal and Torres Strait
20 Islander corporations under section 279-15, 279-20, 279-25 or
21 279-30.
- 22 (2) The register must contain a copy of:
- 23 (a) every notice that was served under section 279-30; and
24 (b) every order made by the court under section 279-15, 279-20
25 or 279-25; and
26 (c) every order lodged under section 279-35; and
27 (d) every permission given under subsection 279-30(7); and
28 (e) any other document set out in the regulations.

1
2 **Division 421—What information may a person obtain from**
3 **the Registrar?**

4 **421-1 Inspection and production of records**

- 5 (1) A person may:
6 (a) inspect:
7 (i) any document lodged with the Registrar except an
8 exempt document (see subsection (4)); and
9 (ii) a notice, order or permission set out in subsection
10 418-15(2); or
11 (b) require a certificate of the registration of an Aboriginal and
12 Torres Strait Islander corporation or any other certificate
13 authorised by this Act to be given by the Registrar; or
14 (c) require a copy of, or extract from:
15 (i) any document that the person is entitled to inspect under
16 paragraph (a); or
17 (ii) any certificate referred to in paragraph (b) to be given,
18 or given and certified, by the Registrar; or
19 (d) if the Registrar agrees—inspect or search a prescribed
20 register kept by the Registrar for prescribed information.

21 *Registrar not required to use originals*

- 22 (2) If a reproduction or an image of a document or certificate is
23 produced for inspection, a person is not entitled under
24 subsection (1) to require the production of the original of the
25 document or certificate.
26 (3) For the purposes of paragraph (1)(c), the Registrar is not required
27 to take the copy or extract from the original of the lodged
28 document but may take the copy or extract from an image of the
29 original.

30 *Meaning of exempt document*

- 31 (4) In subsection (1):
-

Section 421-5

- 1 *exempt document* means:
- 2 (a) a notice lodged under subsection 304-15(4); or
- 3 (b) a report made or lodged under:
- 4 (i) section 422 of the Corporations Act (as applied by
- 5 section 516-1 of this Act); or
- 6 (ii) section 438D of the Corporations Act (as applied by
- 7 section 521-1 of this Act); or
- 8 (iii) section 533 of the Corporations Act (as applied by
- 9 section 526-35 of this Act); or
- 10 (c) a report by a special administrator under section 502-1 into
- 11 an Aboriginal and Torres Strait Islander corporation, if the
- 12 corporation has not agreed to allow the inspection of the
- 13 report; or
- 14 (d) a report by an examiner under section 453-1 into an
- 15 Aboriginal and Torres Strait Islander corporation, if the
- 16 corporation has not agreed to allow the inspection of the
- 17 report; or
- 18 (e) a document that has been destroyed or otherwise disposed of;
- 19 or
- 20 (f) any other document specified in the regulations.

21 **421-5 Requests and certification of copy or extract etc.**

- 22 (1) If:
- 23 (a) a person makes, under paragraph 421-1(1)(c), a requirement
- 24 that relates to a document or certificate; and
- 25 (b) the Registrar keeps, by means of a computer, a record of
- 26 information set out in the document or certificate; and
- 27 (c) in meeting that requirement, the Registrar gives a writing or
- 28 document that sets out what purports to be the contents of:
- 29 (i) the whole of the document or certificate; or
- 30 (ii) a part of the document or certificate;
- 31 then, for the purposes of paragraph 421-1(1)(c), the Registrar is
- 32 taken to have given:
- 33 (d) if subparagraph (c)(i) applies—a copy of the document or
- 34 certificate; or

Section 421-5

- 1 (e) if subparagraph (c)(ii) applies—an extract from the document
2 or certificate setting out that part of it.

3 *Certification by Registrar*

4 (2) If:

- 5 (a) the requirement referred to in paragraph (1)(a) includes a
6 requirement that the copy or extract be certified; and
7 (b) in meeting that requirement, the Registrar gives a writing or
8 document as mentioned in paragraph (1)(c);

9 then:

- 10 (c) the Registrar may certify that the writing or document sets
11 out the contents of the whole or part of the document or
12 certificate, as the case requires; and
13 (d) the writing or document is, in a proceeding in a court,
14 admissible as prima facie evidence of the information
15 contained in it.

- 16 (3) A certification under subsection (2) is not a legislative instrument.

Section 424-1

1

2 **Division 424—Validity and use of information etc. obtained**
3 **from a register**

4 **424-1 Validity of copy or extract**

5 A copy or an extract derived from a document lodged with the
6 Registrar, and certified by the Registrar, is, in any proceeding,
7 admissible in evidence as of equal validity with the original
8 document.

9 **424-5 Use in court proceedings etc. of documents issued by Registrar**

10 (1) If:

- 11 (a) the Registrar gives a certificate; and
12 (b) the certificate states that, at a date or during a period
13 specified in the certificate, no Aboriginal and Torres Strait
14 Islander corporation was registered under this Act by a name
15 specified in the certificate;

16 then, in any proceeding, the certificate is to be received as prima
17 facie evidence that at that date or during that period, as the case
18 may be, no Aboriginal and Torres Strait Islander corporation was
19 registered by that name under this Act.

20 (2) If:

- 21 (a) the Registrar gives a certificate; and
22 (b) the certificate states that a requirement of this Act specified
23 in the certificate:
24 (i) had or had not been complied with at a date or within a
25 period specified in the certificate; or
26 (ii) had been complied with at a date specified in the
27 certificate but not before that date;

28 then in any proceeding, the certificate is to be received as prima
29 facie evidence of matters specified in the certificate.

30 (3) If:

- 31 (a) the Registrar gives a certificate; and

1 (b) the certificate states that, during a period specified in the
2 certificate, a particular Aboriginal and Torres Strait Islander
3 corporation was registered, or taken to be registered, under
4 this Act;

5 then, in any proceedings, the certificate is to be received as prima
6 facie evidence that, during that period, that corporation was
7 registered under this Act.

8 *Certificates issued are prima facie evidence*

9 (4) A certificate given by the Registrar stating that an Aboriginal and
10 Torres Strait Islander corporation has been registered under this
11 Act is prima facie evidence that:

12 (a) all requirements of this Act for its registration have been
13 complied with; and

14 (b) the corporation was duly registered as an Aboriginal and
15 Torres Strait Islander corporation under this Act on the date
16 specified in the certificate.

17 *Writing prepared by the Registrar*

18 (5) If:

19 (a) a writing purports to have been prepared by the Registrar;
20 and

21 (b) the writing sets out information that purports to relate to an
22 Aboriginal and Torres Strait Islander corporation; and

23 (c) the information relating to the corporation was derived from
24 information obtained by the Registrar in the administration of
25 this Act; and

26 (d) the information was obtained by the Registrar using a
27 computer;

28 then the writing is prima facie evidence of the matters stated in the
29 writing. In other words, the writing is proof of such a matter in the
30 absence of evidence to the contrary.

31 (6) The writing referred to in subsection (5) need not bear a certificate
32 or signature in order to be taken to purport to have been prepared
33 by the Registrar.

Chapter 9 Lodgments and registers

Part 9-3 Registers

Division 424 Validity and use of information etc. obtained from a register

Section 424-10

1 (7) Nothing in this section limits, or is limited by, any other provision
2 of this Part.

3 **424-10 Registrar's certificate that person was a director etc.**

4 The Registrar may certify that a person was a director, secretary or
5 contact person of an Aboriginal and Torres Strait Islander
6 corporation at a particular time or during a particular period. In the
7 absence of evidence to the contrary, a certificate is proof of the
8 matters stated in it.

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2

Chapter 10—Regulation and enforcement

3

Part 10-1—Introduction

4

Division 434—Introduction

5

434-1 What this Chapter is about

6

This Chapter deals with the regulation of Aboriginal and Torres Strait Islander corporations and enforcement.

7

8

Part 10-2 of this Chapter deals with the regulation of Aboriginal and Torres Strait Islander corporations by the Registrar.

9

10

Part 10-3 deals with the enforcement powers available to ensure compliance with the Act etc.

11

12

Part 10-4 deals with offences relating to the regulatory and enforcement powers.

13

14

Part 10-5 deals with protection for whistleblowers.

15

Note: Other regulatory powers that the Registrar has include:

16

(a) putting an Aboriginal and Torres Strait Islander corporation under special administration (see section 487-1);

17

18

(b) disqualifying a person from managing an Aboriginal and Torres Strait Islander corporation (see 279-30);

19

20

(c) changing an Aboriginal and Torres Strait Islander corporation's constitution (see section 69-35).

21

Section 439-1

1

2 **Part 10-2—Regulation of Aboriginal and Torres**
3 **Strait Islander corporations**

4 **Division 439—Regulation of Aboriginal and Torres Strait**
5 **Islander corporations**

6 **439-1 What this Part is about**

7

This Part deals with the Registrar's regulatory powers
(section 658-10 also deals with the Registrar's powers generally).

8

9

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).

10

11

12

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).

13

14

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.

16

17

18 **439-5 Registrar may convene meetings of interested persons**

19

(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.

20

21

22

(2) The Registrar may inform the Minister of the following matters in
respect of the meeting:

23

24

(a) the reason for the meeting;

25

(b) the persons who were given notice of the convening of the
meeting;

26

27

(c) the names of the notified persons who did not attend the
meeting;

28

- 1 (d) any other matter arising from the meeting.
- 2 (3) The notice of the convening of the meeting is not a legislative
3 instrument.
- 4 (4) Some or all of the information provided to the Minister under
5 subsection (2) may be included in the Agency's report on the
6 Agency's activities during a financial year.
- 7 (5) In subsection (4):
- 8 *Agency* means the Agency (within the meaning of the *Public*
9 *Service Act 1999*) of which the Office of the Registrar of
10 Aboriginal and Torres Strait Islander Corporations is a part.

11 **439-10 Registrar may call a general meeting (other than an AGM)**

- 12 (1) The Registrar may call and arrange to hold a general meeting
13 (other than an AGM) of an Aboriginal and Torres Strait Islander
14 corporation if:
- 15 (a) the corporation has called the meeting for a particular day but
16 it has not been held for 14 days after that day; or
- 17 (b) the Registrar has been requested to do so in writing by at
18 least the required number of members of the corporation
19 under subsection (9); or
- 20 (c) the corporation has not held a general meeting within 3
21 months after the corporation is registered; or
- 22 (d) the Registrar is satisfied that, in the circumstances of the
23 corporation, there is a need to do so.
- 24 *Meeting may be held for any purpose*
- 25 (2) The Registrar may call and arrange to hold the meeting for any
26 purpose relevant to the corporation that the Registrar thinks
27 appropriate and, in the case of a meeting called under
28 paragraph (1)(a), the Registrar may include in the notice of the
29 meeting a matter that was not in the original notice of meeting.
- 30 (3) The notice of the convening of the meeting is not a legislative
31 instrument.

Chapter 10 Regulation and enforcement

Part 10-2 Regulation of Aboriginal and Torres Strait Islander corporations

Division 439 Regulation of Aboriginal and Torres Strait Islander corporations

Section 439-10

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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.

- 1 Without limiting this, the regulations may specify the number as a
2 percentage of the number of members of the corporation.
- 3 (11) The regulations may prescribe a different percentage for the
4 purposes of applying paragraph (9)(b) to:
- 5 (a) a particular Aboriginal and Torres Strait Islander corporation;
6 or
7 (b) a particular class of Aboriginal and Torres Strait Islander
8 corporation.

9 **439-15 Registrar may call an AGM**

10 *Registrar may call an AGM*

- 11 (1) The Registrar may call and arrange to hold an AGM of an
12 Aboriginal and Torres Strait Islander corporation if the corporation
13 has not held the meeting as required by section 201-150 or
14 201-155.

15 *Rules for meeting*

- 16 (2) A meeting called by the Registrar under this section is to be
17 chaired by:
- 18 (a) the Registrar; or
19 (b) another individual authorised by the Registrar.
- 20 (3) The rules in Chapter 5 (meetings) (except section 201-75) apply to
21 an AGM called under this section unless the Registrar determines
22 in writing that some or all of those rules do not apply. The
23 determination must:
- 24 (a) specify the rules that do not apply; and
25 (b) specify such other rules (if any) as the Registrar thinks
26 appropriate to apply to the meeting.
- 27 (4) A determination under subsection (3) is not a legislative
28 instrument.

Section 439-20

1 *Observers*

2 (5) The Registrar may authorise a person to attend a meeting called
3 under this section as an observer. A person so authorised is entitled
4 to attend the meeting.

5 **439-20 Registrar may require compliance with Act etc.**

6 *Suspicion of non-compliance with the Act or financial irregularity*

7 (1) If the Registrar suspects on reasonable grounds that:

8 (a) an Aboriginal and Torres Strait Islander corporation has
9 failed to comply with a provision of this Act or the
10 corporation's constitution; or

11 (b) there has been an irregularity in the affairs of an Aboriginal
12 and Torres Strait Islander corporation;

13 the Registrar may, by notice in writing to the corporation or to each
14 director, require the directors to take the action specified in the
15 notice, within the period specified in the notice, for the purpose of
16 complying with the Act or the constitution or remedying the
17 irregularity, as the case may be.

18 (2) A notice under subsection (1) is not a legislative instrument.

19 *Suspicion that there may be grounds to appoint a special*
20 *administrator*

21 (3) If the Registrar suspects on reasonable grounds that:

22 (a) circumstances exist in relation to an Aboriginal and Torres
23 Strait Islander corporation; and

24 (b) those circumstances constitute, or may constitute, grounds
25 for determining that an Aboriginal and Torres Strait Islander
26 corporation is to be under special administration;

27 the Registrar may, by notice in writing, require the directors of the
28 corporation to take the action specified in the notice, within the
29 period specified in the notice, for the purpose of causing those
30 circumstances to cease to exist.

31 (4) A notice under subsection (3) is not a legislative instrument.

- 1 *Suspicion that circumstances may occur or develop that would*
2 *constitute grounds to appoint a special administrator*
- 3 (5) If the Registrar suspects on reasonable grounds that:
- 4 (a) circumstances are likely to occur or develop in relation to an
5 Aboriginal and Torres Strait Islander corporation; and
- 6 (b) if those circumstances were to occur or develop, they would
7 constitute, or may constitute, grounds for determining that an
8 Aboriginal and Torres Strait Islander corporation is to be
9 under special administration;
- 10 the Registrar may, by notice in writing, require the directors of the
11 corporation to take the action specified in the notice, within the
12 period specified in the notice, for the purpose of preventing those
13 circumstances from occurring or developing.
- 14 (6) A notice under subsection (5) is not a legislative instrument.
- 15 *Issue of notice does not preclude Registrar taking other action*
16 *under this Act*
- 17 (7) If a notice has been issued by the Registrar under this section then,
18 regardless of whether the period specified in the notice has expired
19 or not, the Registrar may take any other action under this Act in
20 relation to the corporation that the Registrar thinks appropriate.

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2

Part 10-3—Enforcement

3

Division 444—Introduction

4

444-1 What this Part is about

5

This Part deals with enforcement powers.

6

Division 447 deals with the appointment of authorised officers.

7

Division 450 deals with the purposes for which the powers under this Part may be exercised.

8

9

Division 453 deals with the powers to examine books and ask people questions.

10

11

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.

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2 **Division 447—Authorised officers**

3 **447-1 Appointment of authorised officers**

- 4 (1) The Registrar may, in writing, appoint:
- 5 (a) an officer or employee of the Department; or
- 6 (b) any other suitably qualified person;
- 7 to be an authorised officer for the purposes of this Part.
- 8 (2) In exercising powers or performing functions as an authorised
- 9 officer, an authorised officer must comply with any directions of
- 10 the Registrar.

11 **447-5 Identity cards**

- 12 (1) The Registrar must issue an identity card to an authorised officer in
- 13 the form prescribed by the regulations. The identity card must
- 14 contain a recent photograph of the authorised officer.
- 15 (2) A person commits an offence if:
- 16 (a) the person has been issued with an identity card; and
- 17 (b) the person ceases to be an authorised officer; and
- 18 (c) the person does not, within 7 days after so ceasing, return the
- 19 identity card to the Registrar.
- 20 Penalty: 1 penalty unit.
- 21 (3) However, the person does not commit the offence if the identity
- 22 card was lost or destroyed.
- 23 Note: A defendant bears an evidential burden in relation to the matter in
- 24 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
- 25 (4) An authorised officer must carry the identity card at all times when
- 26 exercising powers or performing functions as an authorised officer.
- 27 (5) An identity card is not a legislative instrument.

Section 450-1

1

2 **Division 450—Purposes for which powers under this Part**
3 **may be exercised**

4 **450-1 Purposes for which power under this Part may be exercised**

5 A power conferred by this Part may only be exercised:

6 (a) for the purposes of the performance or exercise of any of the
7 Registrar's functions and powers under this Act; or

8 (b) for the purpose of ensuring compliance with this Act; or

9 (c) in relation to:

10 (i) an alleged or suspected contravention of this Act; or

11 (ii) an alleged or suspected contravention of a law of the
12 Commonwealth, or of a State or Territory, being a
13 contravention that concerns the management or
14 examinable affairs of an Aboriginal and Torres Strait
15 Islander corporation or a related body corporate; or

16 (iii) an alleged or suspected contravention of a law of the
17 Commonwealth, or of a State or Territory, being a
18 contravention that involves fraud or dishonesty and
19 relates to an Aboriginal and Torres Strait Islander
20 corporation or a related body corporate.

1

2 **Division 453—Examination of books and persons**

3 **453-1 Examination of books**

- 4 (1) The Registrar may, at any time, cause an authorised officer to
5 examine the books of an Aboriginal and Torres Strait Islander
6 corporation and to report to the Registrar on the results of that
7 examination, drawing attention to any or all of the following
8 matters:
- 9 (a) if the corporation has failed to comply with a provision of
10 this Act or the corporation's constitution;
- 11 (b) an alleged or suspected contravention of a law of the
12 Commonwealth, or of a State or Territory, being a
13 contravention that concerns the management or affairs of an
14 Aboriginal and Torres Strait Islander corporation or a related
15 body corporate, or involves fraud or dishonesty and relates to
16 an Aboriginal and Torres Strait Islander corporation or a
17 related body corporate;
- 18 (c) if there has been an irregularity in the operations or affairs of
19 the corporation;
- 20 (d) if circumstances exist that constitute, or may constitute,
21 grounds for appointing a special administrator for the
22 corporation;
- 23 (e) if circumstances are likely to occur or develop and that, if
24 they were to occur or develop, may constitute grounds for
25 appointing a special administrator for the corporation.
- 26 (2) The authorised officer is entitled, at all reasonable times, to full
27 and free access to the books of the corporation.
- 28 (3) The authorised officer may make copies, or take extracts from, any
29 such books.
- 30 (4) The authorised officer may require any person to produce such
31 books of the corporation in the possession of the person, or to
32 which the person has access, as the authorised officer considers
33 necessary for the purposes of this section.

Section 453-5

- 1 (5) A person who fails to comply with a requirement under
2 subsection (4) commits an offence.
- 3 Penalty: 10 penalty units.
- 4 (6) An offence against subsection (5) is an offence of strict liability.
5 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 6 (7) A report under subsection (1) is not a legislative instrument.

7 **453-5 Production of books or attendance to answer questions**

- 8 (1) The Registrar may, by notice given to a person whom the
9 Registrar, on reasonable grounds, believes to have some
10 knowledge of the examinable affairs of an Aboriginal and Torres
11 Strait Islander corporation, require the person:
- 12 (a) to provide the Registrar or an authorised officer with
13 information concerning the corporation or its examinable
14 affairs; or
- 15 (b) to produce to the Registrar or an authorised officer books of
16 the corporation in the custody or under the control of the
17 person; or
- 18 (c) to appear before the Registrar or an authorised officer to
19 answer questions about the corporation or its examinable
20 affairs.
- 21 (2) Subject to subsection (3), the notice:
- 22 (a) must be in writing; and
- 23 (b) may be given personally or by post; and
- 24 (c) must specify:
- 25 (i) when and how the person is to provide the information
26 or produce the documents; or
- 27 (ii) when and where the person is to appear before the
28 Registrar or an authorised officer.
- 29 (3) The person must not be required to provide the information,
30 produce the documents or appear to answer questions within a
31 period of less than 14 days after the notice is given.

Section 453-5

- 1 (4) The Registrar may require the person to give or verify the
2 information or answers:
3 (a) on oath or affirmation; and
4 (b) either orally or in writing.
5 The Registrar, or an authorised officer to whom the information or
6 answers are given, may administer such an oath or affirmation to
7 the person.
- 8 (5) A person must not fail to comply with a notice under
9 subsection (1).
10 Penalty: 30 penalty units or imprisonment for 6 months, or both.
- 11 (6) An offence against subsection (5) is an offence of strict liability.
12 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 13 (7) A person does not commit an offence against subsection (5) to the
14 extent to which the person is not capable of complying with the
15 notice.
16 Note: The defendant bears an evidential burden in relation to the matter in
17 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Section 456-1

1

2 **Division 456—Warrants for books not produced**

3 **Subdivision 456-A—Warrants applied for in person**

4 **456-1 Application for warrant to seize books not produced**

5 (1) If the Registrar or an authorised officer has reasonable grounds to
6 suspect that there are, or may be within the next 3 days, on
7 particular premises in Australia, books:

8 (a) whose production has been required under section 453-1 or
9 453-5; and

10 (b) that have not been produced in compliance with that
11 requirement;

12 the Registrar or authorised officer may:

13 (c) lay before a magistrate an information on oath or affirmation
14 setting out those grounds; and

15 (d) apply for the issue of a warrant to search the premises for
16 those books.

17 (2) On an application under this section, the magistrate may require
18 further information to be given, either orally or by affidavit, in
19 connection with the application.

20 **456-5 Grant of warrant**

21 (1) This section applies if, on an application under section 456-1, the
22 magistrate is satisfied that there are reasonable grounds to suspect
23 that there are, or may be within the next 3 days, on particular
24 premises, particular books:

25 (a) whose production has been required under section 453-1 or
26 453-5; and

27 (b) that have not been produced in compliance with that
28 requirement.

29 (2) The magistrate may issue a warrant authorising an authorised
30 officer, whether or not named in the warrant, together with any
31 person named in the warrant, with such assistance, and by such
32 force, as is necessary and reasonable:

Section 456-10

- 1 (a) to enter on or into the premises; and
2 (b) to search the premises; and
3 (c) to break open and search anything, whether a fixture or not,
4 in or on the premises; and
5 (d) to take possession of, or secure against interference, books
6 that appear to be any or all of those books.
- 7 (3) If the magistrate issues such a warrant, he or she must set out on
8 the information laid before him or her under subsection 456-1(1)
9 for the purposes of the application:
10 (a) which of the grounds set out in the information; and
11 (b) particulars of any other grounds;
12 he or she has relied on to justify the issue of the warrant.
- 13 (4) A warrant under this section must:
14 (a) specify the premises and books referred to in subsection (1);
15 and
16 (b) state whether entry is authorised to be made at any time of
17 the day or night or only during specified hours; and
18 (c) state that the warrant ceases to have effect on a specified day
19 that is not more than 7 days after the day of issue of the
20 warrant.
- 21 (5) The function of issuing a warrant is conferred on the magistrate in
22 a personal capacity and not as a court or a member of a court. The
23 magistrate need not accept the function conferred.

24 **456-10 Powers where books produced or seized**

- 25 (1) This section applies if:
26 (a) books of an Aboriginal and Torres Strait Islander corporation
27 are produced to an authorised officer under section 453-1 or
28 section or 453-5; or
29 (b) under a warrant issued under this Division, an authorised
30 officer:
31 (i) takes possession of books of an Aboriginal and Torres
32 Strait Islander corporation; or
33 (ii) secures books of an Aboriginal and Torres Strait
34 Islander corporation against interference; or
-

Section 456-10

- 1 (c) by virtue of a previous application of subsection (8) of this
2 section, books are delivered into a person's possession.
- 3 (2) If paragraph (1)(a) applies, the authorised officer may take
4 possession of any of the books.
- 5 (3) The authorised officer may inspect, and may make copies of, or
6 take extracts from, any of the books.
- 7 (4) The authorised officer may use, or permit the use of, any of the
8 books for the purposes of a proceeding (including a proceeding
9 under a law of the Commonwealth, or of a State or Territory).
- 10 (5) The authorised officer may retain possession of any of the books
11 for so long as is necessary:
- 12 (a) for the purposes of exercising a power conferred by this
13 section (other than this subsection and subsection (7)); or
14 (b) for any of the purposes referred to in paragraphs 450-1(a), (b)
15 or (c); or
16 (c) to determine if there is a matter in relation to the corporation
17 that is specified in subsection 453-1(1) as a matter that
18 should be drawn attention to; or
19 (d) for a decision to be made about whether or not a proceeding
20 (including a proceeding under a law of the Commonwealth,
21 or of a State or Territory) to which the books concerned
22 would be relevant should be begun; or
23 (e) for such a proceeding to be begun and carried on.
- 24 (6) No-one is entitled, as against the authorised officer, to claim a lien
25 on any of the books, but such a lien is not otherwise prejudiced.
- 26 (7) While the books are in the authorised officer's possession, the
27 officer:
- 28 (a) must permit another person to inspect, at all reasonable
29 times, such (if any) of the books as the other person would be
30 entitled to inspect if they were not in the authorised officer's
31 possession; and
32 (b) may permit another person to inspect any of the books.

- 1 (8) Unless subparagraph (1)(b)(ii) applies, the authorised officer may
2 deliver any of the books into the possession of the Registrar or a
3 person approved by the Registrar to receive them.
- 4 (9) If paragraph (1)(a) or (b) applies, the authorised officer, the
5 Registrar or an approved person into whose possession the
6 authorised officer delivers any of the books under subsection (8),
7 may require:
- 8 (a) if paragraph (1)(a) applies—a person who so produced any of
9 the books; or
- 10 (b) in any case—a person who was a party to the compilation of
11 any of the books;
12 to explain any matter about the compilation of any of the books or
13 to which any of the books relate.
- 14 (10) Subsection (9) does not apply to the extent that the person has
15 explained the matter to the best of his or her knowledge or belief.
- 16 Note: A defendant bears an evidential burden in relation to the matter in
17 subsection (10) (see subsection 13.3(3) of the *Criminal Code*).
- 18 (11) A person must not intentionally or recklessly fail to comply with a
19 requirement under subsection (9).
- 20 Penalty: 100 penalty units or imprisonment for 2 years, or both.
- 21 (12) Subsection (11) does not apply to the extent to which the person
22 has a reasonable excuse.
- 23 Note: A defendant bears an evidential burden in relation to the matter in
24 subsection (12) (see subsection 13.3(3) of the *Criminal Code*).

25 **Subdivision 456-B—Warrants by telephone or other electronic**
26 **means**

27 **456-15 Applying for warrants by telephone or other electronic**
28 **means**

- 29 (1) The Registrar or an authorised officer may apply to a magistrate
30 for a warrant by telephone, fax or other electronic means:
31 (a) in an urgent case; or

Section 456-20

- 1 (b) if the delay that would occur if an application were made in
2 person would frustrate the effective execution of the warrant.
- 3 (2) An application under subsection (1):
4 (a) must include all information that would be required in an
5 ordinary application for a warrant; and
6 (b) if necessary, may be made before the information is sworn or
7 affirmed.
- 8 (3) The magistrate may require:
9 (a) communication by voice to the extent that it is practicable in
10 the circumstances; and
11 (b) any further information.
- 12 (4) The function of issuing a warrant is conferred on the magistrate in
13 a personal capacity and not as a court or a member of a court. The
14 magistrate need not accept the function conferred.

15 **456-20 Issuing warrants by telephone etc.**

- 16 (1) The magistrate may complete and sign the same form of warrant
17 that would be issued under section 456-5 if satisfied that:
18 (a) a warrant in the terms of the application should be issued
19 urgently; or
20 (b) the delay that would occur if an application were made in
21 person would frustrate the effective execution of the warrant.
- 22 (2) If the magistrate issues the warrant, he or she must inform the
23 applicant, by telephone, fax or other electronic means, of the terms
24 of the warrant and the day on which and the time at which it was
25 signed.
- 26 (3) The applicant must then:
27 (a) complete a form of warrant in terms substantially
28 corresponding to those given by the magistrate; and
29 (b) state on the form:
30 (i) the name of the magistrate; and
31 (ii) the day on which the warrant was signed; and
32 (iii) the time at which the warrant was signed.

- 1 (4) The applicant must give the magistrate:
2 (a) the form of warrant completed by the applicant; and
3 (b) if the information was unsworn under paragraph
4 456-15(2)(b)—the sworn information;
5 by the end of the day after whichever first occurs:
6 (c) the warrant expires; or
7 (d) the warrant is executed.
- 8 (5) The magistrate must attach the form of warrant completed by the
9 magistrate to the documents provided under subsection (4).

10 **456-25 Unsigned warrants by telephone etc. in court proceedings**

- 11 If:
12 (a) it is material, in any proceedings, for a court to be satisfied
13 that the exercise of a power under a warrant issued under this
14 Division was duly authorised; and
15 (b) the form of warrant signed by the magistrate is not produced
16 in evidence;
17 the court must assume that the exercise of the power was not duly
18 authorised unless the contrary is proved.

19 **Subdivision 456-C—Offences relating to warrants by telephone**
20 **or other electronic means**

21 **456-30 Offence for stating incorrect names in warrants by telephone**
22 **etc.**

- 23 A person commits an offence if:
24 (a) the person states a name of a magistrate in a document; and
25 (b) the document purports to be a form of warrant under
26 section 456-20; and
27 (c) the name is not the name of the magistrate who issued the
28 warrant.

29 Penalty: 120 penalty units or imprisonment for 2 years, or both.

Section 456-35

1 **456-35 Offence for unauthorised form of warrant**

2 A person commits an offence if:

- 3 (a) the person states a matter in a form of warrant under
4 section 456-20; and
5 (b) the matter departs in a material particular from the form
6 authorised by the magistrate.

7 Penalty: 120 penalty units or imprisonment for 2 years, or both.

8 **456-40 Offence for execution etc. of unauthorised form of warrant**

9 A person commits an offence if:

- 10 (a) the person executes a document or presents a document to a
11 person; and
12 (b) the document purports to be a form of warrant under
13 section 456-20; and
14 (c) the document:
15 (i) has not been approved by a magistrate under that
16 section; or
17 (ii) departs in a material particular from the terms
18 authorised by the magistrate under that section.

19 Penalty: 120 penalty units or imprisonment for 2 years, or both.

20 **456-45 Offence for giving unexecuted form of warrant**

21 A person commits an offence if:

- 22 (a) the person gives a magistrate a form of warrant under
23 section 456-20; and
24 (b) the document is not the form of warrant that the person
25 executed.

26 Penalty: 120 penalty units or imprisonment for 2 years, or both.

1 **Subdivision 456-D—Warrant details to be given to occupier**

2 **456-50 Details of warrant to be given to occupier etc.**

- 3 (1) If a warrant in relation to premises is being executed and the
4 occupier of the premises or another person who apparently
5 represents the occupier is present at the premises, the authorised
6 officer executing the warrant must make available to that person a
7 copy of the warrant.
- 8 (2) If a warrant in relation to a person is being executed, the authorised
9 officer executing the warrant must make available to that person a
10 copy of the warrant.
- 11 (3) The authorised officer must identify himself or herself to the
12 person at the premises.
- 13 (4) The copy of the warrant referred to in subsections (1) and (2) need
14 not include the signature of the issuing magistrate or the seal of the
15 relevant court.

Section 461-1

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Part 10-4—Offences relating to regulatory and enforcement powers of Registrar

3

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Division 461—Offences relating to regulatory and enforcement powers of Registrar

5

6

461-1 Obstructing Registrar or interfering with meeting called by Registrar etc.

7

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(1) A person must not:

9

(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

10

11

12

(b) engage in conduct that results in the obstruction or hindering of a person who is executing a warrant under Division 456.

13

14

Penalty: 100 penalty units or imprisonment for 2 years, or both.

15

(2) Subsection (1) does not apply to the extent that the person has a reasonable excuse.

16

17

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

18

19

(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.

20

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Penalty: 25 penalty units or imprisonment for 6 months, or both.

25

(4) A person must not:

26

(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

27

28

29

30

(b) engage in conduct that results in the disruption of a meeting called under section 439-10 or 439-15.

31

1 Penalty: 50 penalty units or imprisonment for 1 year, or both.

2 (5) An offence constituted by a contravention of subsection (4) is
3 punishable on summary conviction.

4 **461-5 False information**

5 (1) A person must not, in purported compliance with a requirement
6 made under Part 10-3, give information, or make a statement, that
7 is false or misleading in a material particular.

8 Penalty: 100 penalty units or imprisonment for 2 years, or both.

9 (2) It is a defence to a prosecution for a contravention of subsection (1)
10 if it is proved that the defendant, when giving the information or
11 evidence or making the statement, believed on reasonable grounds
12 that it was true and not misleading.

13 Note: A defendant bears a legal burden in relation to the matter in
14 subsection (3) (see section 13.4 of the *Criminal Code*).

15 **461-10 Concealing books relevant to investigation**

16 (1) If a requirement under section 453-1 or 453-5 has been made to
17 produce a book, a person must not:

18 (a) in any case—engage in conduct that results in the
19 concealment, destruction, mutilation or alteration of the
20 book; or

21 (b) if a book is in a particular State or Territory—engage in
22 conduct that results in the taking or sending of the book out
23 of that State or Territory or out of Australia.

24 Penalty: 200 penalty units or imprisonment for 5 years, or both.

25 (2) It is a defence to a prosecution for a contravention of subsection (1)
26 if it is proved that the defendant did not intend to defeat the
27 purposes of this Act.

28 Note: A defendant bears a legal burden in relation to a matter mentioned in
29 subsection (2) (see section 13.4 of the *Criminal Code*).

Section 461-15

1 **461-15 Self-incrimination**

- 2 (1) For the purposes of Part 10-3, it is not a reasonable excuse for a
3 person to refuse or fail:
4 (a) to give information; or
5 (b) to produce a book;
6 in accordance with a requirement made of the person, that the
7 information or production of the book, as the case may be, might
8 tend to incriminate the person or make the person liable to a
9 penalty.
- 10 (2) Subsection (3) applies if:
11 (a) before making an oral statement giving information in
12 compliance with a requirement made under this Part or
13 Part 10-3, a person (other than a body corporate) claims that
14 the statement might tend to incriminate the person or make
15 the person liable to a penalty; and
16 (b) the statement might in fact tend to incriminate the person or
17 make the person so liable.
- 18 (3) The statement is not admissible in evidence against the person in:
19 (a) a criminal proceeding; or
20 (b) a proceeding for the imposition of a penalty;
21 other than a proceeding in respect of the falsity of the statement.

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2

Part 10-5—Protection for whistleblowers

3

Division 466—Which disclosures qualify for protection under this Part?

4

5

466-1 Disclosures qualifying for protection

6

(1) A disclosure of information by a person (the *discloser*) qualifies for protection under this Part if:

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(a) the discloser is:

9

(i) an officer or contact person of an Aboriginal and Torres Strait Islander corporation; or

10

11

(ii) an employee of an Aboriginal and Torres Strait Islander corporation; or

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13

(iii) a person who has a contract for the supply of services or goods to an Aboriginal and Torres Strait Islander corporation; or

14

15

16

(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

17

18

19

(b) the disclosure is made to:

20

(i) the Registrar; or

21

(ii) the corporation's auditor or a member of an audit team conducting an audit of the corporation; or

22

23

(iii) a director, secretary or senior manager of the corporation; or

24

25

(iv) a person authorised by the corporation to receive disclosures of that kind; and

26

27

(c) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and

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29

30

(d) the discloser has reasonable grounds to suspect that the information indicates that:

31

32

(i) the corporation has, or may have, contravened a provision of this Act; or

33

Chapter 10 Regulation and enforcement

Part 10-5 Protection for whistleblowers

Division 466 Which disclosures qualify for protection under this Part?

Section 466-1

1 (ii) an officer or employee of the corporation has, or may
2 have, contravened a provision of this Act; and

3 (e) the discloser makes the disclosure in good faith.

4 (2) A reference in subsection (1) to a person contravening a provision
5 of this Act includes a reference to a person committing an offence
6 against, or based on, a provision of this Act.

7 Note: This subsection causes section 11.6 of the *Criminal Code* to operate in
8 relation to such references.

1

2 **Division 469—Effects of disclosure**

3 **469-1 Disclosure that qualifies for protection not actionable etc.**

4 (1) If a person makes a disclosure that qualifies for protection under
5 this Part:

6 (a) the person is not subject to any civil or criminal liability for
7 making the disclosure; and

8 (b) no contractual or other remedy may be enforced, and no
9 contractual or other right may be exercised, against the
10 person on the basis of the disclosure.

11 Note: This subsection does not provide that the person is not subject to any
12 civil or criminal liability for conduct of the person that is revealed by
13 the disclosure.

14 (2) Without limiting subsection (1):

15 (a) the person has qualified privilege in respect of the disclosure;
16 and

17 (b) a contract to which the person is a party may not be
18 terminated on the basis that the disclosure constitutes a
19 breach of the contract.

20 (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied
21 that:

22 (a) a person (the *employee*) is employed in a particular position
23 under a contract of employment with another person (the
24 *employer*); and

25 (b) the employee makes a disclosure that qualifies for protection
26 under this Part; and

27 (c) the employer purports to terminate the contract of
28 employment on the basis of the disclosure;

29 the court may order that the employee be reinstated in that position
30 or a position at a comparable level.

Section 469-5

1 **469-5 Victimization prohibited**

2 *Actually causing detriment to another person*

- 3 (1) A person (the **first person**) contravenes this subsection if:
- 4 (a) the first person engages in conduct; and
- 5 (b) the first person's conduct causes any detriment to another
- 6 person (the **second person**); and
- 7 (c) the first person intends that his or her conduct cause
- 8 detriment to the second person; and
- 9 (d) the first person engages in his or her conduct because the
- 10 second person or a third person made a disclosure that
- 11 qualifies for protection under this Part.

12 Penalty: 25 penalty units or imprisonment for 6 months, or both.

13 *Threatening to cause detriment to another person*

- 14 (2) A person (the **first person**) contravenes this subsection if:
- 15 (a) the first person makes to another person (the **second person**)
- 16 a threat to cause any detriment to the second person or to a
- 17 third person; and
- 18 (b) the first person:
- 19 (i) intends the second person to fear that the threat will be
- 20 carried out; or
- 21 (ii) is reckless as to causing the second person to fear that
- 22 the threat will be carried out; and
- 23 (c) the first person makes the threat because a person:
- 24 (i) makes a disclosure that qualifies for protection under
- 25 this Part; or
- 26 (ii) may make a disclosure that would qualify for protection
- 27 under this Part.

28 Penalty: 25 penalty units or imprisonment for 6 months, or both.

29 *Officers and employees involved in contravention*

- 30 (3) If an Aboriginal and Torres Strait Islander corporation contravenes
- 31 subsection (1) or (2), any officer or employee of the corporation
- 32 who is involved in that contravention contravenes this subsection.

Section 469-10

1 Penalty: 25 penalty units or imprisonment for 6 months, or both.

2 *Threats*

3 (4) For the purposes of subsection (2), a threat may be:

4 (a) express or implied; or

5 (b) conditional or unconditional.

6 (5) In a prosecution for an offence against subsection (2), it is not
7 necessary to prove that the person threatened actually feared that
8 the threat would be carried out.

9 **469-10 Right to compensation**

10 If:

11 (a) a person (the *person in contravention*) contravenes
12 subsection 469-5(1), (2) or (3); and

13 (b) a person (the *victim*) suffers damage because of the
14 contravention;

15 the person in contravention is liable to compensate the victim for
16 the damage.

Section 472-1

1

2 **Division 472—Confidentiality requirement**

3 **472-1 Confidentiality requirements for corporations, corporation**
4 **officers and employees and auditors**

5 (1) A person (the *offender*) commits an offence against this subsection
6 if:

7 (a) a person (the *discloser*) makes a disclosure of information
8 (the *qualifying disclosure*) that qualifies for protection under
9 this Part; and

10 (b) the qualifying disclosure relates to a contravention or
11 possible contravention of a provision of this Act by:

12 (i) an Aboriginal and Torres Strait Islander corporation; or

13 (ii) an officer or employee of the corporation; and

14 (c) the qualifying disclosure is made to:

15 (i) the corporation's auditor or a member of an audit team
16 conducting an audit of the corporation; or

17 (ii) a director, secretary or senior manager of the
18 corporation; or

19 (iii) a person authorised by the corporation to receive
20 disclosures of that kind; and

21 (d) the offender is:

22 (i) the corporation's auditor or a member of an audit team
23 conducting an audit of the corporation; or

24 (ii) a director, secretary or senior manager of the
25 corporation; or

26 (iii) a person authorised by the corporation to receive
27 disclosures of that kind; or

28 (iv) the corporation; or

29 (v) any officer or employee of the corporation; and

30 (e) the offender discloses one of the following (the *confidential*
31 *information*):

32 (i) the information disclosed in the qualifying disclosure;

33 (ii) the identity of the discloser;

Section 472-1

- 1 (iii) information that is likely to lead to the identification of
2 the discloser; and
3 (f) the confidential information is information that the offender
4 obtained directly or indirectly because of the qualifying
5 disclosure; and
6 (g) either:
7 (i) the offender is the person to whom the qualifying
8 disclosure is made; or
9 (ii) the offender is a person to whom the confidential
10 information is disclosed in contravention of this section
11 and the offender knows that the disclosure of the
12 confidential information to the offender was unlawful or
13 made in breach of confidence; and
14 (h) the disclosure referred to in paragraph (e) is not authorised
15 under subsection (2).

16 Penalty: 25 penalty units.

- 17 (2) The disclosure referred to in paragraph (1)(e) is authorised under
18 this subsection if it:
19 (a) is made to:
20 (i) the Registrar; or
21 (ii) ASIC; or
22 (iii) the Australian Prudential Regulation Authority; or
23 (b) is made to a member or special member of the Australian
24 Federal Police (within the meaning of the *Australian Federal*
25 *Police Act 1979*); or
26 (c) is made to a member (however described) of a police force of
27 a State or Territory; or
28 (d) is made to someone else with the consent of the discloser.

1

2

Chapter 11—External administration

3

Part 11-1—Introduction

4

Division 482—Introduction

5

482-1 What this Chapter is about

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9

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.

10

There are basically 4 ways in which this can happen:

11

12

(a) The Registrar may appoint a special administrator for the corporation under Part 11-2.

13

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16

(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).

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(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).

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(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).

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The following Parts of this Chapter also apply some other provisions of the Corporations Act to an Aboriginal and Torres Strait Islander corporation:

Section 482-1

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- (a) Part 11-6 applies Divisions 3, 4, 5 and 6 of Part 5.7B of the Corporations Act (which deal with insolvent trading);
- (b) Part 11-7 applies Part 5.8A of the Corporations Act (which deals with employee entitlements).

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Part 11-2—Special administration

3

Division 487—Special administration of Aboriginal and Torres Strait Islander corporation

4

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487-1 Registrar may put Aboriginal and Torres Strait Islander corporation under special administration

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(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.

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

11

12

(3) The Registrar:

13

(a) must not make a determination under subsection (1) if:

14

(i) the corporation is being wound up; or

15

(ii) a liquidator of the corporation has been appointed; and

16

(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).

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(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.

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(5) The Registrar must make a determination under subsection (1) in accordance with section 487-10.

23

24

487-5 Grounds for special administration

25

(1) The following are the grounds for determining that an Aboriginal and Torres Strait Islander corporation is to be under special administration:

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(a) the corporation has traded at a loss for at least 6 months during the period of 12 months before the determination is made;

29

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Section 487-5

- 1 (b) the corporation or the officers of the corporation have failed
2 to comply with, or to ensure that the corporation complies
3 with, one or more of the following:
4 (i) a provision of this Act;
5 (ii) an internal governance rule of the corporation;
6 (iii) a notice that the Registrar has given the directors under
7 section 439-20;
8 and the corporation has, or the officers have, failed to give
9 the Registrar a satisfactory explanation for the failure;
- 10 (c) the corporation has failed to comply with an obligation under
11 Part 7-3;
- 12 (d) the officers of the corporation have acted in the affairs of the
13 corporation:
14 (i) in their own interests rather than in the interests of the
15 members of the corporation as a whole; or
16 (ii) in a way that appears to be unfair or unjust to members
17 of the corporation;
- 18 (e) the affairs of the corporation are being conducted in a way
19 that is:
20 (i) oppressive; or
21 (ii) unfairly prejudicial to, or unfairly discriminatory
22 against, a member or member of the corporation; or
23 (iii) contrary to the interests of the members of the
24 corporation as a whole;
- 25 (f) disputes between:
26 (i) the corporation's members; or
27 (ii) the corporation's members and the corporation's
28 officers;
29 are interfering with the proper conduct of the corporation's
30 affairs;
- 31 (g) disputes between the corporation's officers are interfering
32 with the proper conduct of the corporation's affairs;
- 33 (h) a majority of the corporation's directors have requested the
34 Registrar in writing to appoint a special administrator;
- 35 (i) at least the required number of members under subsection (4)
36 request the Registrar, in writing, to appoint a special
37 administrator;

Chapter 11 External administration

Part 11-2 Special administration

Division 487 Special administration of Aboriginal and Torres Strait Islander corporation

Section 487-5

- 1 (j) the appointment of the special administrator is otherwise
2 required:
3 (i) in the interests of the members of the corporation; or
4 (ii) in the interest of the corporation's creditors; or
5 (iii) in the public interest.
6 Paragraph (j) does not limit any of the other paragraphs in this
7 subsection.
- 8 (2) Paragraph (1)(d) or (e) does not apply to an officer of an
9 Aboriginal and Torres Strait Islander corporation that is a
10 registered native title body corporate merely because of doing (or
11 refraining from doing) a particular act if the officer does (or
12 refrains from doing) the act:
13 (a) in good faith; and
14 (b) with the belief that doing (or refraining from doing) the act is
15 necessary to ensure that the corporation complies with a
16 Native Title legislation obligation.
- 17 (3) Separate copies of a document setting out a request under
18 paragraph (1)(i) may be used for signing by members if the
19 wording of the request is identical in each copy.
- 20 (4) The required number of members for an Aboriginal and Torres
21 Strait Islander corporation is the greater of:
22 (a) 5 members of the corporation; or
23 (b) 10% of the members of the corporation.
- 24 (5) The regulations may prescribe a different number of members for
25 the purposes of applying paragraph (4)(a) to:
26 (a) a particular Aboriginal and Torres Strait Islander corporation;
27 or
28 (b) a particular class of Aboriginal and Torres Strait Islander
29 corporation.
- 30 (6) The regulations may prescribe a different percentage for the
31 purposes of applying paragraph (4)(b) to:
32 (a) a particular Aboriginal and Torres Strait Islander corporation;
33 or

- 1 (b) a particular class of Aboriginal and Torres Strait Islander
2 corporation.

3 **487-10 Show cause notice procedure**

- 4 (1) Subject to subsection (2), the Registrar must, before determining
5 that an Aboriginal and Torres Strait Islander corporation is to be
6 under special administration:
7 (a) give the corporation notice in writing inviting the corporation
8 to show cause, within a reasonable period specified in the
9 notice, why the determination should not be made; and
10 (b) consider any representations the corporation makes to the
11 Registrar within that period.
- 12 (2) Subsection (1) does not apply if the Registrar is satisfied that the
13 determination needs to be made as a matter of urgency to prevent:
14 (a) a likely loss of property of the corporation; or
15 (b) a likely loss of public money held or administered by the
16 corporation; or
17 (c) conduct that would contravene:
18 (i) a provision of this Act or the regulations; or
19 (ii) a law of the Commonwealth or a State or Territory; or
20 (d) the corporation ceasing to provide, or suspending the
21 provision of, services that are essential to, or very significant
22 for, a particular community or group.
- 23 (3) **Public money** includes money that:
24 (a) has been granted to the corporation by:
25 (i) the Commonwealth, a State or a Territory; or
26 (ii) a public authority; and
27 (b) has been granted to the corporation on conditions.
- 28 (4) Without limiting paragraph (2)(c), the conduct referred to in that
29 paragraph may be conduct of:
30 (a) the corporation; or
31 (b) an officer of the corporation; or
32 (c) a body corporate related to the corporation; or
33 (d) an officer of a body corporate related to the corporation.

Chapter 11 External administration

Part 11-2 Special administration

Division 487 Special administration of Aboriginal and Torres Strait Islander corporation

Section 487-15

- 1 (5) If the Registrar:
2 (a) gives an Aboriginal and Torres Strait Islander corporation
3 notice under subsection (1); and
4 (b) decides not to proceed to determine that the corporation is to
5 be under special administration;
6 the Registrar must give the corporation notice in writing, as soon as
7 practicable after the decision is made, that the Registrar does not
8 propose to determine that the corporation is to be under special
9 administration.

10 **487-15 Extension of period of special administration**

- 11 (1) The Registrar may extend the period for which an Aboriginal and
12 Torres Strait Islander corporation is to be under special
13 administration.
14 (2) An extension under subsection (1) must:
15 (a) be made in writing; and
16 (b) be made before the period to be extended ends.

17 **487-20 Registrar may terminate special administration**

- 18 (1) The Registrar may determine in writing that an Aboriginal and
19 Torres Strait Islander corporation is to cease to be under special
20 administration on the date specified in the determination.
21 (2) A determination under subsection (1) is not a legislative
22 instrument.
23 (3) Without limiting subsection (1), the Registrar may determine that
24 the corporation is to cease to be under special administration if the
25 Registrar is satisfied that it is no longer necessary for the
26 corporation to be under special administration.

27 **487-25 References to corporation under special administration**

- 28 If the Registrar determines under subsection 487-1(1) in relation to
29 an Aboriginal and Torres Strait Islander corporation, the
30 corporation:

Section 487-25

- 1 (a) starts being *under special administration* when the period
2 specified in the determination under subsection 487-1(1)
3 starts; and
4 (b) ceases being *under special administration*:
5 (i) when the period specified in the determination under
6 subsection 487-1(1), or that period as extended under
7 section 487-15, ends; or
8 (ii) if, before the end of the period referred to in
9 subparagraph (i), a liquidator for the corporation is
10 appointed, or the winding up of the corporation starts, as
11 a result of an application made by the Registrar or the
12 special administrator—when the liquidator is appointed
13 or the winding up starts; or
14 (iii) if, before the end of the period referred to in
15 subparagraph (i), the Registrar makes a determination
16 under section 487-20—on the date specified in the
17 determination under section 487-20.

18 Note: Subparagraph (b)(ii)—once the corporation is under special
19 administration only the Registrar or the special administrator can
20 apply for the winding up of the corporation (see subsection
21 526-15(3)).

Section 490-1

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2 **Division 490—Appointment of special administrator**

3 **490-1 Registrar may appoint special administrator**

4 (1) The Registrar may appoint a special administrator for an
5 Aboriginal and Torres Strait Islander corporation that is under
6 special administration.

7 Note: The special administrator may be appointed either as the initial special
8 administrator for the special administration of the corporation or to
9 replace a special administrator who was appointed earlier.

10 (2) The appointment must be made in writing.

11 **490-5 Period of appointment**

12 (1) The appointment must specify the period for which the special
13 administrator is appointed.

14 (2) The Registrar may extend the period for which a special
15 administrator is appointed.

16 (3) An extension under subsection (2) must:
17 (a) be made in writing; and
18 (b) be made before the period to be extended ends.

19 (4) An appointment:
20 (a) has effect, subject to paragraph (b), until the end of the period
21 of the appointment; and
22 (b) ceases to have effect if it is terminated under section 505-1
23 before the end of that period.

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2 **Division 493—Notice requirements**

3 **493-1 Notice of special administration determination or**
4 **appointment of special administrator**

- 5 (1) This section applies if the Registrar makes any of the following
6 decisions:
- 7 (a) a determination under section 487-1 that an Aboriginal and
8 Torres Strait Islander corporation is to be under special
9 administration;
 - 10 (b) an appointment under section 490-1 of a special
11 administrator for an Aboriginal and Torres Strait Islander
12 corporation;
 - 13 (c) an extension under section 487-15 of the period for which an
14 Aboriginal and Torres Strait Islander corporation is to be
15 under special administration;
 - 16 (d) an extension under section 490-5 of the period for which a
17 special administrator for an Aboriginal and Torres Strait
18 Islander corporation is appointed;
 - 19 (e) a determination under section 487-20 that an Aboriginal and
20 Torres Strait Islander corporation is to cease to be under
21 special administration.
- 22 (2) The Registrar must, as soon as practicable, give notice of the
23 decision to:
- 24 (a) the corporation; and
 - 25 (b) any receiver, or receiver and manager, of property of the
26 corporation of whom the Registrar is aware.
- 27 (3) A notice under subsection (2) is not a legislative instrument.
- 28 (4) The Registrar must, as soon as practicable, publish a notice of the
29 decision:
- 30 (a) in the *Gazette*; and
 - 31 (b) either:
 - 32 (i) in a national newspaper; or

Chapter 11 External administration
Part 11-2 Special administration
Division 493 Notice requirements

Section 493-1

- 1 (ii) for each State or Territory in which the corporation has
2 its registered office (if any) or carries on business or
3 other operations—in a daily newspaper that circulates
4 generally in that State or Territory.
- 5 (5) The notice under subsection (2) or (4) must specify:
- 6 (a) the period for which the corporation is to be under special
7 administration; or
- 8 (b) the period for which the special administrator is appointed; or
- 9 (c) the period for which the special administration is extended;
10 or
- 11 (d) the period for which the appointment of the special
12 administrator is extended; or
- 13 (e) the date on which the corporation is to cease to be under
14 special administration.

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2 **Division 496—Effect of appointment of special**
3 **administrator on officers of the corporation**

4 **496-1 General rule that offices of directors and secretary vacated**
5 **when special administrator appointed**

6 (1) Subject to section 496-5, the following offices become vacant on
7 the appointment of a special administrator for an Aboriginal and
8 Torres Strait Islander corporation:

- 9 (a) the office of each director of the corporation;
10 (b) the office of each secretary (if any) of the corporation.

11 (2) Subsection (1) applies even if the special administrator is
12 appointed to replace another special administrator for the
13 corporation.

14 Note: This subsection has the effect that if a special administrator is
15 appointed and the Registrar determines, as part of that appointment,
16 that the offices of the corporation's officers are not to be vacated, the
17 subsequent appointment of a replacement special administrator will
18 automatically vacate those offices unless a fresh determination is
19 made under section 496-5 in relation to the new appointment.

20 **496-5 Registrar may determine that offices not vacated in certain**
21 **circumstances**

22 (1) The Registrar:

- 23 (a) may determine that the offices of the corporation's directors
24 are not vacated on the appointment of a special administrator;
25 and
26 (b) may determine that the office of the corporation's secretary is
27 not vacated, or the offices of each of the corporation's
28 secretaries are not vacated, on the appointment of the special
29 administrator.

30 (2) A determination under subsection (1) is not a legislative
31 instrument.

Chapter 11 External administration

Part 11-2 Special administration

Division 496 Effect of appointment of special administrator on officers of the corporation

Section 496-10

1 (3) The Registrar may make a determination under subsection (1) only
2 if the Registrar is satisfied that making the determination is in the
3 best interests of the corporation.

4 (4) A determination under subsection (1) must be included in the
5 special administrator's appointment.

6 **496-10 Powers of officers can only be exercised by, or with the**
7 **consent of, special administrator**

8 (1) While an Aboriginal and Torres Strait Islander corporation is under
9 special administration, a person (other than the special
10 administrator) cannot perform or exercise, and must not purport to
11 perform or exercise, a function or power as an officer of the
12 corporation.

13 Penalty: 25 penalty units or imprisonment for 6 months, or both.

14 (2) Subsection (1) does not apply to the extent to which the
15 performance or exercise, or purported performance or exercise, is
16 with the special administrator's written approval.

17 Note: A defendant bears an evidential burden in relation to the matter in
18 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

19 (3) An offence against subsection (1) is an offence of strict liability.

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

21 (4) Subsection (1) does not remove an officer of an Aboriginal and
22 Torres Strait Islander corporation from his or her office.

23 (5) Section 496-15 does not limit the generality of subsection (1) of
24 this section.

25 (6) This section has effect despite:

26 (a) Part 5.2 of the Corporations Act (as applied by section 516-1
27 of this Act); and

28 (b) Part 5.3A of the Corporations Act (as applied by
29 section 521-1 of this Act).

30 Note: This means that a receiver, or an administrator appointed under
31 Part 5.3A of the Corporations Act (as applied by section 521-1 of this
32 Act), cannot exercise any powers without the approval of the special
33 administrator.

Section 496-15

- 1 (7) Despite subsection (6), this section does not affect the validity of
2 anything that a person who is:
3 (a) a receiver, or a receiver and manager, of property of the
4 corporation; or
5 (b) an administrator of the corporation appointed under
6 Part 5.3A of the Corporations Act;
7 does after the special administration begins and on or before the
8 day on which the Registrar complies with subsection 493-1(4) in
9 relation to the special administration.

10 **496-15 Only special administrator can deal with corporation's**
11 **property**

- 12 (1) This section applies if:
13 (a) an Aboriginal and Torres Strait Islander corporation that is
14 under special administration purports to enter into; or
15 (b) a person purports to enter into, on behalf of an Aboriginal
16 and Torres Strait Islander corporation that is under special
17 administration;
18 a transaction or dealing affecting property of the corporation.
- 19 (2) The transaction or dealing is void unless:
20 (a) the special administrator entered into it on the corporation's
21 behalf; or
22 (b) the special administrator consented to it in writing before it
23 was entered into; or
24 (c) it was entered into under an order of the Court.
- 25 (3) Subsection (2) does not apply to a payment made:
26 (a) by an Australian ADI out of an account kept by the
27 corporation with the ADI; and
28 (b) in good faith and in the ordinary course of the ADI's banking
29 business; and
30 (c) after the special administration begins and on or before the
31 day on which the Registrar complies with subsection
32 493-1(4) in relation to the special administration.
- 33 (4) Subsection (2) has effect subject to an order that the Court makes
34 after the purported transaction or dealing.

Chapter 11 External administration

Part 11-2 Special administration

Division 496 Effect of appointment of special administrator on officers of the corporation

Section 496-20

- 1 (5) If, because of subsection (2), the transaction or dealing is void, or
2 would be void apart from subsection (4), an officer or employee of
3 the corporation who:
4 (a) purported to enter into the transaction or dealing on the
5 corporation's behalf; or
6 (b) was in any other way, by act or omission, directly or
7 indirectly, knowingly concerned in, or party to, the
8 transaction or dealing;
9 contravenes this subsection.

10 Penalty: 25 penalty units or imprisonment for 6 months, or both.

- 11 (6) This section has effect despite:
12 (a) Part 5.2 of the Corporations Act (as applied by section 516-1
13 of this Act); and
14 (b) Part 5.3A of the Corporations Act (as applied by
15 section 521-1 of this Act).

16 Note: This means that a receiver, or an administrator appointed under
17 Part 5.3A of the Corporations Act (as applied by section 521-1 of this
18 Act), cannot exercise any powers without the approval of the special
19 administrator.

- 20 (7) Despite subsection (6), this section does not affect the validity of
21 anything that a person who is:
22 (a) a receiver, or a receiver and manager, of property of the
23 corporation; or
24 (b) an administrator of the corporation appointed under
25 Part 5.3A of the Corporations Act;
26 does after the special administration begins and on or before the
27 day on which the Registrar complies with subsection 493-1(4) in
28 relation to the special administration.

29 **496-20 Order for compensation where officer involved in void**
30 **transaction**

- 31 (1) If:
32 (a) a court finds that a person committed an offence constituted
33 by a contravention of subsection 496-15(5) (including such
34 an offence that is taken to have been committed because of
35 section 11.2 of the *Criminal Code*); and

Section 496-20

- 1 (b) the court is satisfied that the Aboriginal and Torres Strait
2 Islander corporation or another person has suffered loss or
3 damage because of the act or omission constituting the
4 offence;
5 the court may (whether or not it imposes a penalty) order the
6 first-mentioned person to pay compensation to the corporation or
7 other person, as the case may be, of such amount as the order
8 specifies.
- 9 (2) An order under subsection (1) may be enforced as if it were a
10 judgment of the court.
- 11 (3) The power of a court under section 576-1 to relieve a person from
12 liability as mentioned in that section extends to relieving a person
13 from liability to be ordered under this section to pay compensation.

Section 499-1

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2 **Division 499—Function, duties and powers of special**
3 **administrator**

4 **499-1 Function of special administrator**

5 While an Aboriginal and Torres Strait Islander corporation is under
6 special administration, the special administrator is responsible for
7 the conduct of the affairs of the corporation.

8 **499-5 Powers of special administrator**

9 (1) While an Aboriginal and Torres Strait Islander corporation is under
10 special administration, the special administrator:

- 11 (a) has control of the corporation's business, property and
12 affairs; and
13 (b) may carry on that business and manage that property and
14 those affairs; and
15 (c) may terminate or dispose of all or part of that business, and
16 may dispose of any of that property; and
17 (d) may engage or discharge employees on behalf of the
18 corporation; and
19 (e) may perform any function, and exercise any power, that:
20 (i) the corporation; or
21 (ii) any of the corporation's officers; or
22 (iii) the corporation's members;
23 could perform or exercise if the corporation were not under
24 special administration.

25 This subsection has effect even if the offices of the corporation's
26 officers are not vacated on the appointment of the special
27 administrator.

28 (2) To avoid doubt and without limiting paragraph (1)(e), the special
29 administrator may perform any function and exercise any power
30 that the corporation has as trustee.

31 (3) Without limiting subsection (1), the special administrator may do
32 the following:

- 1 (a) change the corporation's constitution;
2 (b) admit a person as a member of the corporation;
3 (c) remove a person as a member of the corporation;
4 (d) appoint a person as a director or secretary of the corporation;
5 (e) terminate a person's appointment as a director or secretary of
6 the corporation;
7 (f) terminate a person's appointment as contact person for the
8 corporation.

- 9 (4) In changing the corporation's constitution, the special
10 administrator does not have to comply with paragraph 69-5(1)(a)
11 (special resolution), section 69-15 (satisfying extra requirements in
12 constitution) or section 69-20 (corporation to lodge copy of
13 changes).

14 Note: The special administrator must still lodge a copy of the change under
15 section 69-25.

16 **499-10 Applying Corporations Act provisions to Aboriginal and**
17 **Torres Strait Islander corporation that is under special**
18 **administration**

- 19 (1) The following provisions of the Corporations Act apply to an
20 Aboriginal and Torres Strait Islander corporation that is under
21 special administration:
22 (a) Division 6 of Part 5.3A (other than section 440A);
23 (b) Division 7 of Part 5.3A;
24 (c) Division 8 (other than section 442A) of Part 5.3A;
25 (d) Division 9 of Part 5.3A;
26 (e) the other provisions of that Act (including Parts 1.2 and 9.4
27 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to
28 the extent to which they relate to the operation of the
29 provisions referred to in paragraphs (a) to (d);
30 (f) the regulations made under that Act for the purposes of the
31 provisions of that Act referred to in paragraphs (a) to (e).
- 32 (2) Those provisions apply to an Aboriginal and Torres Strait Islander
33 corporation that is under special administration as if the following
34 substitutions were made:
35

Chapter 11 External administration

Part 11-2 Special administration

Division 499 Function, duties and powers of special administrator

Section 499-10

Substitutions to be made

Item	For a reference to...	substitute a reference to...
1	a company	an Aboriginal and Torres Strait Islander corporation
2	administrator	special administrator
3	administration	special administration

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

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2 **Division 502—Special administrator to report to Registrar**

3 **502-1 Report to Registrar**

4

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.

5

6

Section 505-1

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2 **Division 505—Termination of special administrator's**
3 **appointment**

4 **505-1 Termination of appointment of special administrator**

- 5 (1) The appointment of a special administrator for an Aboriginal and
6 Torres Strait Islander corporation terminates if:
7 (a) the period for which the special administrator is appointed
8 ends; or
9 (b) the special administrator dies; or
10 (c) a liquidator for the corporation is appointed; or
11 (d) the corporation is being wound up; or
12 (e) the special administrator resigns the appointment by notice in
13 writing to the Registrar; or
14 (f) the Registrar terminates the special administrator's
15 appointment under subsection (4); or
16 (g) the Registrar terminates the special administration under
17 section 487-20.

18 Note: The termination of the appointment of the special administrator does
19 not necessarily terminate the special administration. For when the
20 special administration ceases, see section 487-25.

- 21 (2) Subject to subsection (3), the special administrator's resignation
22 under paragraph (1)(e) takes effect at the end of the period of 28
23 days after the day on which the special administrator gives the
24 notice to the Registrar.
- 25 (3) The Registrar may, on application by the special administrator,
26 determine in writing that the special administrator's resignation is
27 to take effect before the end of the period of 28 days referred to in
28 subsection (2).
- 29 (4) The Registrar may, by notice in writing to the special administrator
30 for an Aboriginal and Torres Strait Islander corporation, terminate
31 the special administrator's appointment if satisfied that it is
32 appropriate to do so.

1 **505-5 Grounds for terminating appointment**

2 Without limiting subsection 505-1(4), the Registrar may be
3 satisfied that it is appropriate to terminate the special
4 administrator's appointment if the Registrar is satisfied that:

- 5 (a) it is no longer necessary for the corporation to be under
6 special administration; or
7 (b) the special administrator has a material personal interest in a
8 matter related to the special administration of the
9 corporation; or
10 (c) the special administrator's performance is not satisfactory; or
11 (d) the special administrator has contravened a provision of this
12 Act; or
13 (e) it would be appropriate in the circumstances to replace the
14 special administrator with another special administrator with
15 different skills, experience or qualifications.

16 **505-10 Registrar to appoint new special administrator in certain**
17 **circumstances**

- 18 (1) If the appointment of a special administrator for an Aboriginal and
19 Torres Strait Islander corporation terminates, the Registrar must, as
20 soon as practicable after the termination of the appointment,
21 appoint another person as special administrator for the corporation.
22 (2) Subsection (1) does not apply if the Registrar is satisfied that it is
23 no longer necessary for the corporation to be under special
24 administration.

Section 508-1

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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).

Section 508-5

508-5 Election of directors to take over affairs of corporation when corporation ceases to be under special administration

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- (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.

Section 511-1

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2 **Division 511—Miscellaneous**

3 **511-1 Remuneration of special administrator**

4 (1) The special administrator for an Aboriginal and Torres Strait
5 Islander corporation is to receive such remuneration (if any) as the
6 Registrar determines in writing.

7 (2) A determination under subsection (1) is not a legislative
8 instrument.

9 (3) Subject to subsection (4), the special administrator's remuneration,
10 charges and expenses are to be borne by the Commonwealth.

11 (4) The Registrar:

12 (a) may determine, in writing, that some or all of the special
13 administrator's remuneration, charges or expenses are to be
14 borne by the corporation or a related body corporate; and

15 (b) may charge some or all of the remuneration, charges or
16 expenses referred to in paragraph (a) on the property of the
17 corporation or a related body corporate in such order of
18 priority in relation to any existing charges on that property as
19 the Registrar thinks fit.

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2 **Part 11-3—Receivers, and other controllers, of**
3 **property of corporations**

4 **Division 516—Receivers, and other controllers, of property**
5 **of corporations**

6 **516-1 Applying Corporations Act receiver provisions to Aboriginal**
7 **and Torres Strait Islander corporations**

- 8 (1) The Corporations Act receiver provisions apply to an Aboriginal
9 and Torres Strait Islander corporation as if the following
10 substitutions were made:
11

Substitutions to be made		
Item	For a reference to...	substitute a reference to...
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

- 12 (2) The Corporations Act receiver provisions apply to an Aboriginal
13 and Torres Strait Islander corporation:
14 (a) only to the extent to which they are capable of applying to an
15 Aboriginal and Torres Strait Islander corporation; and
16 (b) with the modifications specified in the regulations.
- 17 (3) In this Act:

18 ***Corporations Act receiver provisions*** means:

- 19 (a) Part 5.2 of the Corporations Act; and
20 (b) the other provisions of that Act (including Parts 1.2, 5.8, 5.9
21 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and

Chapter 11 External administration

Part 11-3 Receivers, and other controllers, of property of corporations

Division 516 Receivers, and other controllers, of property of corporations

Section 516-1

- 1 9.4A) to the extent to which they relate to the operation of
2 Part 5.2 of that Act; and
3 (c) the regulations made under that Act for the purposes of
4 Part 5.2 of that Act and the provisions referred to in
5 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:

Substitutions to be made		
Item	For a reference to...	substitute a reference to...
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:

Chapter 11 External administration

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

Section 521-5

- 1 (a) increase, or have the effect of increasing, the maximum
2 penalty for any offence; or
3 (b) widen, or have the effect of widening, the scope of any
4 offence.

5 (4) In this Act:

6 ***Corporations Act administration provisions*** means:

- 7 (a) Part 5.3A of the Corporations Act; and
8 (b) the other provisions of that Act (including Parts 1.2, 5.8, 5.9
9 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and
10 9.4A) to the extent to which they relate to the operation of
11 Part 5.3A of that Act; and
12 (c) the regulations made under that Act for the purposes of
13 Part 5.3A of that Act and the provisions referred to in
14 paragraph (b).

15 **521-5 Administrator's capacity to act as trustee**

16 To avoid doubt, an administrator appointed under the Corporations
17 Act administration provisions (as applied by section 521-1 of this
18 Act) may, under those provisions as applied, perform any function
19 and exercise any power that the corporation has as trustee.

20 **521-10 Corporations Act administrator cannot be appointed if**
21 **special administrator appointed**

- 22 (1) An administrator of an Aboriginal and Torres Strait Islander
23 corporation cannot be appointed under section 436A, 436B or
24 436C of the Corporations Act (as applied by section 521-1) if:
25 (a) the corporation is under special administration under
26 Part 11-2; or
27 (b) the Registrar:
28 (i) has given the corporation a notice under subsection
29 487-10(1); and
30 (ii) has not given the corporation a notice under subsection
31 487-10(5).

Section 521-15

- 1 (2) Paragraph (1)(b) does not apply if the Registrar has consented in
2 writing to the appointment of the administrator under that section
3 of the Corporations Act (as applied by section 521-1 of this Act).
- 4 (3) A consent under subsection (2) to the appointment of an
5 administrator is not a legislative instrument.

6 **521-15 Effect of appointment of special administrator on**
7 **Corporations Act administrator**

- 8 (1) This section deals with the situation in which:
9 (a) an administrator of an Aboriginal and Torres Strait Islander
10 corporation (the *Corporations Act administrator*) is
11 appointed under section 436A, 436B or 436C of the
12 Corporations Act (as applied by section 521-1 of this Act);
13 and
14 (b) while that appointment continues, a special administrator for
15 the corporation is appointed under Part 11-2.
- 16 Note: Section 496-10 deals with the effect of the special administrator's
17 appointment on the Corporations Act administrator's powers.
- 18 (2) The Court may order that the administration of the corporation
19 under Part 5.3A of the Corporations Act (as applied by
20 section 521-1 of this Act) is to end.
- 21 (3) The order may be made on the application of:
22 (a) the Registrar; or
23 (b) the special administrator for the corporation; or
24 (c) any other interested person.
- 25 (4) The order may be made subject to conditions.

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Part 11-5—Winding up

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Division 526—Winding up

4

526-1 Court may order winding up

5

(1) The Court may order that an Aboriginal and Torres Strait Islander corporation be wound up.

6

7

(2) The order may only be made on the grounds set out in section 526-5.

8

9

(3) The order may only be made on an application made in accordance with section 526-15.

10

11

526-5 Grounds for Court ordered winding up

12

The following are the grounds on which an Aboriginal and Torres Strait Islander corporation may be wound up:

13

14

(a) the corporation has by special resolution resolved that it be wound up by the Court;

15

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(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;

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(c) the corporation has ceased to satisfy a requirement for registration imposed by section 141-5, 141-10 or 141-15;

20

21

(d) section 26-15 precludes the continued registration of the corporation;

22

23

(e) the officers of the corporation have acted in the affairs of the corporation:

24

25

(i) in their own interests rather than in the interests of the members of the corporation as a whole; or

26

27

(ii) in a way that appears to be unfair or unjust to the members of the corporation;

28

29

(f) the affairs of the corporation are being conducted in a way that is:

30

31

(i) oppressive; or

Section 526-5

- 1 (ii) unfairly prejudicial to, or unfairly discriminatory
2 against, a member or members of the corporation; or
3 (iii) contrary to the interests of the members of the
4 corporation as a whole;
- 5 (g) an act or omission, or a proposed act or omission, by or on
6 behalf of the corporation was or would be:
- 7 (i) oppressive; or
8 (ii) unfairly prejudicial to, or unfairly discriminatory
9 against, a member or members of the corporation; or
10 (iii) contrary to the interests of the members as a whole;
- 11 (h) a resolution, or a proposed resolution, of a class of members
12 of the corporation, was or would be:
- 13 (i) oppressive; or
14 (ii) unfairly prejudicial to, or unfairly discriminatory
15 against, a member or members of the corporation; or
16 (iii) contrary to the interests of the members of the
17 corporation as a whole;
- 18 (i) the corporation is insolvent;
- 19 (j) the directors of the corporation have failed to comply with a
20 notice that the Registrar has given the directors under
21 section 439-20;
- 22 (k) the corporation has failed, for a prescribed period, to lodge
23 any financial or other reports required to be lodged by
24 Part 7-3;
- 25 (l) by reason of the complexity or magnitude of the activities of
26 the corporation, it is inappropriate that it continue to be
27 registered under this Act;
- 28 (m) the Court is satisfied that it is in the interests of:
- 29 (i) the public; or
30 (ii) the corporation's members; or
31 (iii) the corporation's creditors;
32 that the corporation should be wound up;
- 33 (n) the Court is satisfied that it is just and equitable that the
34 corporation be wound up.

Section 526-10

1 **526-10 Acts etc. done to comply with Native Title legislation**
2 **requirement**

- 3 (1) Paragraph 526-5(e) or (f) does not apply to an officer of an
4 Aboriginal and Torres Strait Islander corporation that is a
5 registered native title body corporate merely because of doing (or
6 refraining from doing) a particular act if the officer does (or
7 refrains from doing) the act:
8 (a) in good faith; and
9 (b) with the belief that doing (or refraining from doing) the act is
10 necessary to ensure that the corporation complies with a
11 Native Title legislation obligation.
- 12 (2) Paragraph 526-5(g) does not apply to an act or omission, or a
13 proposed act or omission, by or on behalf of a corporation that is a
14 registered native title body corporate, if the act or omission, or the
15 proposed act or omission, was done:
16 (a) in good faith; and
17 (b) with the belief that the doing of the act or omission, or the
18 proposed act or omission, is necessary to ensure that the
19 corporation complies with a Native Title legislation
20 obligation.
- 21 (3) Paragraph 526-5(h) does not apply to a resolution, or a proposed
22 resolution, of a class of members of a corporation that is a
23 registered native title body corporate, if the resolution, or proposed
24 resolution, was made:
25 (a) in good faith; and
26 (b) with the belief that the making of the resolution, or proposed
27 resolution, is necessary to ensure that the corporation
28 complies with a Native Title legislation obligation.

29 **526-15 Who may apply to court for winding up order**

- 30 (1) Any one or more of the following may apply to the Court for an
31 order that an Aboriginal and Torres Strait Islander corporation be
32 wound up:
33 (a) the corporation;

Section 526-15

- 1 (b) a creditor of the corporation (even if the creditor is a secured
2 creditor or is only a contingent or prospective creditor);
3 (c) a member of the corporation;
4 (d) a director of the corporation;
5 (e) a contributory of the corporation;
6 (f) a liquidator, or a provisional liquidator, of the corporation;
7 (g) a special administrator of the corporation;
8 (h) the Registrar.
9 This subsection has effect subject to subsections (2), (3), (4) and
10 (5).
- 11 (2) The Registrar is the only person who may apply for an order that
12 the corporation be wound up if the grounds on which the winding
13 up is applied for are, or include, grounds referred to in any of the
14 following:
15 (a) paragraph 526-5(j) (failure to comply with a section 439-20
16 notice);
17 (b) paragraph 526-5(k) (failure to lodge reports);
18 (c) paragraph 526-5(l) (complexity or magnitude of
19 corporation's activities).
- 20 (3) If the corporation is under special administration only the Registrar
21 or the special administrator may apply for an order that the
22 corporation be wound up.
- 23 (4) An application by any of the following, or by persons including
24 any of the following, for an order that the corporation be wound up
25 because it is insolvent may only be made with the leave of the
26 Court:
27 (a) a person who is a creditor only because of a contingent or
28 prospective debt;
29 (b) a contributory;
30 (c) a director;
31 (d) the Registrar.
- 32 (5) The court must not hear an application by a person being, or
33 persons including, a contingent or prospective creditor of the
34 corporation for an order to wind up the corporation unless and
35 until:

Section 526-20

- 1 (a) such security for costs has been given as the Court thinks
2 reasonable; and
3 (b) a prima facie case for winding up the corporation has been
4 established to the Court's satisfaction.
- 5 (6) Except as permitted by this section, a person is not entitled to apply
6 for an order to wind up an Aboriginal and Torres Strait Islander
7 corporation.

8 **526-20 Voluntary winding up**

- 9 (1) Subject to subsection (5), an Aboriginal and Torres Strait Islander
10 corporation may be wound up voluntarily if the members of the
11 corporation in general meeting so resolve by special resolution.
- 12 (2) An Aboriginal and Torres Strait Islander corporation cannot
13 resolve that it be wound up voluntarily if:
14 (a) the corporation is under special administration under
15 Part 11-2; or
16 (b) the Registrar:
17 (i) has given the corporation a notice under subsection
18 487-10(1); and
19 (ii) has not given the corporation a notice under subsection
20 487-10(5).
- 21 (3) Paragraph (2)(b) does not apply if the Registrar has consented in
22 writing to the voluntary winding up of the corporation.
- 23 (4) A consent given by the Registrar under subsection (3) is not a
24 legislative instrument
- 25 (5) Except with the leave of the Court, an Aboriginal and Torres Strait
26 Islander corporation cannot resolve that it be wound up voluntarily
27 if:
28 (a) an application has been made to the Court for the corporation
29 to be wound up on the ground that it is insolvent; or
30 (b) the Court has ordered that the corporation be wound up on
31 the ground that it is insolvent (whether or not the order was
32 made on such an application).

Section 526-25

- 1 (6) If an Aboriginal and Torres Strait Islander corporation passes a
2 resolution for the voluntary winding up of the corporation, the
3 corporation must, within 28 days after the passing of a resolution,
4 lodge with the Registrar:
5 (a) a notice in the approved form of the passing of the resolution;
6 and
7 (b) a copy of the resolution.

8 Penalty: 5 penalty units.

- 9 (7) Subsection (6) is an offence of strict liability.

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

- 11 (8) The Registrar must, within 21 days after the lodging of a notice
12 under subsection (6), publish in the *Gazette* a notice of the passing
13 of the resolution to which the notice relates.

14 **526-25 Distribution of surplus assets in winding up by Court**

- 15 (1) This section applies if:

- 16 (a) surplus assets remain on the winding up of an Aboriginal and
17 Torres Strait Islander corporation; and
18 (b) the winding up is a winding up by the Court.

- 19 (2) If the corporation's constitution includes provisions for the
20 distribution of the surplus assets of the corporation in the event of
21 the corporation's being wound up, the Court or the liquidator must
22 distribute those assets in accordance with those provisions. This
23 subsection has effect subject to subsection (4).

24 Note: The liquidator may have powers in relation to the distribution of the
25 surplus under section 488 of the Corporations Act (as applied by
26 section 526-35 of this Act).

- 27 (3) If:

- 28 (a) the corporation's constitution does not include provisions for
29 the distribution of the surplus assets of the corporation in the
30 event of the corporation's being wound up; and
31 (b) the members of the corporation pass a special resolution
32 relating to the distribution of the surplus assets of the
33 corporation;

Section 526-30

1 the Court or the liquidator must distribute those assets in
2 accordance with that special resolution. This subsection has effect
3 subject to subsection (4).

4 Note: The liquidator may have powers in relation to the distribution of the
5 surplus under section 488 of the Corporations Act (as applied by
6 section 526-35 of this Act).

7 (4) If:

- 8 (a) a Judge of the Court considers that a distribution of the
9 surplus assets of the corporation in accordance with:
10 (i) the provisions of the corporation's constitution in
11 accordance with subsection (2); or
12 (ii) a special resolution in accordance with subsection (3);
13 would not be just; or
14 (b) no such provisions exist and such a special resolution has not
15 been passed;

16 the Judge must make such orders for the distribution of those assets
17 as, having regard to the objects of the corporation, he or she
18 considers just.

19 **526-30 Distribution of surplus assets in voluntary winding up**

20 (1) This section applies if:

- 21 (a) surplus assets remain on the winding up of an Aboriginal and
22 Torres Strait Islander corporation; and
23 (b) the winding up is a voluntary winding up.

24 (2) If the corporation's constitution includes provisions for the
25 distribution of the surplus assets of the corporation in the event of
26 the corporation's being wound up, the liquidator must distribute
27 those assets in accordance with those provisions. This subsection
28 has effect subject to subsection (5).

29 (3) If:

- 30 (a) the corporation's constitution does not include provisions for
31 the distribution of the surplus assets of the corporation in the
32 event of the corporation's being wound up; and

Section 526-35

- 1 (b) the members of the corporation pass a special resolution
2 relating to the distribution of the surplus assets of the
3 corporation;
4 the liquidator must distribute those assets in accordance with that
5 special resolution. This subsection has effect subject to
6 subsection (5).
- 7 (4) If:
8 (a) the liquidator considers that a distribution of the surplus
9 assets of the corporation in accordance with:
10 (i) the provisions of the corporation's constitution in
11 accordance with subsection (2); or
12 (ii) a special resolution in accordance with subsection (3);
13 would not be just; or
14 (b) no such provisions exist and such a special resolution has not
15 been passed;
16 the liquidator must apply to a Judge of the Court for an order under
17 subsection (5).
- 18 (5) If:
19 (a) the Judge considers that a distribution of the surplus assets of
20 the corporation in accordance with:
21 (i) the provisions of the corporation's constitution in
22 accordance with subsection (1); or
23 (ii) a special resolution in accordance with subsection (2);
24 would not be just; or
25 (b) no such provisions exist and such a special resolution has not
26 been passed;
27 the Judge must make such orders for the distribution of those assets
28 as, having regard to the objects of the corporation, he or she
29 considers just.

30 **526-35 Applying Corporations Act winding up provisions to**
31 **Aboriginal and Torres Strait Islander corporations**

- 32 (1) The Corporations Act winding up provisions apply to the winding
33 up of an Aboriginal and Torres Strait Islander corporation as if the
34 following substitutions were made:

Section 526-35

1

Substitutions to be made		
Item	For a reference to...	substitute a reference to...
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)

2

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Note: Item 4 is relevant to the operation of subsection 588G(1A) of the Corporations Act.

4

(2) The Corporations Act winding up provisions apply to the winding up of an Aboriginal and Torres Strait Islander corporation:

5

6

(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

7

8

9

(b) with the modifications specified in the regulations.

10

(3) In this Act:

11

Corporations Act winding up provisions means:

12

(a) Parts 5.4, 5.4B, 5.5, 5.6, 5.7B, 5.8, 5.8A and 5.9 of the Corporations Act; and

13

14

(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 Parts referred to in paragraph (a); and

15

16

17

(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);

18

19

20

21

but does not include the excluded winding up provisions of that Act.

22

Section 526-40

1 *excluded winding up provisions* of the Corporations Act means:

- 2 (a) sections 459A of that Act (which deals with the court's
3 power to order a winding up); and
4 (b) sections 459B of that Act (which deals with insolvency as a
5 ground for winding up); and
6 (c) sections 459P of that Act (which deals with who may apply
7 for a winding up on the grounds of insolvency); and
8 (d) section 490 of that Act (which deals with when a resolution
9 for voluntary winding up may be passed); and
10 (e) section 491 of that Act (which deal with the resolution for a
11 voluntary winding up).

12 **526-40 Application of Corporations Act pre-winding up provisions**

- 13 (1) The Corporations Act pre-winding up provisions apply to an
14 Aboriginal and Torres Strait Islander corporation as if the
15 following substitutions were made:
16

Substitutions to be made		
Item	For a reference to...	substitute a reference to...
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

17 Note: This section is intended to apply to Aboriginal and Torres Strait
18 Islander corporations some provisions of the Corporations Act that are
19 capable of operating before a winding up commences (or even
20 whether or not a winding up ever occurs). Section 526-35 only applies
21 provisions of the Corporations Act to a winding up of an Aboriginal
22 and Torres Strait Islander corporation.

- 23 (2) This section has effect without limiting section 526-35.

- 24 (3) In this Act:

25 *Corporations Act pre-winding up provisions* means:

- 26 (a) section 459C, Divisions 2 and 3 of Part 5.4 and section 459Q
27 of the Corporations Act; and

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Section 526-40

- 1 (b) section 487 of that Act; and
2 (c) section 494 of that Act; and
3 (d) section 570 of that Act; and
4 (e) Division 9 of Part 5.6 of that Act; and
5 (f) the other provisions of that Act (including Parts 1.2, 5.8 and
6 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and
7 9.4A) to the extent to which they relate to the operation of
8 the provisions referred to in paragraphs (a) to (e); and
9 (g) the regulations made under that Act for the purposes of the
10 provisions of that Act referred to in paragraphs (a) to (e) and
11 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:

Substitutions to be made		
Item	For a reference to...	substitute a reference to...
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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- 1 (b) the other provisions of that Act (including Parts 1.2 and 9.4
2 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to
3 the extent to which they relate to the operation of the
4 Divisions referred to in paragraph (a); and
5 (c) the regulations made under that Act for the purposes of the
6 Divisions of that Act referred to in paragraph (a) and the
7 provisions referred to in paragraph (b).

8 **531-5 Section 588G of Corporations Act prevails over conflicting**
9 **Native Title legislation obligations**

- 10 (1) In the event of a conflict between:
11 (a) the duty of a director of an Aboriginal and Torres Strait
12 Islander corporation to ensure that the corporation comply
13 with its Native Title legislation obligations; and
14 (b) the director's duty in relation to the corporation under
15 section 588G of the Corporations Act as applied by
16 section 531-1 of this Act;
17 the director's duty under section 588G of the Corporations Act as
18 so applied prevails, and the director is released from the
19 first-mentioned duty, to the extent of the conflict.
- 20 (2) The corporation is released from the duty to comply with its Native
21 Title legislation obligations to the extent that complying with them
22 would place a director of the corporation in breach of his or her
23 duty in relation to the corporation under section 588G of the
24 Corporations Act as so applied.

1
2 **Part 11-7—Employees' entitlements**

3 **Division 536—Employees' entitlements**

4 **536-1 Applying Corporations Act employees' entitlements**
5 **provisions to Aboriginal and Torres Strait Islander**
6 **corporations**

- 7 (1) The Corporations Act employees' entitlements provisions apply to
8 an Aboriginal and Torres Strait Islander corporation as if the
9 following substitutions were made:
10

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)

11 Note: Although section 526-35 applies the provisions of Part 5.8A to the
12 winding up of an Aboriginal and Torres Strait Islander corporation,
13 the employees' entitlements provisions are capable of applying
14 independently of there being a winding up. This section ensures, for
15 example, that a person will commit an offence (under the applied
16 section 596AB) if the person enters into an agreement to defeat the
17 entitlements of employees of an Aboriginal and Torres Strait Islander
18 corporation (regardless of whether winding up proceedings are ever
19 commenced).

- 20 (2) This section has effect without limiting section 526-35.

- 21 (3) In this Act:

22 ***Corporations Act employees' entitlements provisions*** means:

- 23 (a) Part 5.8A of the Corporations Act; and
24 (b) the other provisions of that Act (including Parts 1.2 and 9.4
25 and Schedule 3, but not including Parts 1.1, 1.1A and 9.4A)
26 to the extent to which they relate to the operation of the Part
27 referred to in paragraph (a); and

Chapter 11 External administration
Part 11-7 Employees' entitlements
Division 536 Employees' entitlements

Section 536-1

- 1 (c) the regulations made under that Act for the purposes of
2 Part 5.8A of that Act and the provisions referred to in
3 paragraph (b).

1
2 **Chapter 12—Deregistration and unclaimed**
3 **property**

4 **Part 12-1—Deregistration**

5 **Division 546—Deregistration**

6 **546-1 Deregistration—voluntary**

7 *Who may apply for deregistration*

8 (1) An application to deregister an Aboriginal and Torres Strait
9 Islander corporation may be lodged with the Registrar by:

- 10 (a) the corporation; or
11 (b) a director or member of the corporation; or
12 (c) a liquidator of the corporation.

13 If the corporation lodges the application, it must nominate a person
14 to be given notice of the deregistration.

15 *Circumstances in which application can be made*

16 (2) A person may apply only if:

- 17 (a) all the members of the corporation agree to the deregistration;
18 and
19 (b) the corporation is not carrying on business; and
20 (c) the corporation's assets are worth less than \$1,000; and
21 (d) the corporation has paid all fees and penalties payable under
22 this Act; and
23 (e) the corporation has no outstanding liabilities; and
24 (f) the corporation is not a party to any legal proceedings.

25 *Registrar may ask for information about officers*

26 (3) The applicant must give the Registrar any information that the
27 Registrar requests about the current and former officers of the
28 corporation.

Section 546-5

1

Deregistration procedure

2

(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*.

3

4

5

(5) A notice in the *Gazette* is not a legislative instrument.

6

7

(6) When 2 months have passed since the *Gazette* notice, the Registrar may deregister the corporation.

8

(7) The Registrar must give notice of the deregistration to:

9

(a) the applicant; or

10

(b) the person nominated in the application to be given the notice.

11

12

546-5 Deregistration—Registrar initiated

13

Circumstances in which the Registrar may deregister

14

(1) The Registrar may decide to deregister an Aboriginal and Torres Strait Islander corporation if:

15

16

(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

17

18

19

(b) the corporation has not lodged any other documents under this Act in the last 18 months; and

20

21

(c) the Registrar has no reason to believe that the corporation is carrying on business.

22

23

(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:

24

25

26

(a) the liquidator is no longer acting; or

27

28

(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

29

30

(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

31

32

1 property or not enough property to cover the costs of
2 obtaining a Court order for the corporation's deregistration.

3 *Deregistration procedure*

4 (3) If the Registrar decides to deregister an Aboriginal and Torres
5 Strait Islander corporation under this section, the Registrar must
6 give notice of the proposed deregistration:

- 7 (a) to the corporation; and
8 (b) to the corporation's liquidator (if any); and
9 (c) to the corporation's directors; and
10 (d) in the *Gazette*.

11 When 2 months have passed since the *Gazette* notice, the Registrar
12 may deregister the corporation.

13 (4) The Registrar does not have to give a person notice under
14 subsection (3) if the Registrar does not have the necessary
15 information about the person's identity or address.

16 (5) The Registrar must give notice of the deregistration to everyone
17 who was notified of the proposed deregistration under
18 paragraph (3)(b) or (c).

19 **546-10 Deregistration—following amalgamation or winding up**

20 (1) The Registrar must deregister an Aboriginal and Torres Strait
21 Islander corporation if the Court orders the deregistration of the
22 corporation under:

- 23 (a) paragraph 413(1)(d) of the Corporations Act (reconstruction
24 and amalgamation of Part 5.1 bodies); or
25 (b) paragraph 481(5)(b) of the Corporations Act (as applied by
26 section 526-35 of this Act) (release of liquidator); or
27 (c) subsection 509(6) of the Corporations Act (as applied by
28 section 526-35 of this Act) (liquidator's return following
29 winding up).

30 (2) The Registrar must deregister an Aboriginal and Torres Strait
31 Islander corporation if:

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Part 12-1 Deregistration

Division 546 Deregistration

Section 546-15

- 1 (a) 3 months have passed since the corporation's liquidator
2 lodged a return under section 509 of the Corporations Act (as
3 applied by section 526-35 of this Act); and
4 (b) no order under subsection 509(6) of the Corporations Act (as
5 applied by section 526-35 of this Act) has been made during
6 that period.

7 **546-15 Registered native title body corporate**

8 The Registrar must not deregister an Aboriginal and Torres Strait
9 Islander corporation that is a registered native title body corporate
10 under section 546-1, 546-5 or 546-10.

11 **546-20 Effect of deregistration**

12 *Aboriginal and Torres Strait Islander corporation ceases to exist*

- 13 (1) An Aboriginal and Torres Strait Islander corporation ceases to
14 exist on deregistration.

15 Note: Despite the deregistration, officers of the corporation may still be
16 liable for things done before the corporation was deregistered.

17 *Corporation's property vests in Registrar*

- 18 (2) On deregistration, all the corporation's property vests in the
19 Registrar. If corporation property is vested in a liquidator
20 immediately before deregistration, that property vests in the
21 Registrar. This subsection extends to property situated outside
22 Australia.

- 23 (3) Under subsection (2), the Registrar takes only the same property
24 rights that the corporation itself held. If the corporation held
25 particular property subject to a security or other interest or claim,
26 the Registrar takes the property subject to that interest or claim.

27 Note: See also subsection 546-25(3), which deals with liabilities that a law
28 imposes on the property (particularly liabilities such as rates, taxes
29 and other charges).

- 30 (4) The Registrar has all the powers of an owner over property vested
31 in the Registrar under subsection (2).

Section 546-25

1 Note: Section 546-30 confers additional powers on the Registrar to fulfil
2 outstanding obligations of the deregistered corporation.

3 *Corporation's books to be kept by former directors*

4 (5) The directors of the corporation immediately before deregistration
5 must keep the corporation's books for 3 years after the
6 deregistration.

7 (6) Subsection (5) does not apply to books that a liquidator has to keep
8 under subsection 542(2) of the Corporations Act (as applied by
9 section 526-35 of this Act).

10 Note: A defendant bears an evidential burden in relation to the matter in
11 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

12 *Strict liability offences*

13 (7) An offence based on subsection (5) is an offence of strict liability.

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

15 **546-25 What the Registrar does with the property**

16 (1) If property vested in the Registrar under subsection 546-20(2) was
17 held by the corporation on trust, the Registrar may:

- 18 (a) continue to act as trustee; or
19 (b) apply to a court for the appointment of a new trustee.

20 Note: Under paragraph (a), the Registrar may be able to transfer the property
21 to a new trustee chosen in accordance with the trust instrument.

22 (2) If the corporation did not hold the property on trust, the Registrar
23 may:

- 24 (a) dispose of or deal with the property as he or she sees fit; and
25 (b) apply any money he or she receives to:
26 (i) defray expenses incurred by the Registrar in exercising
27 his or her powers in relation to the corporation under
28 this Chapter; and
29 (ii) make payments authorised by subsection (3).

30 The Registrar must deal with the rest of the property (if any) under
31 Part 12-2.

Section 546-30

1 *Obligations attaching to property*

- 2 (3) The property remains subject to all liabilities imposed on the
3 property under a law and does not have the benefit of any
4 exemption that the property might otherwise have because it is
5 vested in the Registrar. These liabilities include a liability that:
6 (a) is a charge or claim on the property; and
7 (b) arises under a law that imposes rates, taxes or other charges.
- 8 (4) The Registrar's obligation under subsection (3) is limited to
9 satisfying the liabilities out of the corporation's property to the
10 extent that the property is properly available to satisfy those
11 liabilities.

12 *Accounts*

- 13 (5) The Registrar must keep:
14 (a) a record of property that he or she knows is vested in the
15 Registrar under this Part; and
16 (b) a record of his or her dealings with that property; and
17 (c) accounts of all money received from those dealings; and
18 (d) all accounts, vouchers, receipts and papers relating to the
19 property and that money.

20 **546-30 Registrar's power to fulfil outstanding obligations of**
21 **deregistered corporation**

22 The Registrar may do an act on behalf of the corporation or its
23 liquidator if the Registrar is satisfied that the corporation or
24 liquidator would be bound to do the act if the corporation still
25 existed.

26 Note: This power is a general one and is not limited to acts in relation to
27 property vested in the Registrar under subsection 546-20(2). The
28 Registrar has all the powers that automatically flow from the vesting
29 of property in the Registrar under that subsection (see subsection
30 546-20(4)) and may exercise those powers whether or not the
31 corporation was bound to do so.

1 **546-35 Claims against insurers of deregistered corporation**

2 A person may recover from the insurer of an Aboriginal and Torres
3 Strait Islander corporation that is deregistered an amount that was
4 payable to the corporation under the insurance contract if:

- 5 (a) the corporation had a liability to the person; and
6 (b) the insurance contract covered that liability immediately
7 before deregistration.

8 **546-40 Reinstatement**

9 *Reinstatement by the Registrar*

- 10 (1) The Registrar may reinstate the registration of an Aboriginal and
11 Torres Strait Islander corporation if the Registrar is satisfied that
12 the corporation should not have been deregistered.

13 *Reinstatement by Court*

- 14 (2) The Court may make an order that the Registrar reinstate the
15 registration of an Aboriginal and Torres Strait Islander corporation
16 if:

- 17 (a) an application for reinstatement is made to the Court by:
18 (i) a person aggrieved by the deregistration; or
19 (ii) a former liquidator of the corporation; and
20 (b) the Court is satisfied that it is just that the corporation's
21 registration be reinstated.

- 22 (3) If the Court makes an order under subsection (2), it may:
23 (a) validate anything done between the deregistration of the
24 corporation and its reinstatement; and
25 (b) make any other order it considers appropriate.

26 Note: For example, the Court may direct the Registrar to transfer to another
27 person property vested in the Registrar under subsection 546-20(2).

28 *Registrar to give notice of reinstatement*

- 29 (4) The Registrar must give notice of a reinstatement in the *Gazette*. If
30 the Registrar exercises his or her power under subsection (1) in

Chapter 12 Deregistration and unclaimed property

Part 12-1 Deregistration

Division 546 Deregistration

Section 546-40

1 response to an application by a person, the Registrar must also give
2 notice of the reinstatement to the applicant.

3 *Effect of reinstatement*

4 (5) If an Aboriginal and Torres Strait Islander corporation is
5 reinstated:

- 6 (a) the corporation is taken to have continued in existence as if it
7 had not been deregistered; and
8 (b) a person who was a director of the corporation immediately
9 before deregistration becomes a director again as from the
10 time when the Registrar or the Court reinstates the
11 corporation; and
12 (c) any property of the corporation that is still vested in the
13 Registrar reverts in the corporation; and
14 (d) if the corporation held particular property subject to a
15 security or other interest or claim—the corporation takes the
16 property subject to that interest or claim.

1

2 **Part 12-2—Unclaimed property**

3 **Division 551—Unclaimed property**

4 **551-1 Unclaimed property**

5 Property is *unclaimed property* if it is property that subsection
6 546-25(2) provides for the Registrar to deal with under this Part.

7 **551-5 Registrar to deal with unclaimed property**

- 8 (1) The Registrar, on behalf of the Commonwealth, holds unclaimed
9 property that is money at the time when it becomes unclaimed
10 property on trust in accordance with, and for the purposes of, this
11 Part.
- 12 (2) If unclaimed property is not money at the time when it becomes
13 unclaimed property, the Registrar must:
- 14 (a) on behalf of the Commonwealth, hold the property on trust in
15 accordance with, and for the purposes of, this Part until it is
16 dealt with under paragraph (b); and
- 17 (b) sell or dispose of the property as the Registrar thinks fit and
18 hold the proceeds, on behalf of the Commonwealth, on trust
19 in accordance with, and for the purposes of, this Part.

20 **551-10 Registrar and Commonwealth not liable to pay calls on**
21 **shares etc.**

22 If unclaimed property is or includes shares in a body corporate, the
23 Registrar and the Commonwealth are not subject to any obligation:

- 24 (a) to pay any calls; or
25 (b) to make any contribution to the debts and liabilities of the
26 body corporate; or
27 (c) to discharge any other liability; or
28 (d) to do any other act or thing;

Section 551-15

1 in respect of the shares, whether the obligation arises before or
2 after the shares become unclaimed property, but this section does
3 not affect the right of a body corporate to forfeit a share.

4 **551-15 Disposition of money that is unclaimed property etc.**

- 5 (1) This section applies to money that:
6 (a) is unclaimed property; or
7 (b) represents the proceeds of unclaimed property.
- 8 (2) If:
9 (a) a person claims to be entitled to the money; and
10 (b) the Registrar is satisfied that the person is entitled to the
11 money;
12 the Registrar must pay the money to the person in accordance with
13 section 551-30.

14 **551-20 Establishment of the Aboriginal and Torres Strait Islander**
15 **Corporations Unclaimed Money Account**

- 16 (1) The Aboriginal and Torres Strait Islander Corporations Unclaimed
17 Money Account is established by this section.
- 18 (2) The Account is a Special Account for the purposes of the *Financial*
19 *Management and Accountability Act 1997*.

20 **551-25 Credits of amounts to Account**

- 21 There must be credited to the Account amounts equal to:
22 (a) money that is unclaimed property; and
23 (b) money that represents the proceeds of unclaimed property.

24 **551-30 Purposes of Account**

- 25 (1) The purposes of the Account, in relation to which amounts may be
26 debited from the Account, are:
27 (a) to pay persons whom the Registrar is satisfied under
28 paragraph 551-15(2)(b) are entitled to the money; and

Section 551-35

- 1 (b) to reduce the balance of the Account (and therefore the
2 available appropriation for the Account) without making a
3 payment to any person if 6 years have elapsed since the
4 unclaimed property was first held by the Registrar.
- 5 (2) If the money is not paid out in accordance with this section within
6 6 years after the unclaimed property was first held by the Registrar
7 as unclaimed property, the Account must be debited by an amount
8 equivalent to the money.
- 9 (3) If:
- 10 (a) a person makes a claim under paragraph 551-15(2)(a) to
11 money that is unclaimed property, or to money that
12 represents the proceeds of unclaimed property, after 6 years
13 have elapsed since the property was first held by the
14 Registrar as unclaimed property; and
- 15 (b) the Registrar is satisfied that the person is entitled to the
16 money;
- 17 the Registrar must pay the money to the person out of money that
18 is appropriated by the Parliament for the purpose.

551-35 Claims of disposition of money to incorrect payee

- 19
- 20 (1) If:
- 21 (a) a person (the *claimant*) claims to be entitled to money; and
- 22 (b) the money has been paid to another person (the *payee*) in
23 accordance with paragraph 551-30(1)(a) or subsection
24 551-30(3);
- 25 the Registrar is not under any liability to the claimant in respect of
26 that money, but, if the claimant is entitled to that money, the
27 claimant may recover that money from the payee.
- 28 (2) If:
- 29 (a) a person (the *claimant*) claims to be entitled to money; and
- 30 (b) an amount equivalent to that money has been paid to another
31 person (the *payee*) in accordance with paragraph
32 551-30(1)(a) or subsection 551-30(3);

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Part 12-2 Unclaimed property

Division 551 Unclaimed property

Section 551-40

1 the Registrar is not under any liability to the claimant in respect of
2 that money, but, if the claimant is entitled to that money, the
3 claimant may recover that equivalent amount from the payee.

4 **551-40 Commonwealth or Registrar not liable for loss or damage**

5 Neither the Commonwealth nor the Registrar is liable for any loss
6 or damage suffered by a person arising out of the exercise of, or the
7 failure to exercise, any of the powers which are conferred on the
8 Registrar under this Part or which the Registrar has in relation to
9 unclaimed property.

1
2 **Chapter 13—Offences**

3 **Part 13-1—Offences about false or misleading**
4 **statements etc.**

5 **Division 561—Offences about false or misleading**
6 **statements etc.**

7 **561-1 False or misleading statements**

8 (1) A person commits an offence if the person, in a document required
9 by or for the purposes of this Act or lodged with or submitted to
10 the Registrar:

11 (a) makes or authorises the making of a statement that, to the
12 person's knowledge, is false or misleading in a material
13 particular; or

14 (b) omits or authorises the omission of any matter or thing
15 without which the document is, to the person's knowledge,
16 misleading in a material respect.

17 Penalty: 200 penalty units or imprisonment for 5 years, or both.

18 (2) A person who makes or authorises the making of a statement that is
19 based on information that, to the person's knowledge:

20 (a) is false or misleading in a material particular; or

21 (b) has omitted from it a matter or thing the omission of which
22 renders the information misleading in a material respect;

23 is, for the purposes of subsection (1), taken to have made or
24 authorised the making of a statement that, to the person's
25 knowledge, was false or misleading in a material particular.

26 (3) A person is not liable to be prosecuted for an offence in
27 consequence of a regulation made under section 633-1 as well as
28 for an offence against subsection (1) of this section.

29 (4) A person commits an offence if the person, in a document required
30 by or for the purposes of this Act or lodged with the Registrar:

Chapter 13 Offences

Part 13-1 Offences about false or misleading statements etc.

Division 561 Offences about false or misleading statements etc.

Section 561-1

- 1 (a) makes or authorises the making of a statement that is false or
2 misleading in a material particular; or
3 (b) omits or authorises the omission of any matter or thing
4 without which the document is misleading in a material
5 respect;
6 without having taken reasonable steps to ensure that the statement
7 was not false or misleading or to ensure that the statement did not
8 omit any matter or thing without which the document would be
9 misleading, as the case may be.
- 10 Penalty: 200 penalty units or imprisonment for 5 years, or both.
- 11 (5) A person who makes or authorises the making of a statement
12 without having taken reasonable steps to ensure that the
13 information on which the statement was based:
14 (a) was not false or misleading in a material particular; and
15 (b) did not have omitted from it a matter or thing the omission of
16 which would render the information misleading in a material
17 respect;
18 is, for the purposes of subsection (4), taken to have made or
19 authorised the making of a statement without having taken
20 reasonable steps to ensure that the statement was not false or
21 misleading.
- 22 (6) For the purposes of subsections (1) and (4), if:
23 (a) at a meeting, a person votes in favour of a resolution
24 approving, or otherwise approves, a document required by or
25 for the purposes of this Act or required to be lodged; and
26 (b) the document contains a statement that, to the person's
27 knowledge, is false or misleading in a material particular, or
28 omits any matter or thing without which the document is, to
29 the person's knowledge, misleading in a material respect;
30 the person is taken to have authorised the making of the statement
31 or the omission of the matter or thing.
- 32 (7) For the purposes of this section, a statement, report or other
33 document that:
34 (a) relates to affairs of an Aboriginal and Torres Strait Islander
35 corporation or of a subsidiary of an Aboriginal and Torres
36 Strait Islander corporation; and

- 1 (b) is not itself required by this Act to be laid before the
2 corporation in general meeting; and
3 (c) is attached to or included with a report of the directors sent
4 under Division 342 to members of the corporation or laid
5 before the corporation at an AGM of the corporation;
6 is taken to be part of the report referred to in paragraph (c).

7 **561-5 False information etc.**

- 8 (1) An officer or employee of an Aboriginal and Torres Strait Islander
9 corporation commits an offence if:
10 (a) the officer or employee makes available or gives information,
11 or authorises or permits the making available or giving of
12 information, to:
13 (i) a director, auditor or member of the corporation; or
14 (ii) if the corporation is taken for the purposes of this Act to
15 be controlled by another Aboriginal and Torres Strait
16 Islander corporation—an auditor of the other
17 corporation; and
18 (b) the information (whether in documentary or any other form)
19 relates to the affairs of the corporation; and
20 (c) the information, to the knowledge of the officer or employee:
21 (i) is false or misleading in a material particular; or
22 (ii) has omitted from it a matter or thing the omission of
23 which renders the information misleading in a material
24 respect.

25 Penalty: 200 penalty units or imprisonment for 5 years, or both.

- 26 (2) An officer or employee of an Aboriginal and Torres Strait Islander
27 corporation commits an offence if:
28 (a) the officer or employee makes available or gives information,
29 or authorises or permits the making available or giving of
30 information, to:
31 (i) a director, auditor or member of the corporation; or
32 (ii) if the corporation is taken for the purposes of this Act to
33 be controlled by another Aboriginal and Torres Strait
34 Islander corporation—an auditor of the other
35 corporation; and

Chapter 13 Offences

Part 13-1 Offences about false or misleading statements etc.

Division 561 Offences about false or misleading statements etc.

Section 561-5

- 1 (b) the information (whether in documentary or any other form)
2 related to the affairs of the corporation; and
3 (c) the information:
4 (i) is false or misleading in a material particular; or
5 (ii) has omitted from it a matter or thing the omission of
6 which renders the information misleading in a material
7 respect; and
8 (d) the officer or employee does not take reasonable steps to
9 ensure that the information:
10 (i) was not false or misleading in a material particular; and
11 (ii) did not have omitted from it a matter or thing the
12 omission of which rendered the information misleading
13 in a material respect.

14 Penalty: 100 penalty units or imprisonment for 2 years, or both.

- 15 (3) The references in subsections (1) and (2) to a person making
16 available or giving, or authorising or permitting the making
17 available or giving of, information relating to the affairs of a
18 corporation include references to a person making available or
19 giving, or authorising or permitting the making available or giving
20 of, information as to the state of knowledge of that person with
21 respect to the affairs of the corporation.
- 22 (4) If information is made available or given to a person referred to in
23 subparagraph (1)(a)(i) or (ii) or (2)(a)(i) or (ii) in response to a
24 question asked by that person, the question and the information are
25 to be considered together in determining whether the information
26 was false or misleading.

1

2 **Part 13-2—General matters relating to offences**

3 **Division 566—General matters relating to offences**

4 **566-1 Penalties for bodies corporate**

5 If a body corporate is convicted of an offence against this Act, the
6 penalty that the court may impose is a fine not exceeding 5 times
7 the maximum amount that, but for this section, the court could
8 impose as a pecuniary penalty for that offence.

9 **566-5 Penalty notices**

- 10 (1) If the Registrar has reason to believe that a person has committed a
11 prescribed offence, the Registrar may, subject to subsection (2),
12 give the person a written notice:
- 13 (a) alleging that the person has committed the prescribed offence
14 and giving the prescribed particulars in relation to the
15 prescribed offence; and
 - 16 (b) setting out the prescribed penalty in respect of the prescribed
17 offence; and
 - 18 (c) in the case of a prescribed offence constituted by a failure to
19 do a particular act or thing—stating:
 - 20 (i) that the obligation to do the act or thing continues
21 despite the service of the notice or the payment of the
22 prescribed penalty; and
 - 23 (ii) that if, within the period specified in the notice (being a
24 period of at least 21 days), the person pays the
25 prescribed penalty to the Registrar and does the act or
26 thing, no further action will be taken against the person
27 in relation to the prescribed offence; and
 - 28 (iii) that if, at the end of the period specified in the notice,
29 the person has not paid the prescribed penalty to the
30 Registrar or has not done the act or thing, proceedings
31 may be instituted against the person; and
 - 32 (d) in the case of a prescribed offence that is not constituted by a
33 failure to do a particular act or thing—stating:

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Section 566-5

- 1 (i) that if, within the period specified in the notice (being a
2 period of at least 21 days), the person pays the
3 prescribed penalty to the Registrar, no further action
4 will be taken against the person in relation to the
5 prescribed offence; and
6 (ii) that if, at the end of the period specified in the notice,
7 the person has not paid the prescribed penalty to the
8 Registrar, proceedings may be instituted against the
9 person.
- 10 (2) A notice under subsection (1) is not a legislative instrument.
- 11 (3) Subsection (1) does not empower the Registrar:
- 12 (a) to give a person more than one notice under that subsection
13 in relation to an alleged commission by that person of a
14 particular prescribed offence; or
15 (b) to give a person a notice under that subsection in relation to a
16 prescribed offence unless proceedings could be instituted
17 against that person for that offence in accordance with
18 section 566-15.
- 19 (4) A notice under subsection (1) may be given to a natural person
20 either personally or by post.
- 21 (5) If a notice under subsection (1) is given to a person in relation to a
22 prescribed offence constituted by a failure to do a particular act or
23 thing:
- 24 (a) if, within the period specified in the notice, the person pays
25 the prescribed penalty to the Registrar, and does the act or
26 thing—no proceedings may be instituted against the person
27 in respect of the prescribed offence; or
28 (b) if, at the end of the period specified in the notice, the person
29 has paid the prescribed penalty to the Registrar but has not
30 done the act or thing—no proceedings may be instituted
31 against the person in respect of the prescribed offence, but
32 the obligation to do that act or thing continues, and
33 section 566-10 applies in relation to the continued failure to
34 do that act or thing as if, on the day on which the person so
35 paid the prescribed penalty, the person had been convicted of
36 an offence constituted by a failure to do that act or thing; or

Section 566-5

- 1 (c) if, at the end of the period specified in the notice, the person
2 has not paid the prescribed penalty to the Registrar but had
3 done the act or thing—proceedings may be instituted against
4 the person in respect of the prescribed offence; or
- 5 (d) if, at the end of the period specified in the notice, the person
6 has not paid the prescribed penalty to the Registrar and has
7 not done the act or thing—the obligation to do that act or
8 thing continues, and proceedings may be instituted against
9 the person in respect of the prescribed offence.
- 10 (6) If a notice under subsection (1) is given to a person in relation to a
11 prescribed offence, not being an offence constituted by a failure to
12 do a particular act or thing:
- 13 (a) if, within the period specified in the notice, the person pays
14 the prescribed penalty to the Registrar—no proceedings may
15 be instituted against the person in respect of the prescribed
16 offence; or
- 17 (b) if, at the end of the period specified in the notice, the person
18 has not paid the prescribed penalty to the Registrar—
19 proceedings may be instituted against the person in respect of
20 the prescribed offence.
- 21 (7) The payment of an amount by a person pursuant to a notice served
22 on the person under this section in relation to a prescribed offence
23 is not taken for any purpose to be an admission by that person of
24 any liability in connection with the alleged commission of the
25 prescribed offence.
- 26 (8) Except as provided by paragraphs (5)(a) and (b) and (6)(a), this
27 section does not affect the operation of any provision of this Act,
28 of the regulations, of the rules or of any other Act in relation to the
29 institution of proceedings in respect of offences that are prescribed
30 offences for the purposes of this section.
- 31 (9) In this section:
- 32 ***prescribed offence*** means an offence against this Act that the
33 regulations prescribe for the purposes of this section.
- 34 ***prescribed penalty***, in relation to a prescribed offence in relation to
35 which the Registrar may give, or has given, to a person a notice

Chapter 13 Offences

Part 13-2 General matters relating to offences

Division 566 General matters relating to offences

Section 566-10

1 under subsection (1), means a penalty of the amount that the
2 regulations prescribe in relation to the offence.

3 **566-10 Continuing offences**

4 (1) If:

5 (a) by or under a provision, an act is or was required to be done
6 within a particular period or before a particular time; and

7 (b) failure to do the act within that period or before that time
8 constitutes an offence; and

9 (c) the act is not done within that period or before that time;

10 then:

11 (d) the obligation to do the act continues, after that period has
12 ended or that time has passed, and whether or not a person is
13 or has been convicted of a primary substantive offence in
14 relation to failure to do the act, until the act is done; and

15 (e) subsections (3) and (4) apply.

16 (2) If:

17 (a) by or under a provision, an act is or was required to be done
18 but neither a period nor a time for the doing of the act is or
19 was specified; and

20 (b) failure to do the act constitutes an offence; and

21 (c) a person is or has been convicted of a primary substantive
22 offence in relation to failure to do the act;

23 then:

24 (d) the obligation to do the act continues, despite the conviction,
25 until the act is done; and

26 (e) subsections (3) and (4) apply.

27 (3) If:

28 (a) at a particular time, a person is or was first convicted of a
29 substantive offence, or is or was convicted of a second or
30 subsequent substantive offence, in relation to failure to do the
31 act; and

32 (b) the failure to do the act continued after that time;

33 then:

- 1 (c) the person, in relation to failure to do the act, commits a
2 further offence in respect of so much of the period
3 throughout which the failure to do the act continued or
4 elapsed after that time and before the relevant day in relation
5 to the further offence; and
6 (d) for the purposes of this Act and of the *Crimes Act 1914*, the
7 further offence is taken to be constituted by failure to do the
8 act during so much of that period as so elapsed.
- 9 (4) If:
- 10 (a) the provision referred to in paragraph (1)(a) or (2)(a), as the
11 case may be, provides or provided that:
- 12 (i) an officer or employee of a body corporate; or
13 (ii) a person;
14 who is or was in default, or is or was involved in a
15 contravention constituted by the failure to do the act,
16 commits or committed an offence or contravenes or
17 contravened a provision of this Act; and
- 18 (b) throughout a particular period (the *relevant period*):
- 19 (i) the failure to do the act continued; and
20 (ii) a person (the *derivative offender*) is or was in any way,
21 by act or omission, directly or indirectly, knowingly
22 concerned in or party to the failure to do the act; and
23 (iii) if subparagraph (a)(i) applies—the derivative offender is
24 or was an officer or employee of the body;
- 25 then:
- 26 (c) if either or both of the following events occurs or occur:
- 27 (i) a person is or was convicted, before or during the
28 relevant period, of a primary substantive offence in
29 relation to failure to do the act;
- 30 (ii) the derivative offender is or was convicted, before or
31 during the relevant period, of a primary derivative
32 offence in relation to failure to do the act;
- 33 the derivative offender, in relation to failure to do the act,
34 commits an offence (the *relevant offence*) in respect of so
35 much (if any) of the relevant period as elapsed:

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Division 566 General matters relating to offences

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- 1 (iii) after the conviction referred to in subparagraph (i) or
2 (ii), or after the earlier of the convictions referred to in
3 subparagraphs (i) and (ii), as the case may be; and
4 (iv) before the relevant day in relation to the relevant
5 offence; and
6 (d) if, at a particular time during the relevant period, the
7 derivative offender is or was first convicted of a secondary
8 derivative offence, or is or was convicted of a second or
9 subsequent secondary derivative offence, in relation to failure
10 to do the act—the derivative offender, in relation to failure to
11 do the act, commits a further offence in respect of so much of
12 the relevant period as elapsed after that time and before the
13 relevant day in relation to the further offence.
- 14 (5) If a person, by virtue of subsection (3) or (4), commits an offence
15 in respect of the whole or a part of a particular period, the penalty
16 applicable to the offence is a fine of the amount obtained by
17 multiplying half a penalty unit by the number of days in that
18 period, or in that part of that period, as the case may be.
- 19 (6) In this section:
- 20 *in default*, in relation to a contravention and to an officer or
21 employee of a body corporate, or to a person, means an officer or
22 employee of the body (including a person who later ceases to be
23 such an officer or employee), or a person, as the case may be, who
24 is involved in the contravention.
- 25 *primary derivative offence*, in relation to failure to do an act,
26 means an offence (other than an offence a person commits by
27 virtue of this section) that a person commits or committed by virtue
28 of being an officer of an Aboriginal and Torres Strait Islander
29 corporation, or a person, who is or was in any way, by act or
30 omission, directly or indirectly, knowingly concerned in or party to
31 failure to do the act.
- 32 *primary substantive offence*, in relation to a failure to do an act,
33 means an offence (other than an offence that a person commits or
34 committed by virtue of this section) constituted by failure to do the
35 act, or by failure to do the act within a particular period or before a
36 particular time.

1 **provision** means a section, or a subsection of a section, of this Act.

2 **relevant day**, in relation to an offence that a person commits by
3 virtue of this section, means:

4 (a) if the information relating to the offence specifies a day in
5 relation to the offence for the purposes of this section, being
6 a day not later than the day on which the information is
7 laid—the day the information so specifies; or

8 (b) in any other case—the day on which the information relating
9 to the offence is laid.

10 **required** includes directed.

11 **secondary derivative offence**, in relation to failure to do an act,
12 means an offence or further offence that a person, in relation to
13 failure to do the act, commits by virtue of paragraph (4)(c) or (d).

14 **substantive offence**, in relation to failure to do an act, means:

15 (a) a primary substantive offence in relation to failure to do the
16 act; or

17 (b) a further offence that a person, in relation to failure to do the
18 act, commits by virtue of subsection (3).

19 (7) For the purposes of subsection (4), a provision of this Act is,
20 whether or not it expressly provides as mentioned in
21 paragraph (4)(a), taken to provide that a person who is or was
22 involved in a contravention constituted by a failure to do an act
23 required by the provision contravenes or contravened that
24 provision.

25 **566-15 Time for instituting criminal proceedings**

26 Despite anything in any other law, proceedings for an offence
27 against this Act may be instituted:

28 (a) within the period of 5 years after the act or omission alleged
29 to constitute the offence; or

30 (b) with the Minister's consent, at any later time.

Section 566-20

1 **566-20 Privilege against self-incrimination not available to bodies**
2 **corporate in certain proceedings**

- 3 (1) This section applies to a proceeding in a court when exercising
4 jurisdiction in respect of a criminal matter arising under this Act.
- 5 (2) In the proceeding, a body corporate is not entitled to refuse or fail
6 to comply with a requirement:
7 (a) to answer a question or give information; or
8 (b) to produce a book or any other thing; or
9 (c) to do any other act whatever;
10 on the ground that the answer or information, production of the
11 book or other thing, or doing that other act, as the case may be,
12 might tend:
13 (d) to incriminate the body (whether in respect of an offence to
14 which the proceeding relates or otherwise); or
15 (e) to make the body liable to a penalty (whether in respect of
16 anything to which the proceeding relates or otherwise).
- 17 (3) Subsection (2) applies whether or not the body concerned is a
18 defendant in the proceeding or in any other proceeding.

19 **566-25 Certain persons to assist in prosecutions**

- 20 (1) If a prosecution in respect of an offence against this Act has been
21 instituted, or the Registrar is of the opinion that a prosecution in
22 respect of an offence against this Act ought to be instituted, against
23 a person (the *defendant*), the Registrar may:
24 (a) if the defendant is a natural person—require any person who
25 is or was a partner, employee or agent of the defendant; or
26 (b) if the defendant is a body corporate—require any person who
27 is or was an officer, employee or agent of the defendant;
28 to assist in the prosecution, and the person who is so required must
29 give all assistance in connection with the prosecution that the
30 person is reasonably able to give.
- 31 (2) The Registrar must not make such a requirement as is mentioned in
32 subsection (1) of a person who, in the opinion of the Registrar, is

- 1 or is likely to be a defendant in the proceedings or is or has been
2 such a person's lawyer.
- 3 (3) If a person to whom paragraph (1)(a) or (b) relates fails to give
4 assistance as required by subsection (1), the person contravenes
5 this section and, without affecting any penalty to which the person
6 may be liable for the contravention, the Court may, on the
7 application of the Registrar, order the person to comply with the
8 requirement within such time, and in such manner, as the Court
9 orders.
- 10 (4) In this section:
- 11 **agent**, in relation to the defendant, includes:
12 (a) a banker of the defendant; and
13 (b) a person engaged as an auditor by the defendant;
14 whether that person is an employee or an officer of the defendant
15 or not.
- 16 (5) A requirement by the Registrar under subsection (1) is not a
17 legislative instrument.

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Chapter 14—Courts and proceedings

3

Part 14-1—Powers of courts

4

Division 576—Powers of courts

5

576-1 Power to grant relief

6

(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:

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(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

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(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;

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the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

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(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:

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(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.

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(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

Section 576-5

- 1 (b) forthwith direct judgment to be entered for the defendant on
2 such terms as to costs or otherwise as the judge thinks proper.
- 3 (4) This section applies to a person who is:
- 4 (a) an officer or employee of an Aboriginal and Torres Strait
5 Islander corporation; or
- 6 (b) an auditor of an Aboriginal and Torres Strait Islander
7 corporation (whether or not the person is an officer or
8 employee of the corporation); or
- 9 (c) an expert in relation to a matter:
- 10 (i) relating to an Aboriginal and Torres Strait Islander
11 corporation; and
- 12 (ii) in relation to which the civil proceeding has been taken
13 or the claim will or might arise; or
- 14 (d) a receiver, receiver and manager, liquidator or other person
15 appointed or directed by the Court to carry out any duty
16 under this Act in relation to an Aboriginal and Torres Strait
17 Islander corporation; or
- 18 (e) a special administrator for an Aboriginal and Torres Strait
19 Islander corporation.

20 **576-5 Power of Court to give directions with respect to meetings**
21 **ordered by the Court**

- 22 If, under this Act, the Court orders a meeting to be convened, the
23 Court may, subject to this Act, give such directions with respect to:
- 24 (a) the convening, holding or conduct of the meeting; and
25 (b) such ancillary or consequential directions in relation to the
26 meeting as it thinks fit.

27 **576-10 Appeals from decisions of receivers, liquidators etc.**

- 28 (1) A person aggrieved by any act, omission or decision of:
- 29 (a) a special administrator for an Aboriginal and Torres Strait
30 Islander corporation; or
- 31 (b) a receiver, or a receiver and manager, of property of an
32 Aboriginal and Torres Strait Islander corporation; or

Section 576-15

- 1 (c) an administrator of an Aboriginal and Torres Strait Islander
2 corporation; or
3 (d) an administrator of a deed of corporation arrangement
4 executed by an Aboriginal and Torres Strait Islander
5 corporation; or
6 (e) a liquidator or provisional liquidator of an Aboriginal and
7 Torres Strait Islander corporation;
8 may appeal to the Court in respect of the act, omission or decision.
- 9 (2) The Court may confirm, reverse or modify the act or decision, or
10 remedy the omission, as the case may be, and make such orders
11 and give such directions as it thinks fit.

576-15 Irregularities

- 12
- 13 (1) In this section:
- 14 (a) a reference to a proceeding under this Act is a reference to
15 any proceeding whether a legal proceeding or not; and
16 (b) a reference to a procedural irregularity includes a reference
17 to:
- 18 (i) the absence of a quorum at a meeting of an Aboriginal
19 and Torres Strait Islander corporation, at a meeting of
20 directors or creditors of an Aboriginal and Torres Strait
21 Islander corporation, or at a joint meeting of creditors
22 and members of an Aboriginal and Torres Strait Islander
23 corporation; and
24 (ii) a defect, irregularity or deficiency of notice or time.
- 25 (2) A proceeding under this Act is not invalidated because of any
26 procedural irregularity unless the Court:
- 27 (a) is of the opinion that the irregularity has caused or may cause
28 substantial injustice that cannot be remedied by any order of
29 the Court; and
30 (b) by order declares the proceeding to be invalid.
- 31 (3) A meeting held for the purposes of this Act, or a meeting notice of
32 which is required to be given in accordance with the provisions of
33 this Act, or any proceeding at such a meeting, is not invalidated
34 merely because of:

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- 1 (a) the accidental omission to give notice of the meeting; or
2 (b) the non-receipt by any person of notice of the meeting;
3 unless the Court, on the application of the person concerned, a
4 person entitled to attend the meeting or the Registrar, declares
5 proceedings at the meeting to be void.
- 6 (4) A meeting held for the purposes of this Act, or a meeting notice of
7 which is required to be given in accordance with the provisions of
8 this Act, or any proceeding at such a meeting, is not invalidated
9 merely because of the inability of a person to access the notice of
10 meeting, unless the Court, on the application of the person
11 concerned, a person entitled to attend the meeting or the Registrar,
12 declares proceedings at the meeting to be void.
- 13 Note: Under paragraph 201-25(3)(e), an Aboriginal and Torres Strait
14 Islander corporation may, in certain circumstances, give a member
15 notice of a meeting by notifying the member that the notice of meeting
16 is available and how the member may access the notice of meeting.
- 17 (5) If a member does not have a reasonable opportunity to participate
18 in a meeting of members, or part of a meeting of members, held at
19 2 or more venues, the meeting will only be invalid on that ground
20 if:
21 (a) the Court is of the opinion that:
22 (i) a substantial injustice has been caused or may be
23 caused; and
24 (ii) the injustice cannot be remedied by any order of the
25 Court; and
26 (b) the Court declares the meeting or proceeding (or that part of
27 it) invalid.
- 28 (6) Subject to the following provisions of this section but without
29 limiting the generality of any other provision of this Act, the Court
30 may, on application by any interested person, make all or any of
31 the following orders, either unconditionally or subject to such
32 conditions as the Court imposes:
33 (a) an order declaring that any act, matter or thing purporting to
34 have been done, or any proceeding purporting to have been
35 instituted or taken, under this Act or in relation to an
36 Aboriginal and Torres Strait Islander corporation is not
37 invalid by reason of any contravention of a provision of this

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Section 576-15

- 1 Act or a provision of the constitution of an Aboriginal and
2 Torres Strait Islander corporation;
- 3 (b) an order directing the rectification of any register kept by the
4 Registrar under this Act;
- 5 (c) an order relieving a person in whole or in part from any civil
6 liability in respect of a contravention or failure of a kind
7 referred to in paragraph (a);
- 8 (d) an order extending the period for doing any act, matter or
9 thing or instituting or taking any proceeding under this Act or
10 in relation to an Aboriginal and Torres Strait Islander
11 corporation (including an order extending a period where the
12 period concerned ended before the application for the order
13 was made) or abridging the period for doing such an act,
14 matter or thing or instituting or taking such a proceeding;
15 and may make such consequential or ancillary orders as the Court
16 thinks fit.
- 17 (7) An order may be made under paragraph (6)(a) or (c) despite that
18 the contravention or failure referred to in the paragraph concerned
19 resulted in the commission of an offence.
- 20 (8) The Court must not make an order under this section unless it is
21 satisfied:
- 22 (a) in the case of an order referred to in paragraph (6)(a):
23 (i) that the act, matter or thing, or the proceeding, referred
24 to in that paragraph is essentially of a procedural nature;
25 or
26 (ii) that the person or persons concerned in or party to the
27 contravention or failure acted honestly; or
28 (iii) that it is just and equitable that the order be made; and
29 (b) in the case of an order referred to in paragraph (6)(c)—that
30 the person subject to the civil liability concerned acted
31 honestly; and
32 (c) in every case—that no substantial injustice has been or is
33 likely to be caused to any person.

1 **576-20 Power of Court to prohibit payment or transfer of money,**
2 **financial products or other property**

3 (1) If:

4 (a) an investigation is being carried out under this Act in relation
5 to an act or omission by a person, being an act or omission
6 that constitutes or may constitute a contravention of this Act;
7 or

8 (b) a prosecution has been begun against a person for a
9 contravention of this Act; or

10 (c) a civil proceeding has been begun against a person under this
11 Act;

12 and the Court considers it necessary or desirable to do so for the
13 purpose of protecting the interests of a person (an *aggrieved*
14 *person*) to whom the person referred to in paragraph (a), (b) or (c),
15 as the case may be, (the *relevant person*), is liable, or may be or
16 become liable, to pay money, whether in respect of a debt, by way
17 of damages or compensation or otherwise, or to account for
18 financial products or other property, the Court may, on application
19 by the Registrar or by an aggrieved person, make one or more of
20 the following orders:

21 (d) an order prohibiting a person who is indebted to the relevant
22 person or to an associate of the relevant person from making
23 a payment in total or partial discharge of the debt to, or to
24 another person at the direction or request of, the person to
25 whom the debt is owed;

26 (e) an order prohibiting a person holding money, financial
27 products or other property, on behalf of the relevant person,
28 or on behalf of an associate of the relevant person, from
29 paying all or any of the money, or transferring, or otherwise
30 parting with possession of, the financial products or other
31 property, to, or to another person at the direction or request
32 of, the person on whose behalf the money, financial products
33 or other property, is or are held;

34 (f) an order prohibiting the taking or sending out of this
35 jurisdiction, or out of Australia, by a person of money of the
36 relevant person or of an associate of the relevant person;

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- 1 (g) an order prohibiting the taking, sending or transfer by a
2 person of financial products or other property of the relevant
3 person, or of an associate of the relevant person:
- 4 (i) from a place in this jurisdiction to a place outside this
5 jurisdiction (including the transfer of financial products
6 from a register in this jurisdiction to a register outside
7 this jurisdiction); or
- 8 (ii) from a place in Australia to a place outside Australia
9 (including the transfer of financial products from a
10 register in Australia to a register outside Australia);
- 11 (h) an order appointing:
- 12 (i) if the relevant person is a natural person—a receiver or
13 trustee, having such powers as the Court orders, of the
14 property or of part of the property of that person; or
- 15 (ii) if the relevant person is a body corporate—a receiver or
16 receiver and manager, having such powers as the Court
17 orders, of the property or of part of the property of that
18 person;
- 19 (i) if the relevant person is a natural person—an order requiring
20 that person to deliver up to the Court his or her passport and
21 such other documents as the Court thinks fit;
- 22 (j) if the relevant person is a natural person—an order
23 prohibiting that person from leaving this jurisdiction, or
24 Australia, without the consent of the Court.
- 25 (2) A reference in paragraph (1)(g) or (h) to property of a person
26 includes a reference to property that the person holds otherwise
27 than as sole beneficial owner, for example:
- 28 (a) as trustee for, as nominee for, or otherwise on behalf of or on
29 account of, another person; or
- 30 (b) in a fiduciary capacity.
- 31 (3) Subsection (2) is to avoid doubt, is not to limit the generality of
32 anything in subsection (1) and is not to affect by implication the
33 interpretation of any other provision of this Act.
- 34 (4) An order under subsection (1) prohibiting conduct may prohibit the
35 conduct either absolutely or subject to conditions.

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- 1 (5) If an application is made to the Court for an order under
2 subsection (1), the Court may, if in the opinion of the Court it is
3 desirable to do so, before considering the application, grant an
4 interim order, being an order of the kind applied for that is
5 expressed to have effect pending the determination of the
6 application.
- 7 (6) On an application under subsection (1), the Court must not require
8 the applicant or any other person, as a condition of granting an
9 interim order under subsection (5), to give an undertaking as to
10 damages.
- 11 (7) If the Court has made an order under this section on a person's
12 application, the Court may, on application by that person or by any
13 person affected by the order, make a further order discharging or
14 varying the first-mentioned order.
- 15 (8) An order made under subsection (1) or (5) may be expressed to
16 operate for a specified period or until the order is discharged by a
17 further order under this section.
- 18 (9) Nothing in this section affects the powers that the Court has apart
19 from this section.
- 20 (10) This section has effect subject to the *Bankruptcy Act 1966*.
- 21 (11) A person must not contravene an order by the Court under this
22 section that is applicable to the person.
- 23 Penalty: 25 penalty units or imprisonment for 6 months, or both.
- 24 (12) An offence against subsection (11) is an offence of strict liability.
- 25 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

576-25 Injunctions

- 26
- 27 (1) If a person has engaged, is engaging or is proposing to engage in
28 conduct that constituted, constitutes or would constitute:
29 (a) a contravention of this Act; or
30 (b) attempting to contravene this Act; or
31 (c) aiding, abetting, counselling or procuring a person to
32 contravene this Act; or
-

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Section 576-25

- 1 (d) inducing or attempting to induce, whether by threats,
2 promises or otherwise, a person to contravene this Act; or
3 (e) being in any way, directly or indirectly, knowingly concerned
4 in, or party to, the contravention by a person of this Act; or
5 (f) conspiring with others to contravene this Act;
6 the Court may, on the application of the Registrar, or of a person
7 whose interests have been, are or would be affected by the conduct,
8 grant an injunction, on such terms as the Court thinks appropriate,
9 restraining the first-mentioned person from engaging in the
10 conduct and, if in the opinion of the Court it is desirable to do so,
11 requiring that person to do any act or thing.
- 12 (2) If a person has refused or failed, is refusing or failing, or is
13 proposing to refuse or fail, to do an act or thing that the person is
14 required by this Act to do, the Court may, on the application of:
15 (a) the Registrar; or
16 (b) any person whose interests have been, are or would be
17 affected by the refusal or failure to do that act or thing;
18 grant an injunction, on such terms as the Court thinks appropriate,
19 requiring the first-mentioned person to do that act or thing.
- 20 (3) If an application for an injunction under subsection (1) or (2) has
21 been made, the Court may, if the Court determines it to be
22 appropriate, grant an injunction by consent of all the parties to the
23 proceedings, whether or not the Court is satisfied that that
24 subsection applies.
- 25 (4) If in the opinion of the Court it is desirable to do so, the Court may
26 grant an interim injunction pending determination of an application
27 under subsection (1).
- 28 (5) The Court may discharge or vary an injunction granted under
29 subsection (1), (2) or (4).
- 30 (6) The power of the Court to grant an injunction restraining a person
31 from engaging in conduct may be exercised:
32 (a) whether or not it appears to the Court that the person intends
33 to engage again, or to continue to engage, in conduct of that
34 kind; and

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- 1 (b) whether or not the person has previously engaged in conduct
2 of that kind; and
3 (c) whether or not there is an imminent danger of substantial
4 damage to any person if the first-mentioned person engages
5 in conduct of that kind.
- 6 (7) The power of the Court to grant an injunction requiring a person to
7 do an act or thing may be exercised:
8 (a) whether or not it appears to the Court that the person intends
9 to refuse or fail again, or to continue to refuse or fail, to do
10 that act or thing; and
11 (b) whether or not the person has previously refused or failed to
12 do that act or thing; and
13 (c) whether or not there is an imminent danger of substantial
14 damage to any person if the first-mentioned person refuses or
15 fails to do that act or thing.
- 16 (8) If the Registrar applies to the Court for the grant of an injunction
17 under this section, the Court must not require the applicant or any
18 other person, as a condition of granting an interim injunction, to
19 give an undertaking as to damages.
- 20 (9) In proceedings under this section against a person the Court may
21 make an order under section 576-20 in respect of the person.
- 22 (10) If the Court has power under this section to grant an injunction
23 restraining a person from engaging in particular conduct, or
24 requiring a person to do a particular act or thing, the Court may,
25 either in addition to or in substitution for the grant of the
26 injunction, order that person to pay damages to any other person.

27 **576-30 Effect of sections 576-20 and 576-25**

28 Nothing in either of sections 576-20 or 576-25 limits the generality
29 of anything else in either of those sections.

30 **576-35 Power of Court to punish for contempt of Court**

31 Nothing in a provision of this Act that provides:

- 32 (a) that a person must not contravene an order of the Court; or

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- 1 (b) that a person who contravenes an order of the Court
2 contravenes a provision of this Act or commits an offence;
3 affects the powers of the Court in relation to the punishment of
4 contempts of the Court.

1

2 **Part 14-2—Proceedings**

3 **Division 581—Proceedings**

4 **581-1 The Registrar’s power to intervene in proceedings**

5 (1) The Registrar may intervene in any proceeding relating to a matter
6 arising under this Act.

7 (2) If the Registrar intervenes in a proceeding referred to in
8 subsection (1), the Registrar is taken to be a party to the proceeding
9 and, subject to this Act, has all the rights, duties and liabilities of
10 such a party.

11 (3) Without limiting subsection (2), the Registrar may appear and be
12 represented in any proceeding in which the Registrar wishes to
13 intervene pursuant to subsection (1):

14 (a) by a natural person to whom, or by an officer or employee of
15 a person or body to whom or to which, the Registrar has
16 delegated its functions and powers under this Act or such of
17 those functions and powers as relate to a matter to which the
18 proceeding relates; or

19 (b) by solicitor or counsel.

20 **581-5 Civil proceedings not to be stayed**

21 No civil proceedings under this Act are to be stayed merely
22 because the proceeding discloses, or arises out of, the commission
23 of an offence.

24 **581-10 Standard of proof**

25 If, in proceedings other than proceedings for an offence, it is
26 necessary to establish, or for the Court to be satisfied, for any
27 purpose relating to a matter arising under this Act, that:

28 (a) a person has contravened a provision of this Act; or

29 (b) default has been made in complying with a provision of this
30 Act; or

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- 1 (c) an act or omission was unlawful because a provision of this
2 Act; or
3 (d) a person has been in any way, by act or omission, directly or
4 indirectly, knowingly concerned in or party to a
5 contravention, or a default in complying with, a provision of
6 this Act;
7 it is sufficient if the matter referred to in paragraph (a), (b), (c) or
8 (d) is established, or the Court is so satisfied, as the case may be,
9 on the balance of probabilities.

10 **581-15 Evidence of contravention**

- 11 For the purposes of this Act, a certificate that:
12 (a) purports to be signed by the Registrar of an Australian court
13 or other proper officer of an Australian court; and
14 (b) states:
15 (i) that a person was convicted by that court on a specified
16 day of a specified offence; or
17 (ii) that a person charged before that court with a specified
18 offence was, on a specified day, found in that court to
19 have committed the offence but that the court did not
20 proceed to convict the person of the offence;
21 is, unless it is proved that the conviction was quashed or set aside,
22 or that the finding was set aside or reversed, as the case may be,
23 conclusive evidence:
24 (c) if subparagraph (b)(i) applies—that the person was convicted
25 of the offence on that day; and
26 (d) if the offence was constituted by a contravention of a
27 provision of a law—that the person contravened that
28 provision.

29 **581-20 Costs**

- 30 (1) If an Aboriginal and Torres Strait Islander corporation is plaintiff
31 in any action or other legal proceeding, the court having
32 jurisdiction in the matter may, if it appears by credible testimony
33 that there is reason to believe that the corporation will be unable to
34 pay the costs of the defendant if successful in his, her or its

1 defence, require sufficient security to be given for those costs and
2 stay all proceedings until the security is given.

3 (2) The costs of any proceeding before a court under this Act are to be
4 borne by such party to the proceeding as the court, in its discretion,
5 directs.

6 **581-25 Vesting of property**

7 (1) If an order is made by a court under this Act vesting property in a
8 person:

9 (a) subject to subsection (2), the property forthwith vests in the
10 person named in the order without any conveyance, transfer
11 or assignment; and

12 (b) the person who applied for the order must, within 7 days after
13 the passing and entering of the order, lodge an office copy of
14 the order with such person (if any) as is specified for the
15 purpose in the order.

16 (2) If:

17 (a) the property to which an order referred to in subsection (1)
18 relates is property the transfer or transmission of which may
19 be registered under a law of the Commonwealth, of a State or
20 of a Territory; and

21 (b) that law enables the registration of such an order;
22 the property, despite that it vests in equity in the person named in
23 the order, does not vest in that person at law until the requirements
24 of the law referred to in paragraph (a) have been complied with.

25 (3) If:

26 (a) property vests in a person by force of this Act; and

27 (b) the property is property the transfer or transmission of which
28 may be registered under a law of the Commonwealth, of a
29 State or of a Territory; and

30 (c) that law enables the person to be registered as the owner of
31 that property;

32 the property, despite that it vests in equity in that person by force
33 of this Act, does not vest in that person at law until the

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1 requirements of the law referred to in paragraph (b) have been
2 complied with.

1

2 **Part 14-3—Jurisdiction and procedure of courts**

3 **Division 586—Civil jurisdiction**

4 **Subdivision 586-A—Introduction**

5 **586-1 Operation of Division**

6 (1) This Division deals with:

- 7 (a) the jurisdiction of courts in respect of civil matters arising
8 under the Aboriginal and Torres Strait Islander Corporations
9 legislation; and
10 (b) the jurisdiction of courts in respect of matters arising under
11 the *Administrative Decisions (Judicial Review) Act 1977*
12 involving or related to decisions made under the Aboriginal
13 and Torres Strait Islander Corporations legislation by
14 Commonwealth authorities and officers of the
15 Commonwealth; and
16 (c) the jurisdiction of courts in civil matters in respect of
17 decisions made by officers of the Commonwealth to
18 prosecute persons for offences against the Aboriginal and
19 Torres Strait Islander Corporations legislation and related
20 criminal justice process decisions.

21 (2) This Division operates to the exclusion of:

- 22 (a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and
23 (b) section 39B of the *Judiciary Act 1903*.

24 (3) This Division does not limit the operation of the provisions of the
25 *Judiciary Act 1903* other than section 39B.

26 (4) Without limiting subsection (3), this Division does not limit the
27 operation of subsection 39(2) of the *Judiciary Act 1903* in relation
28 to civil matters arising under the Aboriginal and Torres Strait
29 Islander Corporations legislation.

30 (5) Nothing in this Division affects any other jurisdiction of any court.

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1 **Subdivision 586-B—Conferral of jurisdiction**

2 **586-5 Jurisdiction of Federal Court and State and Territory**
3 **Supreme Courts**

4 (1) Jurisdiction is conferred on the Federal Court of Australia with
5 respect to civil matters arising under the Aboriginal and Torres
6 Strait Islander Corporations legislation.

7 (2) Subject to section 9 of the *Administrative Decisions (Judicial*
8 *Review) Act 1977*, jurisdiction is conferred on the Supreme Court
9 of:

- 10 (a) each State; and
11 (b) the Australian Capital Territory; and
12 (c) the Northern Territory;

13 with respect to civil matters arising under the Aboriginal and
14 Torres Strait Islander Corporations legislation.

15 (3) Despite section 9 of the *Administrative Decisions (Judicial Review)*
16 *Act 1977*, jurisdiction is conferred on the Supreme Court of:

- 17 (a) each State; and
18 (b) the Australian Capital Territory; and
19 (c) the Northern Territory;

20 with respect to matters arising under that Act involving or related
21 to decisions made, or proposed or required to be made, under the
22 Aboriginal and Torres Strait Islander Corporations legislation by a
23 Commonwealth authority or an officer of the Commonwealth.

24 Note 1: The Federal Court also has jurisdiction with respect to these matters
25 under that Act.

26 Note 2: A Supreme Court may be required to transfer a proceeding with
27 respect to such a matter to the Federal Court (see subsection
28 586-35(3)).

29 (4) Subsection (3) applies to a decision made, or proposed or required
30 to be made:

- 31 (a) whether or not in the exercise of a discretion; and
32 (b) whether before or after that subsection commences.

1 (5) The jurisdiction conferred on a Supreme Court by subsection (2) or
2 (3) is not limited by any limits to which any other jurisdiction of
3 that Supreme Court may be subject.

4 (6) This section has effect subject to section 586-15.

5 **586-10 Jurisdiction of Family Court and State Family Courts**

6 (1) Jurisdiction is conferred on the Family Court with respect to civil
7 matters arising under the Aboriginal and Torres Strait Islander
8 Corporations legislation.

9 (2) Subject to section 9 of the *Administrative Decisions (Judicial*
10 *Review) Act 1977*, jurisdiction is conferred on each State Family
11 Court with respect to civil matters arising under the Aboriginal and
12 Torres Strait Islander Corporations legislation.

13 (3) The jurisdiction conferred on a State Family Court by
14 subsection (2) is not limited by any limits to which any other
15 jurisdiction of the State Family Court may be subject.

16 (4) This section has effect subject to section 586-15.

17 **586-15 Jurisdiction of courts (decisions to prosecute and related**
18 **criminal justice process decisions made by**
19 **Commonwealth officers)**

20 (1) If a decision to prosecute a person for an offence against the
21 Aboriginal and Torres Strait Islander Corporations legislation has
22 been made by an officer or officers of the Commonwealth and the
23 prosecution is proposed to be commenced in a State or Territory
24 court:

25 (a) neither the Federal Court nor the Family Court has
26 jurisdiction with respect to any matter in which a person
27 seeks a writ of mandamus or prohibition or an injunction
28 against the officer or officers in relation to that decision; and

29 (b) jurisdiction with respect to any such matter is conferred on
30 the Supreme Court of the State or Territory in which the
31 prosecution is proposed to be commenced.

32 (2) Subject to subsection (3), at any time when:

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- 1 (a) a prosecution for an offence against the Aboriginal and
2 Torres Strait Islander Corporations legislation is before a
3 State or Territory court; or
4 (b) an appeal arising out of such a prosecution is before a State
5 or Territory court;
- 6 the following apply:
- 7 (c) neither the Federal Court nor the Family Court has
8 jurisdiction with respect to any matter in which the person
9 who is or was the defendant in the prosecution seeks a writ of
10 mandamus or prohibition or an injunction against an officer
11 or officers of the Commonwealth in relation to a related
12 criminal justice process decision;
- 13 (d) jurisdiction with respect to any such matter is conferred on
14 the Supreme Court of the State or Territory in which the
15 prosecution or appeal is before a court.
- 16 (3) Subsection (2) does not apply where a person has applied for a writ
17 of mandamus or prohibition, or an injunction, against an officer or
18 officers of the Commonwealth in relation to a related criminal
19 justice process decision before the commencement of a prosecution
20 for an offence against a law of the Commonwealth, or of a State or
21 a Territory.
- 22 (4) If subsection (3) applies, the prosecutor may apply to the court for
23 a permanent stay of the proceedings referred to in that subsection
24 and the court may grant such a stay if the court determines that:
- 25 (a) the matters that are the subject of the proceedings are more
26 appropriately dealt with in the criminal justice process; and
27 (b) a stay of proceedings will not substantially prejudice the
28 person.
- 29 (5) Subsections (1), (2), (3) and (4) have effect despite anything in this
30 Act or in any other law. In particular:
- 31 (a) neither this Act, nor any other law, has the effect of giving
32 the Federal Court or the Family Court jurisdiction contrary to
33 subsection (1) or (2); and
34 (b) neither section 9 of the *Administrative Decisions (Judicial
35 Review) Act 1977*, nor any other law, has the effect of
36 removing from the Supreme Court of a State, the Australian

1 Capital Territory or the Northern Territory the jurisdiction
2 given to that Court by subsection (1) or (2).

3 (6) In this section:

4 ***appeal*** includes an application for a new trial and a proceeding to
5 review or call in question the proceedings, decision or jurisdiction
6 of a court or judge.

7 ***related criminal justice process decision***, in relation to an offence,
8 means a decision (other than a decision to prosecute) made in the
9 criminal justice process in relation to the offence, including:

- 10 (a) a decision in connection with the investigation, committal for
11 trial or prosecution of the defendant; and
12 (b) a decision in connection with the appointment of
13 investigators or inspectors for the purposes of such an
14 investigation; and
15 (c) a decision in connection with the issue of a warrant,
16 including a search warrant or a seizure warrant; and
17 (d) a decision requiring the production of documents, the giving
18 of information or the summoning of persons as witnesses;
19 and
20 (e) a decision in connection with an appeal arising out of the
21 prosecution.

22 **586-20 Jurisdiction of lower courts**

23 (1) Subject to section 9 of the *Administrative Decisions (Judicial*
24 *Review) Act 1977*, jurisdiction is conferred on the lower courts of:

- 25 (a) each State; and
26 (b) the Australian Capital Territory; and
27 (c) the Northern Territory;

28 with respect to civil matters (other than superior court matters)
29 arising under the Aboriginal and Torres Strait Islander
30 Corporations legislation.

31 (2) The jurisdiction conferred on a lower court by subsection (1):

- 32 (a) is subject to the court's general jurisdictional limits, so far as
33 they relate to:

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- 1 (i) the amounts; or
2 (ii) the value of property;
3 with which the court may deal; but
4 (b) is not subject to the court's other jurisdictional limits.

5 **586-25 Appeals**

- 6 (1) An appeal may not be instituted from a decision of the Federal
7 Court to:
8 (a) a State or Territory court; or
9 (b) the Family Court.
- 10 (2) An appeal may not be instituted from a decision of a court of the
11 Australian Capital Territory to:
12 (a) a court of a State or the Northern Territory; or
13 (b) the Family Court.
- 14 (3) An appeal may not be instituted from a decision of a court (not
15 being a State Family Court) of a State or the Northern Territory to:
16 (a) the Federal Court; or
17 (b) a court of another State or Territory; or
18 (c) the Family Court; or
19 (d) a State Family Court of that State.
- 20 (4) An appeal may not be instituted from a decision of the Family
21 Court to:
22 (a) the Federal Court; or
23 (b) a State or Territory court.
- 24 (5) An appeal may not be instituted from a decision of a State Family
25 Court of a State to:
26 (a) the Federal Court; or
27 (b) a court of another State or Territory; or
28 (c) except in accordance with the law of the State under which
29 the State Family Court is constituted—the Supreme Court of
30 that State.

1 **586-30 Courts to act in aid of each other**

2 All courts having jurisdiction in:

3 (a) civil matters arising under the Aboriginal and Torres Strait
4 Islander Corporations legislation; or

5 (b) matters referred to in subsection 586-5(3);

6 and the officers of, or under the control of, those courts must
7 severally act in aid of, and be auxiliary to, each other in all those
8 matters.

9 **Subdivision 586-C—Transfer of proceedings**

10 **586-35 Transfer of proceedings by the Federal Court and State and**
11 **Territory Supreme Courts**

12 (1) This section applies to a proceeding (the *relevant proceeding*) in a
13 court (the *transferor court*) if:

14 (a) the relevant proceeding is:

15 (i) a proceeding with respect to a civil matter arising under
16 the Aboriginal and Torres Strait Islander Corporations
17 legislation; or

18 (ii) a subsection 586-5(3) proceeding; and

19 (b) the transferor court is:

20 (i) the Federal court; or

21 (ii) a State or Territory Supreme Court.

22 (2) Subject to subsections (3), (4) and (5), if it appears to the transferor
23 court that, having regard to the interests of justice, it is more
24 appropriate for:

25 (a) the relevant proceeding; or

26 (b) an application in the relevant proceeding;

27 to be determined by another court that has jurisdiction in the
28 matters for determination in the relevant proceeding or application,
29 the transferor court may transfer the relevant proceeding or
30 application to that other court.

31 (3) If:

32 (a) the relevant proceeding is a subsection 586-5(3) proceeding;
33 and

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- 1 (b) the transferor court is a State or Territory Supreme Court;
2 the transferor court must transfer the relevant proceeding to the
3 Federal Court unless the matter for determination in it arises out of,
4 or relates to, another proceeding pending in any court of that State
5 or Territory that:
- 6 (c) arises, or a substantial part of which arises, under the
7 Aboriginal and Torres Strait Islander Corporations
8 legislation; and
- 9 (d) is not a subsection 586-5(3) proceeding;
10 regardless of which proceeding was commenced first.
- 11 (4) Even if subsection (3) does not require a State or Territory
12 Supreme Court to transfer a subsection 586-5(3) proceeding to the
13 Federal Court, it may nevertheless do so if it considers that to be
14 appropriate, having regard to the interests of justice, including the
15 desirability of related proceedings being heard in the same State or
16 Territory.
- 17 (5) If:
- 18 (a) the relevant proceeding is a subsection 586-5(3) proceeding
19 in relation to a matter; and
- 20 (b) the transferor court is the Federal Court;
21 the transferor court may only transfer the relevant proceeding, or
22 an application in the relevant proceeding, to a State or Territory
23 Supreme Court if:
- 24 (c) the matter arises out of, or relates to, another proceeding
25 pending in any court of that State or Territory that:
- 26 (i) arises, or a substantial part of which arises, under the
27 Aboriginal and Torres Strait Islander Corporations
28 legislation; and
- 29 (ii) is not a subsection 586-5(3) proceeding;
30 regardless of which proceeding was commenced first; and
- 31 (d) the transferor court considers the transfer to be appropriate,
32 having regard to the interests of justice, including the
33 desirability of related proceedings being heard in the same
34 jurisdiction.
- 35 (6) Nothing in this section confers on a court jurisdiction that the court
36 would not otherwise have.

- 1 (7) The fact that some references in this section to the interests of
2 justice include the desirability of related proceedings being heard
3 in the same jurisdiction does not of itself mean that other
4 references to the interests of justice, in this section or elsewhere in
5 this Act, do not include that matter.

6 **586-40 Transfer of proceedings by Family Court and State Family**
7 **Courts**

- 8 (1) This section applies to a proceeding (the *relevant proceeding*) in a
9 court (the *transferor court*) if:
10 (a) the relevant proceeding is with respect to a civil matter
11 arising under the Aboriginal and Torres Strait Islander
12 Corporations legislation; and
13 (b) the transferor court is:
14 (i) the Family Court of Australia; or
15 (ii) a State Family Court.
- 16 (2) If it appears to the transferor court:
17 (a) that the relevant proceeding arises out of, or is related to,
18 another proceeding pending in:
19 (i) the Federal Court; or
20 (ii) another State or Territory court;
21 and that the court in which the other proceeding is pending is
22 the most appropriate court to determine the relevant
23 proceeding; or
24 (b) that having regard to:
25 (i) whether, in the transferor court's opinion, apart from
26 this Division, the relevant proceeding, or a substantial
27 part of it, would have been incapable of being instituted
28 in the transferor court; and
29 (ii) the extent to which, in the transferor court's opinion, the
30 matters for determination in the relevant proceeding are
31 matters not within the transferor court's jurisdiction
32 apart from this Division; and

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- 1 (iii) the interests of justice;
2 the Federal Court, or another State or Territory court, is the
3 most appropriate court to determine the relevant proceeding;
4 or
5 (c) that it is otherwise in the interests of justice that the Federal
6 Court, or another State or Territory court, determine the
7 relevant proceeding;
8 the transferor court must transfer the relevant proceeding to the
9 Federal Court or to that other court.
- 10 (3) Subject to subsection (2), if it appears to the transferor court:
11 (a) that the relevant proceeding arises out of, or is related to,
12 another proceeding pending in another court that is:
13 (i) the Family Court of Australia; or
14 (ii) a State Family Court;
15 and that has jurisdiction under section 586-10 in the matters
16 for determination in the relevant proceeding and that the
17 other court is the most appropriate court to determine the
18 relevant proceeding; or
19 (b) that it is otherwise in the interests of justice that the relevant
20 proceeding be determined by another court that is:
21 (i) the Family Court of Australia; or
22 (ii) a State Family Court;
23 and that has jurisdiction under section 586-10 in the matters
24 for determination in the relevant proceeding;
25 the transferor court must transfer the relevant proceeding to the
26 other court.
- 27 (4) If:
28 (a) the transferor court transfers the relevant proceeding to
29 another court; and
30 (b) it appears to the transferor court that:
31 (i) there is another proceeding pending in the transferor
32 court that arises out of, or is related to, the relevant
33 proceeding; and

- 1 (ii) it is in the interests of justice that the other court also
2 determine the other proceeding;
3 the transferor court must also transfer the other proceeding to the
4 other court.
- 5 (5) Nothing in this section confers on a court jurisdiction that the court
6 would not otherwise have.

7 **586-45 Transfer of proceedings in lower courts**

- 8 (1) This section applies to a proceeding (the *relevant proceeding*) in a
9 court (the *transferor court*) if:
10 (a) the relevant proceeding is with respect to a civil matter
11 arising under the Aboriginal and Torres Strait Islander
12 Corporations legislation; and
13 (b) the transferor court is a lower court of a State or Territory.
- 14 (2) If it appears to the transferor court that, having regard to the
15 interests of justice, it is more appropriate for:
16 (a) the relevant proceeding; or
17 (b) an application in the relevant proceeding;
18 to be determined by another court that has jurisdiction in the
19 matters for determination in the relevant proceeding or application,
20 the transferor court may take action under whichever of
21 subsections (3) and (4) applies.
- 22 (3) If the other court is also a lower court, the transferor court may
23 transfer the relevant proceeding or application to the other court.
- 24 (4) If the other court is a superior court, the transferor court may:
25 (a) transfer the relevant proceeding or application to the
26 Supreme Court of the State or Territory of which the
27 transferor court is a court; and
28 (b) recommend that the relevant proceeding or application be
29 transferred by the Supreme Court to the other court.
- 30 (5) The Supreme Court is not bound to comply with a recommendation
31 under subsection (4) and it may instead decide:
32 (a) to deal with the relevant proceeding or application itself; or

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- 1 (b) to transfer the relevant proceeding or application to some
2 other court (which could be the transferor court).
- 3 (6) Nothing in this section allows the Supreme Court to transfer the
4 relevant proceeding or application to another court otherwise than
5 in accordance with section 586-35 and the other requirements of
6 this Division.
- 7 (7) Nothing in this section confers on a court jurisdiction that the court
8 would not otherwise have.

9 **586-50 Further matters for a court to consider when deciding**
10 **whether to transfer a proceeding**

11 In deciding whether to transfer under section 586-35, 586-40 or
12 586-45 a proceeding or application, a court must have regard to:

- 13 (a) the principal place of business of any body corporate
14 concerned in the proceeding or application; and
15 (b) the place or places where the events that are the subject of the
16 proceeding or application took place; and
17 (c) the other courts that have jurisdiction to deal with the
18 proceeding or application.

19 **586-55 Transfer may be made at any stage**

20 A court may transfer under section 586-35, 586-40 or 586-45 a
21 proceeding or application:

- 22 (a) on the application of a party made at any stage; or
23 (b) of the court's own motion.

24 **586-60 Transfer of documents**

25 If, under section 586-35, 586-40 or 586-45, a court (the *transferor*
26 *court*) transfers a proceeding, or an application in a proceeding, to
27 another court:

- 28 (a) the Registrar of the transferor court or other proper officer of
29 the transferor court must transmit to the Registrar of the other
30 court or other proper officer of the other court all documents
31 filed in the transferor court in respect of the proceeding or
32 application, as the case may be; and

- 1 (b) the other court must proceed as if:
2 (i) the proceeding had been originally instituted in the other
3 court; and
4 (ii) the same proceedings had been taken in the other court
5 as were taken in the transferor court; and
6 (iii) in a case where an application is transferred—the
7 application had been made in the other court.

8 **586-65 Conduct of proceedings**

- 9 (1) Subject to sections 586-80, 586-85 and 586-90, if it appears to a
10 court that, in determining a matter for determination in a
11 proceeding, the court will, or will be likely to, be exercising
12 jurisdiction to which subsection (3) applies, the rules of evidence
13 and procedure to be applied in dealing with that matter are to be
14 the rules that:
15 (a) are applied in a superior court in Australia or in an external
16 Territory; and
17 (b) the court considers appropriate to be applied in the
18 circumstances.
- 19 (2) If a proceeding is transferred or removed to a court (the *transferee*
20 *court*) from another court (the *transferor court*), the transferee
21 court must deal with the proceeding as if, subject to any order of
22 the transferee court, the steps that had been taken for the purposes
23 of the proceeding in the transferor court (including the making of
24 an order), or similar steps, had been taken in the transferee court.
- 25 (3) This subsection applies to:
26 (a) jurisdiction conferred on the Federal Court of Australia or the
27 Family Court with respect to civil matters arising under the
28 Aboriginal and Torres Strait Islander Corporations
29 legislation; and
30 (b) jurisdiction conferred on a court of a State, the Australian
31 Capital Territory or the Northern Territory with respect to
32 matters referred to in subsection 586-5(3).

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1 **586-70 Rights of appearance**

2 (1) This section applies if a proceeding (the *transferred proceeding*) in
3 a court (the *transferor court*) is transferred to another court (the
4 *transferee court*) under this Division.

5 (2) A person who is entitled to practise as a barrister or a solicitor, or
6 as both a barrister and a solicitor, in the transferor court has the
7 same entitlements to practise in relation to:

8 (a) the transferred proceeding; and

9 (b) any other proceeding out of which the transferred proceeding
10 arises or to which the transferred proceeding is related, being
11 another proceeding that is to be determined together with the
12 transferred proceeding;

13 in the transferee court that the person would have if the transferee
14 court were a federal court exercising federal jurisdiction.

15 **586-75 Limitation on appeals**

16 An appeal does not lie from a decision of a court:

17 (a) in relation to the transfer of a proceeding under this Division;
18 or

19 (b) as to which rules of evidence and procedure are to be applied
20 pursuant to subsection 586-65(1).

21 **Subdivision 586-D—Rules of court**

22 **586-80 Rules of the Federal Court**

23 The power to make rules of court conferred by section 59 of the
24 *Federal Court of Australia Act 1976* extends to making rules of
25 court:

26 (a) with respect to proceedings, and the practice and procedure,
27 of the Federal Court of Australia under the Aboriginal and
28 Torres Strait Islander Corporations legislation; and

29 (b) with respect to any matter or thing that is:

30 (i) required or permitted by the Aboriginal and Torres
31 Strait Islander Corporations legislation to be prescribed

- 1 by rules within the meaning of the Aboriginal and
2 Torres Strait Islander Corporations legislation; or
3 (ii) necessary or convenient to be prescribed by such rules
4 for carrying out or giving effect to the Aboriginal and
5 Torres Strait Islander Corporations legislation; and
6 (c) without limitation, with respect to costs, and with respect to
7 rules about meetings ordered by the Federal Court of
8 Australia.

9 **586-85 Rules of the Supreme Court**

- 10 (1) The Judges of the Supreme Court of the Australian Capital
11 Territory, or a majority of them, may make rules of court:
12 (a) with respect to proceedings, and the practice and procedure,
13 of that court under the Aboriginal and Torres Strait Islander
14 Corporations legislation; and
15 (b) with respect to any matter or thing that is:
16 (i) required or permitted by the Aboriginal and Torres
17 Strait Islander Corporations legislation to be prescribed
18 by rules within the meaning of the Aboriginal and
19 Torres Strait Islander Corporations legislation; or
20 (ii) necessary or convenient to be prescribed by such rules
21 for carrying out or giving effect to the Aboriginal and
22 Torres Strait Islander Corporations legislation; and
23 (c) without limitation, with respect to costs, and with respect to
24 rules as to meetings ordered by that Court.
- 25 (2) When a lower court of the Australian Capital Territory is
26 exercising jurisdiction with respect to matters arising under the
27 Aboriginal and Torres Strait Islander Corporations legislation, the
28 court must apply the rules of court made under subsection (1), with
29 such alterations as are necessary.

30 **586-90 Rules of the Family Court**

- 31 The power to make rules of court conferred by section 123 of the
32 *Family Law Act 1975* extends to making rules of court:

Chapter 14 Courts and proceedings
Part 14-3 Jurisdiction and procedure of courts
Division 586 Civil jurisdiction

Section 586-90

- 1 (a) with respect to proceedings, and the practice and procedure,
2 of the Family Court under the Aboriginal and Torres Strait
3 Islander Corporations legislation; and
4 (b) with respect to any matter or thing that is:
5 (i) required or permitted by the Aboriginal and Torres
6 Strait Islander Corporations legislation to be prescribed
7 by rules within the meaning of the Aboriginal and
8 Torres Strait Islander Corporations legislation; or
9 (ii) necessary or convenient to be prescribed by such rules
10 for carrying out or giving effect to the Aboriginal and
11 Torres Strait Islander Corporations legislation; and
12 (c) without limitation, with respect to costs, and with respect to
13 rules about meetings ordered by the Family Court.

1

2 **Division 589—Criminal jurisdiction**

3 **589-1 Operation of Division**

- 4 (1) This Division provides in relation to the jurisdiction of courts in
5 respect of criminal matters arising under the Aboriginal and Torres
6 Strait Islander Corporations legislation and so provides to the
7 exclusion of sections 68, 70 and 70A of the *Judiciary Act 1903*.
- 8 (2) This Division does not limit the operation of the provisions of the
9 *Judiciary Act 1903* other than sections 68, 70 and 70A.
- 10 (3) Without limiting subsection (2), this Division does not limit the
11 operation of subsection 39(2) of the *Judiciary Act 1903* in relation
12 to criminal matters arising under the Aboriginal and Torres Strait
13 Islander Corporations legislation.

14 **589-5 Jurisdiction of courts**

- 15 (1) Subject to this section, the several courts of each State, the
16 Australian Capital Territory and the Northern Territory exercising
17 jurisdiction:
- 18 (a) with respect to:
- 19 (i) the summary conviction; or
20 (ii) the examination and commitment for trial on
21 indictment; or
22 (iii) the trial and conviction on indictment;
23 of offenders or persons charged with offences against the
24 laws of the State, the Australian Capital Territory or the
25 Northern Territory, and with respect to:
- 26 (iv) their sentencing, punishment and release; or
27 (v) their liability to make reparation in connection with
28 their offences; or
29 (vi) the forfeiture of property in connection with their
30 offences; or
31 (vii) the proceeds of their crimes; and
32 (b) with respect to the hearing and determination of:

Section 589-5

- 1 (i) proceedings connected with; or
2 (ii) appeals arising out of; or
3 (iii) appeals arising out of proceedings connected with;
4 any such trial or conviction or any matter of a kind referred
5 to in subparagraph (a)(iv), (v), (vi) or (vii);
6 have the equivalent jurisdiction with respect to offenders or
7 persons charged with offences against the Aboriginal and Torres
8 Strait Islander Corporations legislation.
- 9 (2) The jurisdiction conferred by subsection (1) is not to be exercised
10 with respect to the summary conviction, or examination and
11 commitment for trial, of any person except by a magistrate.
- 12 (3) The jurisdiction conferred by subsection (1) includes jurisdiction in
13 accordance with provisions of a relevant law of a State, the
14 Australian Capital Territory or the Northern Territory, and:
15 (a) the reference in paragraph (1)(b) to “any such trial or
16 conviction” includes a reference to any conviction or
17 sentencing in accordance with the provisions of a relevant
18 law; and
19 (b) unless the contrary intention appears, a reference to
20 jurisdiction conferred by subsection (1) includes a reference
21 to such included jurisdiction.
- 22 (4) A person may be dealt with in accordance with a relevant law even
23 if, apart from this section, the offence concerned:
24 (a) would be required to be prosecuted on indictment; or
25 (b) would be required to be prosecuted either summarily or on
26 indictment.
- 27 (5) For the purposes of the application of a relevant law as provided by
28 subsection (3):
29 (a) a reference in that law to an indictable offence is taken to
30 include a reference to an offence that may be prosecuted on
31 indictment; and
32 (b) in order to determine the sentence that may be imposed on a
33 person by a court pursuant to the relevant law, the person is
34 taken to have been prosecuted and convicted on indictment in
35 that court.

- 1 (6) Subject to subsection (8), the jurisdiction conferred on a State or
2 Territory court by subsection (1) is conferred despite any limits as
3 to locality of the jurisdiction of that court under the law of that
4 State or Territory.
- 5 (7) If:
- 6 (a) jurisdiction is conferred on a State or Territory court in
7 relation to the summary conviction of persons charged with
8 offences against the Aboriginal and Torres Strait Islander
9 Corporations legislation by subsection (1); and
- 10 (b) the court is satisfied that it is appropriate to do so, having
11 regard to all the circumstances including the public interest;
12 the court may decline to exercise that jurisdiction in relation to an
13 offence committed in another State or Territory.
- 14 (8) The jurisdiction conferred on a court of a State or the Northern
15 Territory by subsection (1) in relation to:
- 16 (a) the examination and commitment for trial on indictment; and
17 (b) the trial and conviction on indictment;
18 of offenders or persons charged with offences against the
19 Aboriginal and Torres Strait Islander Corporations legislation is
20 conferred only in relation to:
- 21 (c) offences committed outside Australia; and
22 (d) offences committed, begun or completed in the State or the
23 Territory concerned.
- 24 (9) In this section:
- 25 ***appeal*** includes an application for a new trial and a proceeding to
26 review or call in question the proceedings, decision or jurisdiction
27 of a court or judge.
- 28 ***Australia*** does not include the coastal sea.
- 29 ***relevant law*** means a law providing that where, in proceedings
30 before a court, a person pleads guilty to a charge for which he or
31 she could be prosecuted on indictment, the person may be
32 committed, to a court having jurisdiction to try offences on
33 indictment, to be sentenced or otherwise dealt with without being
34 tried in that last-mentioned court.

Section 589-10

1 **589-10 Laws to be applied**

2 Subject to this Division, the laws of a State, the Australian Capital
3 Territory or the Northern Territory respecting:
4 (a) the arrest and custody in the State or Territory of offenders or
5 persons charged with offences; and
6 (b) the procedure in the State or Territory for:
7 (i) the summary conviction; and
8 (ii) the examination and commitment for trial on
9 indictment; and
10 (iii) the trial and conviction on indictment; and
11 (iv) the hearing and determination of appeals arising out of
12 any such trial or conviction or out of any related
13 proceedings;
14 of offenders or persons charged with offences, including the
15 procedure for holding accused persons to bail; and
16 (c) the rules of evidence applied in criminal procedure in the
17 State or Territory in relation to such persons;
18 apply in the State or Territory, so far as they are applicable, to
19 persons who are charged with offences against the Aboriginal and
20 Torres Strait Islander Corporations legislation.

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2

Chapter 15—Administration

3

Part 15-1—Introduction

4

Division 599—Introduction

5

599-1 What this Chapter is about

6

This Chapter deals with a number of aspects relating to the administration of this Act, namely:

7

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- protection of information (see Part 15-2);

9

- protection of the Registrar and certain other persons from liability in performing duties etc. (see Part 15-3);

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11

- review of decisions (see Part 15-4);

12

- fees (see Part 15-5);

13

- the power to make regulations etc. (see Part 15-6);

14

- approved forms (see Part 15-7).

Section 604-1

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Part 15-2—Protection of information

3

Division 604—Protection of information

4

604-1 What this Part is about

5

This Part deals with the protection of information received by the Registrar and other persons under this Act from unauthorised use or disclosure.

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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).

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604-5 Protected information

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Information provided in confidence

16

(1) Information is **protected information** if the information is given to the Registrar or another person, in confidence, in connection with:

17

18

(a) the performance of a function of the Registrar; or

19

(b) the exercise of a power of the Registrar.

20

Other protected information

21

(2) Information is also **protected information** if:

22

(a) the information:

23

(i) is disclosed to, or obtained by, a person; or

24

(ii) is included in a document given or produced to a person;

25

for the purposes of this Act; and

26

27

(b) the information relates to the affairs of:

Section 604-10

- 1 (i) an Aboriginal and Torres Strait Islander corporation or a
2 related body corporate; or
3 (ii) an officer of an Aboriginal and Torres Strait Islander
4 corporation or a related body corporate; or
5 (iii) a member of an Aboriginal and Torres Strait Islander
6 corporation or a related body corporate; or
7 (iv) a person who has had, has or proposes to have, dealings
8 with an Aboriginal and Torres Strait Islander
9 corporation or a related body corporate.

10 Information is not *protected information* under this subsection,
11 however, if the information has already been lawfully made
12 available to the public from other sources.

- 13 (3) The references in paragraph (2)(b) to an Aboriginal and Torres
14 Strait Islander corporation, or a related body corporate, include
15 references to an Aboriginal and Torres Strait Islander corporation,
16 or a related body corporate, that has ceased to exist.

17 **604-10 Registrar's obligations in relation to protected information**

18 The Registrar must take all reasonable measures to protect
19 protected information from unauthorised use or disclosure.

20 Note: The *Privacy Act 1988* also contains provisions relevant to the use and
21 disclosure of information.

22 **604-15 Special administrator's obligations in relation to protected**
23 **information**

24 A special administrator for an Aboriginal and Torres Strait Islander
25 corporation commits an offence if:

- 26 (a) the person uses or discloses protected information; and
27 (b) the use or disclosure is not an authorised use or disclosure.

28 Penalty: Imprisonment for 2 years.

29 **604-20 Consultant's obligations in relation to protected information**

30 A person engaged as a consultant under section 658-10 commits an
31 offence if:

Section 604-25

- 1 (a) the person uses or discloses protected information; and
2 (b) the use or disclosure is not an authorised use or disclosure.

3 Penalty: Imprisonment for 2 years.

4 **604-25 Authorised use or disclosure**

- 5 (1) The use or disclosure of information is taken to be an *authorised*
6 *use or disclosure* if the use or disclosure:
7 (a) is made for the purposes of this Act; or
8 (b) is required or authorised by a law of the Commonwealth, a
9 State or a Territory.
- 10 (2) The use or disclosure of information is taken to be an *authorised*
11 *use or disclosure* if the use or disclosure:
12 (a) is made by the Registrar or a delegate of the Registrar in the
13 course of:
14 (i) the performance of a duty of the Registrar; or
15 (ii) the exercise of a power of the Registrar; or
16 (b) is made by a person engaged to assist the Registrar in the
17 performance of his or her duties, or the exercise of his or her
18 powers, and is made in the course of providing that
19 assistance; or
20 (c) is made by a special administrator of an Aboriginal and
21 Torres Strait Islander corporation in the course of the
22 performance of a function or duty, or the exercise of a power,
23 as special administrator for the corporation.
- 24 (3) The disclosure of information is taken to be an *authorised*
25 *disclosure* if the disclosure is made to the Minister.
- 26 (4) The disclosure of information is taken to be an *authorised*
27 *disclosure* if it is made to any of the following:
28 (a) ASIC for the purposes of carrying out its functions or
29 exercising its powers;
30 (b) an Agency Head of, or an APS employee in, an Agency
31 (within the meaning of the *Public Service Act 1999*) which
32 has provided, provides, or proposes to provide, funding to an
33 Aboriginal and Torres Strait Islander corporation, for the
34 purpose of administering that funding and related purposes;

- 1 (c) a Chief Executive, or an officer or employee, of a prescribed
2 Agency (within the meaning of the *Financial Management*
3 *and Accountability Act 1997*) which has provided, provides,
4 or proposes to provide funding to an Aboriginal and Torres
5 Strait Islander corporation, for the purpose of administering
6 that funding and related purposes;
- 7 (d) the head (however described), or an officer or employee, of a
8 Department of State of a State or Territory which has
9 provided, provides, or proposes to provide, funding to an
10 Aboriginal and Torres Strait Islander corporation, for the
11 purpose of administering that funding and related purposes;
- 12 (e) the head (however described) of a body established for a
13 public purpose by or under a law of a State or Territory
14 (including a local governing body) which has provided,
15 provides, or proposes to provide, funding to an Aboriginal
16 and Torres Strait Islander corporation, for the purpose of
17 administering that funding and related purposes;
- 18 (f) an Agency Head of, or an APS employee in, an Agency
19 (within the meaning of the *Public Service Act 1999*) that is
20 prescribed for the purposes of this paragraph for the purposes
21 of performing the functions, or exercising the powers, of the
22 Agency;
- 23 (g) a Chief Executive, or an officer or employee, of a prescribed
24 Agency (within the meaning of the *Financial Management*
25 *and Accountability Act 1997*), if the prescribed Agency is
26 also prescribed for the purposes of this paragraph, for the
27 purposes of performing the functions, or exercising powers,
28 conferred on the prescribed Agency by a law of the
29 Commonwealth;
- 30 (h) another person for the purposes of that other person
31 performing functions, or exercising powers, under a
32 prescribed Act;
- 33 (i) the head (however described), or an officer or employee, of a
34 prescribed Department of State of a State or Territory for the
35 purposes of performing functions of the Department;
- 36 (j) the head (however described) of a prescribed body
37 established for a public purpose by or under a law of a State
38 or Territory (including a local governing body) for the

Section 604-25

- 1 purposes of performing functions conferred on the body by a
2 law of the State or Territory;
- 3 (k) a prescribed professional disciplinary body for the purposes
4 of performing one of its functions or exercising one of its
5 powers;
- 6 (l) a prescribed person or body for the prescribed purposes of
7 the body or person.
- 8 (5) The Registrar may impose conditions to be complied with in
9 relation to information disclosed under subsection (4).
- 10 (6) A person or body to whom information is disclosed under
11 subsection (4) may use or disclose the information only:
- 12 (a) for the purposes for which it was disclosed to the recipient;
13 and
14 (b) in accordance with any conditions imposed under
15 subsection (5).
- 16 (7) The disclosure of:
- 17 (a) a summary of protected information; or
18 (a) statistics derived from protected information;
19 is an **authorised disclosure** of the information but only if the
20 protected information relating to any particular person cannot be
21 found out from those summaries or statistics.
- 22 (8) If the Registrar, or someone else, discloses information to a
23 prescribed professional disciplinary body, in reliance on
24 paragraph (4)(g), the body or member of the body:
- 25 (a) must not disclose the information to any other person; and
26 (b) must not use the information;
27 for any purpose other than for:
- 28 (c) deciding whether or not to take disciplinary or other action;
29 or
30 (d) taking that action.
- 31 Penalty: Imprisonment for 2 years.
- 32 (9) Regulations made for the purposes of this section may specify uses
33 of information and disclosures of information that are **authorised**
34 **uses** and **authorised disclosures** for the purposes of this section.

- 1 (10) The regulations cannot modify subsection (8).
- 2 (11) Nothing in any of the above subsections limits:
- 3 (a) anything else in any of those subsections; or
- 4 (b) what may otherwise constitute, for the purposes of this Part,
- 5 authorised use or disclosure of information.

Chapter 15 Administration

Part 15-3 Protection from liability for Registrar, Minister etc.

Division 609 Protection from liability for Registrar, Minister etc.

Section 609-1

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**Part 15-3—Protection from liability for Registrar,
Minister etc.**

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**Division 609—Protection from liability for Registrar,
Minister etc.**

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609-1 Protection from liability for Minister, Registrar etc.

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A person (*protected person*) who is any of the following:

8

(a) the Minister;

9

(b) the Registrar or a Deputy Registrar;

10

(c) a special administrator;

11

(d) a person acting under the Registrar's authority;

12

is not liable to civil proceedings for loss, damage or injury of any

13

kind suffered by another person as a result of the performance or

14

exercise, in good faith, of the protected person's functions, powers

15

or duties under or in relation to this Act.

1

2 **Part 15-4—Review of decisions**

3 **Division 614—Introduction**

4 **614-1 What this Part is about**

5

This Part deals with review of decisions.

6

Division 617 sets out which decisions under this Act are reviewable.

7

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Division 620 deals with internal review of a reviewable decision. After this has occurred, a reviewable decision may be reviewed by the AAT.

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Division 623 deals with review by the AAT.

Section 617-1

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Division 617—Reviewable decisions

617-1 Reviewable decisions

Each of the following decisions by the Registrar is a *reviewable decision*:

Reviewable decisions		
Item	Decision	Provision under which decision is made
1	To treat an application for registration as being withdrawn	subsection 21-10(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)
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)
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)

Section 617-1

Reviewable decisions		
Item	Decision	Provision under which decision is made
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)
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 etc. from provisions of Chapter 5	subsection 225-5(1)

Chapter 15 Administration
Part 15-4 Review of decisions
Division 617 Reviewable decisions

Section 617-1

Reviewable decisions		
Item	Decision	Provision under which decision is made
22	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation etc. 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)
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 from record-keeping and/or reporting requirements	subsection 353-1(1)
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)

Section 617-1

Reviewable decisions		
Item	Decision	Provision under which decision is made
34	To refuse to receive or register a document submitted for lodgment	section 407-1
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

Section 617-5

Reviewable decisions		
Item	Decision	Provision under which decision is made
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
44	To refuse a claim of entitlement to be paid money that is unclaimed property etc.	subsection 551-15(2)

1 **617-5 Deadlines for making reviewable decisions**

- 2 If:
- 3 (a) this Act provides for a person to apply to the Registrar to
- 4 make a reviewable decision; and
- 5 (b) a period is specified under this Act for giving notice of the
- 6 decision to the applicant; and
- 7 (c) the Registrar has not notified the applicant of the Registrar's
- 8 decision within that period;
- 9 the Registrar is taken, for the purposes of this Act, to have made a
- 10 decision to reject the application.

11 **617-10 Notice of reviewable decision and review rights**

- 12 (1) This section applies to a person (the *decision maker*) who:
- 13 (a) makes a reviewable decision; or
- 14 (b) reviews a reviewable decision under Division 620 of this
- 15 Part.
- 16 (2) Subject to subsection (3), the decision maker must take such steps
- 17 as are reasonable in the circumstances to give to each person
- 18 whose interests are affected by the decision notice, in writing or
- 19 otherwise:
- 20 (a) of the making of the decision; and
- 21 (b) of the person's right to have the decision reviewed under this
- 22 Part.

Section 617-10

- 1 (3) Subsection (2) does not require the decision maker to give notice to
2 a person affected by the decision or to the persons in a class of
3 persons affected by the decision, if the decision maker determines
4 that giving notice to the person or persons is not warranted, having
5 regard to:
6 (a) the cost of giving notice to the person or persons; and
7 (b) the way in which the interests of the person or persons are
8 affected by the decision.
- 9 (4) A failure to comply with this section does not affect the validity of
10 the decision.
- 11 (5) The fact that a person has not been given notice of the decision
12 because of a determination under subsection (3) constitutes special
13 circumstances for the purposes of subsection 29(6) of the
14 *Administrative Appeals Tribunal Act 1975*.

Section 620-1

1

2 **Division 620—Internal review of reviewable decisions**

3 **620-1 Registrar may reconsider reviewable decisions on own**
4 **initiative**

- 5 (1) The Registrar may, on his or her own initiative, reconsider a
6 reviewable decision if the Registrar is satisfied that there is
7 sufficient reason to reconsider the decision.
- 8 (2) The Registrar may reconsider a decision even if:
9 (a) an application for reconsideration of the decision has been
10 made under section 620-5; or
11 (b) if the decision has been affirmed, varied or set aside under
12 section 620-5—an application has been made under
13 section 623-1 for review of the decision.
- 14 (3) After reconsidering the decision, the Registrar must:
15 (a) affirm the decision; or
16 (b) vary the decision; or
17 (c) set the decision aside and substitute a new decision.
- 18 (4) The Registrar's decision (the *decision on review*) to affirm, vary or
19 set aside the decision takes effect:
20 (a) on the day specified in the decision on review; or
21 (b) if a day is not specified—on the day on which the decision on
22 review was made.

23 **620-5 Reconsideration of reviewable decisions**

- 24 (1) A person whose interests are affected by a reviewable decision
25 may request the Registrar to reconsider the decision.
- 26 (2) The person's request must be made by written notice given to the
27 Registrar within 28 days, or such longer period as the Registrar
28 allows, after the day on which the person first received notice of
29 the decision.
- 30 (3) The notice must set out the reasons for making the request.

Section 620-5

- 1 (4) The Registrar must, on receiving an application, cause the decision
2 to be reviewed by a person (the *reviewer*) to whom the Registrar's
3 power under this section is delegated. The reviewer must be a
4 person who was not involved in making the decision.
- 5 (5) A reviewer who reviews a reviewable decision may:
6 (a) make a decision affirming, varying or setting aside the
7 reviewable decision; and
8 (b) if the reviewer sets aside the decision, make such other
9 decision as the reviewer thinks appropriate.
- 10 (6) The reviewer's decision (the *decision on review*) takes effect:
11 (a) on the day specified in the decision on review; or
12 (b) if a day is not specified—on the day on which the decision on
13 review was made.
- 14 (7) The Registrar is taken, for the purposes of this Part, to have
15 affirmed the reviewable decision if the person does not receive
16 notice of the review decision within 90 days after receiving the
17 person's request.

Section 623-1

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2 **Division 623—AAT review of reviewable decisions**

3 **623-1 AAT review of reviewable decisions**

4 An application may be made to the AAT for the review of a
5 reviewable decision that has been affirmed, varied or set aside
6 under section 620-1 or 620-5.

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2 **Part 15-5—Fees**

3 **Division 628—Fees**

4 **628-1 Fees**

5 (1) The regulations may prescribe fees that are payable for services the
6 Registrar provides in performing his or her functions, or exercising
7 his or her powers, under:

8 (a) this Act (including the regulations); and

9 (b) any other Commonwealth law that imposes functions on the
10 Registrar.

11 (2) A prescribed fee must not be such as to amount to taxation.

12 (3) A prescribed fee is payable to the Commonwealth.

13 (4) The regulations may prescribe the circumstances in which the
14 Registrar, on behalf of the Commonwealth, may wholly or partly
15 waive a prescribed fee. The circumstances may relate to an
16 individual Aboriginal and Torres Strait Islander corporation or a
17 class of Aboriginal and Torres Strait Islander corporation.

18 **628-5 Lodgment of document without payment of fee**

19 If:

20 (a) a fee is prescribed for the lodgment of a document; and

21 (b) the document was submitted for lodgment without payment
22 of the fee;

23 the document is not taken not to have been lodged merely because
24 of non-payment of the fee.

25 **628-10 Doing act without payment of fee**

26 If a fee is prescribed for a matter involving the doing of an act by
27 the Registrar, the Registrar may refuse to do that act until the fee is
28 paid.

Section 628-15

1 **628-15 Effect of sections 628-5 and 628-10**

2 Sections 628-5 and 628-10 have effect despite anything in another
3 Part of this Act.

4 **628-20 Debt due to the Commonwealth**

5 Each prescribed fee is a debt due to the Commonwealth.

6 **628-25 Payment of fee does not give right to inspect or search**

7 To avoid doubt, nothing in this Part, and nothing done under this
8 Part:

- 9 (a) imposes on the Registrar a duty to allow the inspection or
10 search of a register or document, or to make available
11 information; or
12 (b) confers a right to inspect or search a register or document or
13 to have information made available;
14 except so far as such a duty or right would, but for the effect of
15 section 628-10, exist under a provision of another Part of this Act
16 or under some other law.

1

2 **Part 15-6—Regulations**

3 **Division 633—Regulations**

4 **633-1 General regulation making power**

- 5 (1) The Governor-General may make regulations prescribing matters:
6 (a) required or permitted by this Act to be prescribed; or
7 (b) necessary or convenient to be prescribed for carrying out or
8 giving effect to this Act.
- 9 (2) Without limiting subsection (1), the regulations may make
10 provision prescribing penalties not exceeding 50 penalty units for
11 contraventions of the regulations.

12 **633-5 Regulations concerning registered native title bodies**
13 **corporate**

14 *Regulations concerning registered native title bodies corporate*
15 *generally*

- 16 (1) Without limiting section 633-1, the regulations may modify any of
17 the provisions of this Act (other than subsections (8) and (9) of this
18 section) as they relate to a registered native title body corporate.

19 *Regulations concerning registered native title bodies corporate*
20 *and special administrators*

- 21 (2) Without limiting subsection (1), the regulations may modify the
22 operation of:
23 (a) Division 499; and
24 (b) the provisions of the Corporations Act (as applied by
25 section 499-10);
26 in relation to the functions, duties and powers of a special
27 administrator for a registered native title body corporate.
- 28 (3) Without limiting subsection (1), the regulations may make
29 provision for the manner in which a special administrator for a

Section 633-5

1 registered native title body corporate is to exercise his or her
2 powers in relation to the body corporate.

3 *Regulations concerning registered native title bodies corporate*
4 *and receivers or liquidators*

5 (4) Without limiting subsection (1), regulations made for the purposes
6 of paragraph 516-1(2)(b) may modify the operation of the
7 Corporations Act receiver provisions in relation to the functions,
8 duties and powers of a receiver or controller of property of a
9 registered native title body corporate.

10 (5) Without limiting subsection (1), the regulations may make
11 provision for the manner in which a receiver or controller of
12 property of a registered native title body corporate is to exercise his
13 or her powers in relation to the body corporate.

14 *Regulations concerning registered native title bodies corporate*
15 *and administrators*

16 (6) Without limiting subsection (1), regulations made for the purposes
17 of paragraph 521-1(2)(b) may modify the operation of the
18 Corporations Act administration provisions in relation to the
19 functions, duties and powers of an administrator appointed under
20 those provisions for a registered native title body corporate.

21 (7) Without limiting subsection (1), the regulations may make
22 provision for the manner in which an administrator appointed
23 under those provisions for a registered native title body corporate is
24 to exercise his or her powers in relation to the body corporate.

25 *Regulations must not increase criminal penalties etc.*

26 (8) Regulations made for the purposes of subsection (1) must not:
27 (a) increase, or have the effect of increasing, the maximum
28 penalty for any offence; or
29 (b) widen, or have the effect of widening, the scope of any
30 offence.

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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.

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Part 15-7—Approved forms

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Division 638—Approved forms

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638-1 Registrar may approve forms

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(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.

6

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(2) The approval may require all or any of the following:

9

(a) the form in which the notice, statement, application or other document is to be given;

10

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(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;

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(c) that the notice, statement, application or other document contain information that is of the kind specified in the approval;

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(d) subject to subsection (3), the manner in which the notice, statement, application or other document is to be given.

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(3) This section, and any approval under this section, does not affect the operation of section 404-10.

21

22

Note: Section 404-10 deals with lodging documents with the Registrar electronically.

23

24

(4) The Registrar may approve different forms for different entities.

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(5) The Registrar may combine in the same form more than one notice, statement, application or other document.

27

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(6) If the giving of a notice, statement, application or other document is covered by an approval under this section:

29

(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

30

Section 638-1

1 (b) is in the *approved form* if, and only if, it is in accordance
2 with that approval.
3 However, strict compliance is not required and substantial
4 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**

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Part 16-1—Introduction

6

Division 648—Introduction

7

648-1 What this Chapter is about

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11

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.

1

2 **Part 16-2—Appointment of the Registrar and**
3 **Deputy Registrars**

3

4 **Division 653—Appointment of Registrar and Deputy**
5 **Registrars**

4

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6 **653-1 Registrar of Aboriginal and Torres Strait Islander**
7 **Corporations**

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7

8 (1) There is to be a Registrar of Aboriginal and Torres Strait Islander
9 Corporations.

8

9

10 (2) The Registrar is to be appointed by the Minister and has such
11 duties, functions and powers as are provided for by this Act or
12 another law of the Commonwealth.

10

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13 (3) The Registrar holds office for such period of up to 5 years that is
14 specified in the instrument of appointment.

13

14

15 **653-5 Deputy Registrars of Aboriginal and Torres Strait Islander**
16 **Corporations**

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17 (1) The Registrar may appoint one or more Deputy Registrars of
18 Aboriginal and Torres Strait Islander Corporations for the purpose
19 of assisting the Registrar in carrying out his or her functions and
20 powers.

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21 (2) The Deputy Registrars are to be persons engaged under the *Public*
22 *Service Act 1999*.

21

22

23 (3) A Deputy Registrar holds office for such period of up to 5 years
24 that is specified in the instrument of appointment.

23

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2 **Part 16-3—Registrar's functions and powers**

3 **Division 658—Registrar's functions and powers**

4 **658-1 Functions of the Registrar**

5 (1) The Registrar has the following functions:

6 (a) to administer this Act;

7 (b) to maintain such registers as the Registrar thinks appropriate;

8 (c) to make available to the public information about the
9 registration of Aboriginal and Torres Strait Islander
10 corporations and the administration of this Act;

11 (d) to provide advice to persons about:

12 (i) the registration of a particular Aboriginal and Torres
13 Strait Islander corporation; and

14 (ii) the rules governing the internal management of the
15 corporation; and

16 (iii) the operation of the corporation;

17 (e) to conduct public education programs on the operation of the
18 Act and on the governance of Aboriginal and Torres Strait
19 Islander corporations;

20 (f) to assist with the resolution of disputes:

21 (i) internal to the operation of an Aboriginal and Torres
22 Strait Islander corporation; or

23 (ii) between an Aboriginal and Torres Strait Islander
24 corporation and others;

25 (g) to assist with complaints under this Act:

26 (i) about the internal operation of an Aboriginal and Torres
27 Strait Islander corporation; or

28 (ii) involving Aboriginal and Torres Strait Islander
29 corporations;

30 (h) to conduct research in relation to matters affecting Aboriginal
31 and Torres Strait Islander corporations;

32 (i) to develop policy proposals about Aboriginal and Torres
33 Strait Islander corporations;

Section 658-5

- 1 (j) such other functions as are conferred on the Registrar under
2 another law of the Commonwealth;
3 (k) such other functions as are prescribed.
- 4 (2) If the Registrar provides advice in undertaking his or her functions,
5 the Registrar is not precluded from exercising a power under this
6 Act, or exercising such a power in a particular way, in respect of an
7 Aboriginal and Torres Strait Islander corporation.

8 **658-5 Aims of the Registrar**

- 9 The Registrar, in performing his or her functions and exercising his
10 or her powers, must have the following aims:
- 11 (a) to facilitate and improve the effectiveness, efficiency,
12 sustainability and accountability of Aboriginal and Torres
13 Strait Islander corporations; and
14 (b) to provide certainty:
15 (i) for the members, officers and employees of an
16 Aboriginal and Torres Strait Islander corporation in
17 their dealings with the corporation and with each other;
18 and
19 (ii) for persons outside Aboriginal and Torres Strait Islander
20 corporations in their dealings with those corporations;
21 and
22 (c) to have regard to Aboriginal and Torres Strait Islander
23 tradition and circumstances; and
24 (d) to administer the laws of the Commonwealth that confer
25 functions and powers on the Registrar effectively and with a
26 minimum of procedural requirements; and
27 (e) to ensure that information is available as soon as practicable
28 for access by the public.

29 **658-10 Powers of the Registrar**

30 The Registrar has power to do all things necessary or convenient to
31 be done for, or in connection with, the performance of his or her
32 functions.

33 Note: Chapter 10 (about regulation and enforcement) contains other specific
34 powers of the Registrar.

Chapter 16 Registrar and Deputy Registrars of Aboriginal and Torres Strait Islander Corporations

Part 16-3 Registrar's functions and powers

Division 658 Registrar's functions and powers

Section 658-15

1 **658-15 Registrar to have a seal**

2 (1) The Registrar must have and use as the seal of his or her office a
3 seal in such form as the Minister, by notice in the *Gazette*,
4 determines.

5 (2) A notice under subsection (1) is not a legislative instrument.

6 **658-20 Judicial notice of certain matters**

7 All courts, judges and persons acting judicially must take judicial
8 notice of:

- 9 (a) the signature of any person who holds or has held, or acts or
10 has acted in, the office of Registrar or Deputy Registrar; and
11 (b) the fact that that person holds or has held, or is acting or has
12 acted in, that office; and
13 (c) the seal of the Registrar.

1
2 **Part 16-4—Matters concerning the Registrar's and**
3 **Deputy Registrars' appointments**

4 **Division 663—Matters concerning the Registrar's and**
5 **Deputy Registrars' appointments**

6 **663-1 Registrar's remuneration**

- 7 (1) The Registrar is to be paid the remuneration that is determined by
8 the Remuneration Tribunal. If no determination of that
9 remuneration by the Tribunal is in operation, the Registrar is to be
10 paid the remuneration that is determined in writing by the Minister.
- 11 (2) The Registrar is to be paid the allowances that are prescribed.
- 12 (3) This section has effect subject to the *Remuneration Tribunal Act*
13 *1973*.

14 **663-5 Resignation**

- 15 (1) The Registrar may resign his or her appointment by giving the
16 Minister a written resignation.
- 17 (2) A Deputy Registrar may resign his or her appointment by giving
18 the Registrar a written resignation.

19 **663-10 Termination of Registrar's appointment**

- 20 (1) The Minister may terminate the appointment of the Registrar for
21 misbehaviour or physical or mental incapacity.
- 22 (2) The Minister must terminate the appointment of the Registrar if the
23 Registrar:
24 (a) becomes bankrupt, applies to take the benefit of any law for
25 the relief of bankrupt or insolvent debtors, compounds with
26 his or her creditors or makes an assignment of his or her
27 remuneration for their benefit; or

Chapter 16 Registrar and Deputy Registrars of Aboriginal and Torres Strait Islander Corporations

Part 16-4 Matters concerning the Registrar's and Deputy Registrars' appointments

Division 663 Matters concerning the Registrar's and Deputy Registrars' appointments

Section 663-15

- 1 (b) is absent, except on leave of absence, for 14 consecutive days
2 or for 28 days in any 12 months; or
3 (c) engages, except with the Minister's approval, in paid
4 employment outside the duties of his or her office; or
5 (d) fails, without reasonable excuse, to comply with
6 section 663-20.

7 **663-15 Termination of Deputy Registrar's appointment**

- 8 (1) The Registrar may terminate, by writing signed by him or her, the
9 appointment of a Deputy Registrar.
10 (2) The appointment of the Deputy Registrar is terminated if the
11 Deputy Registrar ceases to be, for any reason, engaged under the
12 *Public Service Act 1999*.

13 **663-20 Disclosure of interests**

- 14 (1) The Registrar must give written notice to the Minister of all
15 interests, pecuniary or otherwise, that the Registrar has or acquires
16 and that could conflict with the proper performance of the
17 Registrar's functions.
18 (2) A notice under subsection (1) is not a legislative instrument.

19 **663-25 Acting appointments**

20 *Acting Registrar*

- 21 (1) The Minister may appoint a person to act as the Registrar:
22 (a) during a vacancy in the office concerned, whether or not an
23 appointment has previously been made to the office; or
24 (b) during any period, or during all periods, when the office
25 holder is absent from duty or from Australia, or is, for any
26 reason, unable to perform the duties of the office.

27 *Acting Deputy Registrar*

- 28 (2) The Registrar may appoint a person to act as a Deputy Registrar:

Section 663-30

- 1 (a) during a vacancy in the office concerned, whether or not an
2 appointment has previously been made to the office; or
3 (b) during any period, or during all periods, when the office
4 holder is absent from duty or from Australia, or is, for any
5 reason, unable to perform the duties of the office.

6 *Validity of acts done by persons appointed to act*

- 7 (3) Anything done by or in relation to a person purporting to act under
8 an appointment as Registrar or Deputy Registrar is not invalid
9 merely because:
10 (a) the occasion for the appointment had not arisen; or
11 (b) there was a defect or irregularity in connection with the
12 appointment; or
13 (c) the appointment had ceased to have effect; or
14 (d) the occasion to act had not arisen or had ceased.

15 **663-30 Leave of absence**

- 16 (1) The Registrar has the recreation leave entitlements that are
17 determined by the Remuneration Tribunal.
18 (2) The Minister may grant the Registrar leave of absence, other than
19 recreation leave, on the terms and conditions as to remuneration or
20 otherwise that the Minister determines.

21 **663-35 Outside employment**

- 22 (1) The Registrar must not engage in paid employment outside the
23 duties of the Registrar's office without the Minister's approval.
24 (2) An approval under subsection (1) is not a legislative instrument.

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Part 16-5—Delegation

3

Division 668—Delegation

4

668-1 Delegation by Registrar

5

(1) The Registrar may delegate all or any of the Registrar's powers and functions to:

6

7

(a) a Deputy Registrar; or

8

(b) an SES employee, or acting SES employee, in the Department; or

9

10

(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.

11

12

13

(2) The delegation must be in writing.

14

(3) In exercising functions or powers under a delegation, the delegate must comply with any directions of the Registrar.

15

16

668-5 Sub-delegation by Deputy Registrar

17

(1) If the Registrar delegates a function or power to a Deputy Registrar, the Deputy Registrar may sub-delegate the function or power to:

18

19

20

(a) an SES employee, or acting SES employee, in the Department; or

21

22

(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.

23

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25

(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.

26

27

28

(3) The sub-delegation must be in writing.

Section 668-5

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(4) In exercising functions or powers under a sub-delegation, the delegate must comply with any directions of the Deputy Registrar.

Section 673-1

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Part 16-6—Staffing

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Division 673—Staffing

4

673-1 Staff assisting the Registrar and Deputy Registrar

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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.

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673-5 Engagement of consultants etc. by the Registrar

9

(1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar.

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(2) An engagement under subsection (1) is to be made:

13

(a) on behalf of the Commonwealth; and

14

(b) in writing.

15

(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.

16

17

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).

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

Section 683-1

- 1 (3) A person is an *officer* of an Aboriginal and Torres Strait Islander
2 corporation if:
3 (a) the person is a director or secretary of the corporation; or
4 (b) a person:
5 (i) makes, or participates in making, decisions that affect
6 the whole, or a substantial part, of the business of the
7 corporation; or
8 (ii) has the capacity to affect significantly the corporation's
9 financial standing; or
10 (c) subject to subsections (4), (5) and (7), the directors of the
11 corporation are accustomed to act in accordance with the
12 person's instructions or wishes; or
13 (d) the person is:
14 (i) a special administrator of the corporation; or
15 (ii) a receiver, or receiver and manager, of the property of
16 the corporation; or
17 (iii) a person appointed as an administrator of the
18 corporation under Part 5.3A of the Corporations Act (as
19 applied by section 521-1 of this Act); or
20 (iv) a liquidator of the corporation; or
21 (v) a trustee or other person administering a compromise or
22 arrangement made between the corporation and
23 someone else.

24 Note: Section 246-1 contains rules about who can be a director of an
25 Aboriginal and Torres Strait Islander corporation.

- 26 (4) A person is not a *director* under subparagraph (2)(b)(ii), or an
27 *officer* under paragraph (3)(c), merely because the directors act on
28 advice given by the person in the proper performance of functions
29 attaching to the person's professional capacity, or the person's
30 business relationship with the directors or the corporation.
- 31 (5) A common law holder of native title is not a *director* of an
32 Aboriginal and Torres Strait Islander corporation under
33 subparagraph (2)(b)(ii), or an *officer* of an Aboriginal and Torres
34 Strait Islander corporation under paragraph (3)(c), merely because
35 the directors of the corporation take action, or refrain from taking
36 action, to ensure that the corporation complies with a Native Title
37 legislation obligation.

Section 683-1

- 1 (6) A person who is a common law holder of native title is not an
2 **officer** of an Aboriginal and Torres Strait Islander corporation
3 under paragraph (3)(b), merely because:
4 (a) the person, in complying with a Native Title legislation
5 obligation, makes, or participates in making, decisions that
6 affect the whole, or a substantial part, of the business of the
7 corporation; or
8 (b) the person, as a common law holder of native title, has the
9 capacity to affect significantly the corporation's financial
10 standing.
- 11 (7) The Registrar is not a **director**, or an **officer**, of an Aboriginal and
12 Torres Strait Islander corporation merely because of the exercise
13 by the Registrar of powers under this Act.

Section 686-1

1

2 **Division 686—Associates**

3 **686-1 Effect of Division**

- 4 (1) This Division has effect for the purposes of interpreting a reference
5 (the *associate reference*), in relation to a person (the *primary*
6 *person*), to an associate.
- 7 (2) A person is not an associate of the primary person except as
8 provided in this Division.
- 9 (3) Nothing in this Division limits the generality of anything else in it.

10 **686-5 Associates of bodies corporate**

- 11 If the primary person is a body corporate, the associate reference
12 includes a reference to:
- 13 (a) a director or secretary of the body; and
14 (b) a related body corporate; and
15 (c) a director or secretary of a related body corporate.

16 **686-10 General**

- 17 (1) The associate reference includes a reference to:
- 18 (a) a person in concert with whom the primary person is acting,
19 or proposes to act; and
20 (b) a person who, under the regulations, is, for the purposes of
21 the provision in which the associate reference occurs, an
22 associate of the primary person; and
23 (c) a person with whom the primary person is, or proposes to
24 become, associated, whether formally or informally, in any
25 other way;
- 26 in respect of the matter to which the associate reference relates.
- 27 (2) If the primary person has entered, or proposes to enter, into a
28 transaction, or has done, or proposes to do, any act or thing, in
29 order to become associated with another person as mentioned in

1 subsection (1), the associate reference includes a reference to that
2 other person.

3 **686-15 Exclusions**

- 4 (1) A person is not an associate of another person by virtue of
5 subsection 686-10(1), or by virtue of subsection 686-10(2) as it
6 applies in relation to subsection 686-10(1), merely because of one
7 or more of the following:
- 8 (a) one gives advice to the other, or acts on the other's behalf, in
9 the proper performance of the functions attaching to a
10 professional capacity or a business relationship;
 - 11 (b) one has appointed the other, otherwise than for valuable
12 consideration given by the other or by an associate of the
13 other, to vote as a proxy or representative at a meeting of
14 members, or of a class of members, of a body corporate.
- 15 (2) A person who is a common law holder of native title is not an
16 associate of another person by virtue of subsection 686-10(1), or
17 by virtue of subsection 686-10(2) as it applies in relation to
18 subsection 686-10(1), merely because a Native Title legislation
19 obligation has been complied with.

Section 689-1

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2 **Division 689—Subsidiaries and control**

3 **689-1 What is a subsidiary**

4 A body corporate (the *first body*) is a subsidiary of another body
5 corporate if, and only if:

- 6 (a) the other body:
- 7 (i) controls the composition of the first body's board; or
 - 8 (ii) is in a position to cast, or control the casting of, more
9 than one-half of the maximum number of votes that
10 might be cast at a general meeting of the first body; or
 - 11 (iii) holds more than one-half of the issued share capital of
12 the first body (excluding any part of that issued share
13 capital that carries no right to participate beyond a
14 specified amount in a distribution of either profits or
15 capital); or
- 16 (b) the first body is a subsidiary of a subsidiary of the other
17 body.

18 Note: Subparagraph (a)(iii)—although an Aboriginal and Torres Strait
19 Islander corporation itself does not have shares, the corporation may
20 hold shares in a body corporate that does have shares.

21 **689-5 Control of a body corporate's board**

- 22 (1) For the purposes of this Act, the composition of the board of a
23 body corporate (the *first body*) is taken to be controlled by another
24 body (the *second body*) if the second body, by exercising a power
25 exercisable (whether with or without the consent or concurrence of
26 any other person) by it, can appoint or remove all, or the majority,
27 of the directors of the first body.
- 28 (2) For the purposes of this Division, the second body is taken to have
29 power to make such an appointment if:
- 30 (a) a person cannot be appointed as a director of the first body
31 without the exercise by the second body of such a power in
32 the person's favour; or

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- 1 (b) a person's appointment as a director of the first body follows
2 necessarily from the person being a director or other officer
3 of the second body.
- 4 (3) Subsections (1) and (2) do not limit the circumstances in which the
5 composition of a body corporate's board is taken to be controlled
6 by another body corporate.

7 **689-10 Matters to be disregarded**

- 8 (1) This section applies for the purposes of determining whether a
9 body corporate (the *first body*) is a subsidiary of another body
10 corporate.
- 11 (2) Any shares held, or power exercisable, by the other body in a
12 fiduciary capacity are treated as not held or exercisable by it.
- 13 (3) Subject to subsections (4) and (5), any shares held, or power
14 exercisable:
15 (a) by a person as a nominee for the other body (except where
16 the other body is concerned only in a fiduciary capacity); or
17 (b) by, or by a nominee for, a subsidiary of the other body (not
18 being a subsidiary that is concerned only in a fiduciary
19 capacity);
20 are treated as held or exercisable by the other body.
- 21 (4) Any shares held, or power exercisable, by a person by virtue of the
22 provisions of debentures of the first body, or of a trust deed for
23 securing an issue of such debentures, are to be disregarded.
- 24 (5) Any shares held, or power exercisable, otherwise than as
25 mentioned in subsection (4), by, or by a nominee for, the other
26 body or a subsidiary of it are to be treated as not held or
27 exercisable by the other body if:
28 (a) the ordinary business of the other body or that subsidiary, as
29 the case may be, includes lending money; and
30 (b) the shares are held, or the power is exercisable, only by way
31 of security given for the purposes of a transaction entered
32 into in the ordinary course of business in connection with
33 lending money, not being a transaction entered into with an

Section 689-15

1 associate of the other body, or of that subsidiary, as the case
2 may be.

3 **689-15 References in this Division to a subsidiary**

4 A reference in paragraph 689-1(b) or 689-10(3)(b) or subsection
5 689-10(5) to being a subsidiary, or to a subsidiary, of a body
6 corporate includes a reference to being a subsidiary, or to a body
7 corporate that is a subsidiary, as the case may be, of the
8 first-mentioned body by virtue of any other application or
9 applications of this Division.

10 **689-20 Related bodies corporate**

11 If a body corporate is:
12 (a) a holding body corporate of another body corporate; or
13 (b) a subsidiary of another body corporate; or
14 (c) a subsidiary of a holding body corporate of another body
15 corporate;
16 the first-mentioned body and the other body are related to each
17 other.

18 **689-25 Control**

- 19 (1) For the purposes of this Act, an entity controls a second entity if
20 the first entity has the capacity to determine the outcome of
21 decisions about the second entity's financial and operating policies.
- 22 (2) In determining whether the first entity has this capacity:
23 (a) the practical influence the first entity can exert (rather than
24 the rights it can enforce) is the issue to be considered; and
25 (b) any practice or pattern of behaviour affecting the second
26 entity's financial or operating policies is to be taken into
27 account (even if it involves a breach of an agreement or a
28 breach of trust).
- 29 (3) The first entity does not control the second entity merely because
30 the first entity and a third entity jointly have the capacity to
31 determine the outcome of decisions about the second entity's
32 financial and operating policies.

- 1 (4) If the first entity:
2 (a) has the capacity to influence decisions about the second
3 entity's financial and operating policies; and
4 (b) is under a legal obligation to exercise that capacity for the
5 benefit of someone other than the first entity's members;
6 the first entity is taken not to control the second entity.
- 7 (5) If the first entity is a common law holder of native title and the
8 second entity is a registered native title body corporate, the first
9 entity does not control the second entity merely because the second
10 entity complies with a Native Title legislation obligation.

1

2

Part 17-2—Interpretation of other expressions

3

Division 694—Interpretation of other expressions

4

694-1 Giving information

5

A reference in this Act to *giving information* includes a reference to:

6

7

(a) explaining or stating a matter; or

8

(b) identifying a person, matter or thing; or

9

(c) disclosing information; or

10

(d) answering a question.

11

694-5 Doing acts

12

A reference to doing an act or thing includes a reference to causing or authorising the act or thing to be done.

13

14

694-10 Signing

15

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.

16

17

18

694-15 Business affairs of a body corporate

19

A body corporate's *business affairs* include (without limitation):

20

(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

21

22

(b) matters concerned with ascertaining the corporations with which the body is or has been connected.

23

24

25

694-20 Business affairs of a natural person

26

A natural person's *business affairs* include (without limitation):

- 1 (a) the person's examinable operations and examinable assets
2 and liabilities; and
3 (b) any act done (including any contract made and any
4 transaction entered into) by or on behalf of the person, or to
5 or in relation to the person or his or her business or property,
6 at a time when:
7 (i) the person was, under the *Bankruptcy Act 1966* or the
8 law of an external Territory, a bankrupt in respect of a
9 bankruptcy from which the person had not been
10 discharged; or
11 (ii) the person had, under a law of an external Territory or
12 of a foreign country, the status of an undischarged
13 bankrupt; or
14 (iii) the person's property was subject to control under
15 Division 2 of Part X of the *Bankruptcy Act 1966*
16 because of an authority given by the person under
17 section 188 of that Act; or
18 (iv) a personal insolvency agreement under Part X of the
19 *Bankruptcy Act 1966* or under the corresponding
20 provisions of the law of an external Territory or of a
21 foreign country was in effect in relation to the person or
22 the person's property; and
23 (c) without limiting the generality of paragraph (b), any conduct
24 of the trustee of such a bankrupt estate or of such a personal
25 insolvency agreement or a person acting under such an
26 authority; and
27 (d) matters concerned with ascertaining the corporations with
28 which the person is or has been connected.

29 **694-25 Business affairs of a partnership**

30 A partnership's *business affairs* include (without limitation):

- 31 (a) the partnership's promotion, formation, membership, control,
32 examinable operations and examinable assets and liabilities;
33 and
34 (b) the partnership's management and proceedings; and
35 (c) any act done (including any contract made and any
36 transaction entered into) by or on behalf of the partnership, or

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- 1 to or in relation to the partnership, at a time when the
2 partnership is being wound up; and
3 (d) matters concerned with ascertaining the corporations with
4 which the partnership is or has been connected.

5 **694-30 Business affairs of a trust**

- 6 A trust's *business affairs* include (without limitation):
7 (a) the creation of the trust; and
8 (b) matters arising under, or otherwise relating to, the terms of
9 the trust; and
10 (c) the appointment and removal of a trustee of the trust; and
11 (d) the business, trading, transactions and dealings of the trustee
12 of the trust; and
13 (e) the profits, income and receipts of the trustee of the trust; and
14 (f) the losses, outgoings and expenditure of the trustee of the
15 trust; and
16 (g) the trust property, including transactions and dealings in, and
17 the income arising from, the trust property; and
18 (h) the liabilities of the trustee of the trust; and
19 (i) the management of the trust; and
20 (j) any act done (including any contract made and any
21 transaction entered into) by or on behalf of the trustee of the
22 trust, or to or in relation to the trust, at a time when the trust
23 is being wound up; and
24 (k) matters concerned with ascertaining the corporations with
25 which the trust is or has been connected.

26 **694-35 Meaning of court and Court**

- 27 (1) Subject to subsection (2), in this Act:
28 *court* means any court.
29 *Court* means any of the following courts:
30 (a) the Federal Court;
31 (b) the Supreme Court of a State or Territory;
32 (c) the Family Court of Australia;

1 (d) a court to which section 41 of the *Family Law Act 1975*
2 applies because of a Proclamation made under subsection
3 41(2) of that Act.

4 (2) Except where there is a clear expression of a contrary intention (for
5 example, by use of the expression *the Court*), proceedings in
6 relation to a matter under this Act may, subject to Part 14-3, be
7 brought in any court.

8 Note: The matters dealt with in Part 14-3 include the applicability of limits
9 on the jurisdictional competence of courts.

10 **694-40 Entities**

11 Except in Part 6-6, a reference to an *entity*:

12 (a) is a reference to a natural person, a body corporate (other
13 than an exempt public authority within the meaning of the
14 Corporations Act), a partnership or a trust; and

15 (b) includes, in the case of a trust, a reference to the trustee of the
16 trust.

17 **694-45 Entities connected with a corporation (including an** 18 **Aboriginal and Torres Strait Islander corporation)**

19 *Body corporate*

20 (1) A body corporate is connected with a corporation if, and only if,
21 the corporation:

22 (a) can control, or influence materially, the body's activities or
23 internal affairs; or

24 (b) is a member of the body; or

25 (c) is in a position to cast, or to control the casting of, a vote at a
26 general meeting of the body; or

27 (d) has power to dispose of, or to exercise control over the
28 disposal of, a share in the body; or

29 (e) is financially interested in the body's success or failure or
30 apparent success or failure; or

31 (f) is owed a debt by the body; or

32 (g) is engaged by the body under a contract for services; or

33 (h) acts as agent for the body in any transaction or dealing.

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1

Natural person

2

(2) A natural person is connected with a corporation if, and only if, the corporation:

3

4

(a) is a trustee of a trust under which the person is capable of benefiting; or

5

6

(b) is engaged by the person under a contract for services; or

7

(c) acts as agent for the person in any transaction or dealing; or

8

(d) is an attorney of the person under a power of attorney; or

9

(e) has appointed the person as the corporation's attorney under a power of attorney; or

10

11

(f) is given financial, business or legal advice by the person in the performance of the functions attaching to the person's professional capacity.

12

13

14

Partnership

15

(3) A partnership is connected with a corporation if, and only if, the corporation:

16

17

(a) is a partner in the partnership; or

18

(b) can control, or influence materially, the partnership's activities or internal affairs; or

19

20

(c) is financially interested in the partnership's success or failure or apparent success or failure; or

21

22

(d) is a creditor of the partnership; or

23

(e) is engaged by the partnership under a contract for services; or

24

(f) acts as agent for the partnership in any transaction or dealing.

25

Trust

26

(4) A trust is connected with a corporation if, and only if, the corporation:

27

28

(a) is the settlor, or one of the settlors, of the trust; or

29

(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

30

31

(c) is a trustee of the trust; or

32

- 1 (d) can control, or influence materially, the activities of the trust;
2 or
3 (e) is capable of benefiting under the trust; or
4 (f) is a creditor of the trustee of the trust; or
5 (g) is engaged by the trustee of the trust under a contract for
6 services; or
7 (h) acts as agent for the trustee of the trust in any transaction or
8 dealing.
- 9 (5) To avoid doubt, a reference in this section to a *corporation*
10 includes a reference to an Aboriginal and Torres Strait Islander
11 corporation.

12 **694-50 Extension of period for doing an act**

13 If this Act confers power to extend the period for doing an act, an
14 application for the exercise of the power may be made, and the
15 power may be exercised, even if the period, or the period as last
16 extended, as the case requires, has ended.

17 **694-55 Involvement in contraventions**

18 A person is *involved in* a contravention if, and only if, the person:
19 (a) has aided, abetted, counselled or procured the contravention;
20 or
21 (b) has induced, whether by threats or promises or otherwise, the
22 contravention; or
23 (c) has been in any way, by act or omission, directly or
24 indirectly, knowingly concerned in, or party to, the
25 contravention; or
26 (d) has conspired with others to effect the contravention.

27 **694-60 Possession**

28 A thing that is in a person's custody or under a person's control is
29 in the person's possession.

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1 **694-65 Public document of a body corporate**

2 (1) Subject to this section, *public document*, in relation to a body,
3 means:

4 (a) an instrument of, or purporting to be signed, issued or
5 published by or on behalf of, the body that:

6 (i) when signed, issued or published, is intended to be
7 lodged or is required by or under this Act to be lodged;
8 or

9 (ii) is signed, issued or published under or for the purposes
10 of this Act or any other Australian law; or

11 (b) an instrument of, or purporting to be signed or issued by or
12 on behalf of, the body that is signed or issued in the course
13 of, or for the purposes of, a particular transaction or dealing;
14 or

15 (c) without limiting paragraph (a) or (b), a business letter,
16 statement of account, invoice, receipt, order for goods, order
17 for services or official notice of, or purporting to be signed or
18 issued by or on behalf of, the body.

19 (2) A thing is not a public document of a body if it:

20 (a) is applied, or is intended or required to be applied:

21 (i) to goods; or

22 (ii) to a package, label, reel or thing in or with which goods
23 are, or are to be, supplied; and

24 (b) is so applied, or is intended or required to be so applied, for a
25 purpose connected with the supply of the goods.

26 (3) In subsection (2):

27 *apply* to includes print on, weave in, impress on, work into, or
28 annex, affix or attach to.

29 *label* includes a band or ticket.

30 *package* includes:

31 (a) a covering, stopper, glass, bottle, vessel, box, capsule, case,
32 frame or wrapper; or

33 (b) any other container or thing in which goods are, or are to be,
34 packed.

1 **694-70 Receivers and managers**

2 A receiver of property of a body corporate is also a manager if the
3 receiver manages, or has under the terms of the receiver's
4 appointment power to manage, affairs of the body.

5 **694-75 Securities**

6 (1) Subject to this section, *securities* means:

- 7 (a) debentures, stocks or bonds issued or proposed to be issued
8 by a government; or
9 (b) shares in, or debentures of, a body; or
10 (c) interests in a managed investment scheme; or
11 (d) units of such shares;

12 but does not include:

- 13 (e) a derivative (within the meaning of Chapter 7 of the
14 Corporations Act), other than an option to acquire by way of
15 transfer a security covered by paragraph (a), (b), (c) or (d); or
16 (f) an excluded security.

17 (2) The expression *securities*, when used in relation to a body, means:

- 18 (a) shares in the body; or
19 (b) debentures of the body; or
20 (c) interests in a managed investment scheme made available by
21 the body; or
22 (d) units of such shares;

23 but does not include:

- 24 (e) a derivative (within the meaning of Chapter 7 of the
25 Corporations Act), other than an option to acquire by way of
26 transfer a security covered by paragraph (a), (b), (c) or (d); or
27 (f) an excluded security.

28 (3) An expression used in this section and in the Corporations Act has
29 the same meaning in this section as it has in that Act.

30 **694-80 Solvency and insolvency**

31 (1) A person is *solvent* if, and only if, the person is able to pay all the
32 person's debts, as and when they become due and payable.

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1 (2) A person who is not solvent is *insolvent*.

2 **694-85 Meaning of *chief executive officer function***

3 *Persons with overall management responsibility for corporation*

4 (1) A person performs a ***chief executive officer function (CEO***
5 ***function)*** in relation to a Aboriginal and Torres Strait Islander
6 corporation if the person is the person who is primarily and directly
7 responsible to the directors for the general and overall management
8 of the corporation.

9 (2) If there is no one person who performs CEO functions under
10 subsection (1), a person performs a CEO function in relation to the
11 corporation if the person is one of a number of people who together
12 are primarily and directly responsible to the directors for the
13 general and overall management of the corporation.

14 *Persons responsible for financial matters*

15 (3) A person performs a CEO function in relation to the corporation if
16 that person is the person who is:

- 17 (a) primarily responsible for financial matters in relation to the
18 corporation; and
19 (b) directly responsible for those matters to either:
20 (i) the directors; or
21 (ii) the person or persons who perform the CEO function in
22 relation to the corporation.

23 (4) If there is no one person who performs a CEO function under
24 subsection (3), a person performs a CEO function in relation to the
25 corporation if the person is one of a number of people who together
26 are:

- 27 (a) primarily responsible for financial matters in relation to the
28 corporation; and
29 (b) directly responsible for those matters to either:
30 (i) the directors; or
31 (ii) the person or persons who perform the CEO function in
32 relation to the corporation.

1 **694-90 Applications to be in writing**

2 An application to the Registrar for the issuing of a document or the
3 doing of any other act or thing by the Registrar under this Act must
4 be in writing.

5 Note: For electronic lodgment of documents with the Registrar, see
6 section 404-10.

7 **694-95 Effect of certain contraventions of this Act**

8 (1) This section has effect except so far as this Act otherwise provides.

9 (2) An act, transaction, agreement, instrument, matter or thing is not
10 invalid, void, voidable or unenforceable merely because of:

11 (a) a contravention of section 284-1 or 284-5; or

12 (b) a failure to comply with a requirement of this Act that a
13 person cause a notice, or a copy of a document, to be
14 published in the *Gazette* or in a newspaper.

15 (3) Nothing in this section limits the generality of anything else in it.

16 **694-100 Effect of provisions empowering a person to require or**
17 **prohibit conduct**

18 If, in accordance with a provision of this Act (other than the
19 replaceable rules), a person requires another person to do, or
20 prohibits another person from doing, a particular act, that provision
21 is taken to require the other person to comply with the requirement
22 or prohibition, as the case may be.

23 **694-105 Calculation of time**

24 Without limiting subsection 36(1) of the *Acts Interpretation Act*
25 *1901*, in calculating how many days a particular day, act or event is
26 before or after another day, act or event, the first-mentioned day, or
27 the day of the first-mentioned act or event, is to be counted but not
28 the other day, or the day of the other act or event.

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1 **694-110 Performance of functions by Registrar or Deputy Registrar**
2 **includes reference to delegate etc.**

3 (1) For the purpose of the performance of a function, or the exercise of
4 a power, under this Act by a delegate of the Registrar, a reference
5 to the Registrar in a provision of this Act relating to the
6 performance of the function, or the exercise of the power, includes
7 a reference to the delegate.

8 (2) For the purpose of the performance of a function, or the exercise of
9 a power, under this Act by a sub-delegate of a Deputy Registrar, a
10 reference to a Registrar in a provision of this Act relating to the
11 performance of the function, or the exercise of the power, includes
12 a reference to the sub-delegate.

13 (3) Subsections (1) and (2) do not, by implication, limit the operation
14 of section 34AA, paragraph 34AB(a), (b), (d) or (e) or section 34A
15 of the *Acts Interpretation Act 1901*.

1

2 **Part 17-3—Dictionary**

3 **Division 700—Dictionary**

4 **700-1 Dictionary**

5 In this Act:

6 *AAT* means the Administrative Appeals Tribunal.

7 *ABN* (short for Australian Business Number) has the meaning
8 given by section 41 of the *A New Tax System (Australian Business*
9 *Number) Act 1999*.

10 *Aboriginal and Torres Strait Islander corporation* has the
11 meaning given by section 16-5.

12 *Aboriginal and Torres Strait Islander corporation affected* by a
13 contravention of a civil penalty provision means the Aboriginal
14 and Torres Strait Islander corporation to which the conduct that
15 constituted the contravention relates.

16 *Aboriginal and Torres Strait Islander Corporations legislation*
17 means:

- 18 (a) this Act; and
19 (b) except in Subdivision 586-D—rules of court made by the
20 Federal Court, the Supreme Court of the Australian Capital
21 Territory, or the Family Court, because of a provision of this
22 Act; and
23 (c) except in Subdivision 586-D—rules of court applied by the
24 Supreme Court, or a State Family Court, of a State, or by the
25 Supreme Court of the Northern Territory when exercising
26 jurisdiction conferred by Division 586 (including jurisdiction
27 conferred by virtue of any previous application or
28 applications of this paragraph).

29 *Aboriginal and Torres Strait Islander person* means the
30 following:

- 31 (a) an Aboriginal person;

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- 1 (b) a Torres Strait Islander;
2 (c) an Aboriginal and Torres Strait Islander person;
3 (d) a Torres Strait Islander and Aboriginal person;
4 (e) an Aboriginal and Torres Strait Islander corporation;
5 (f) a body corporate prescribed by name in the regulations for
6 the purposes of this paragraph;
7 (g) a body corporate that falls within a class of bodies specified
8 in the regulations for the purposes of this paragraph;
9 (h) a body corporate in which a controlling interest is held by
10 any, or all, of the following persons:
11 (i) Aboriginal persons;
12 (ii) Torres Strait Islanders;
13 (iii) Aboriginal and Torres Strait Islander persons;
14 (iv) Torres Strait Islander and Aboriginal persons.

15 ***Aboriginal person*** means a person of the Aboriginal race of
16 Australia.

17 ***accounting standard*** means:

- 18 (a) a standard in force under section 334 of the Corporations
19 Act; or
20 (b) a provision of such a standard as it so has effect.

21 ***act*** includes a thing.

22 ***administrator***:

- 23 (a) in relation to an Aboriginal and Torres Strait Islander
24 corporation but not in relation to a deed of corporation
25 arrangement:
26 (i) means an administrator of the corporation appointed
27 under Part 5.3A of the Corporations Act (as applied by
28 section 521-1 of this Act); and
29 (ii) if 2 or more persons are appointed under that Part as
30 administrators of the corporation—has a meaning
31 affected by paragraph 451A(2)(b) of that Act as so
32 applied; or
33 (b) in relation to a deed of corporation arrangement:

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-
- 1 (i) means an administrator of the deed appointed under
2 Part 5.3A of the Corporations Act (as applied by
3 section 521-1 of this Act); and
- 4 (ii) if 2 or more persons are appointed under that Part as
5 administrators of the deed—has a meaning affected by
6 paragraph 451B(2)(b) of that Act as so applied; or
- 7 (c) in relation to a body corporate (other than an Aboriginal and
8 Torres Strait Islander corporation) but not in relation to a
9 deed of company arrangement:
- 10 (i) means an administrator of the body or entity appointed
11 under Part 5.3A of the Corporations Act; and
- 12 (ii) if 2 or more persons are appointed under that Part as
13 administrators of the body or entity—has a meaning
14 affected by paragraph 451A(2)(b) of the Corporations
15 Act; or
- 16 (d) in relation to a deed of company arrangement:
- 17 (i) means an administrator of the deed appointed under
18 Part 5.3A of the Corporations Act; and
- 19 (ii) if 2 or more persons are appointed under that Part as
20 administrators of the deed—has a meaning affected by
21 paragraph 451B(2)(b) of the Corporations Act.
- 22 *affairs* of a body corporate (including an Aboriginal and Torres
23 Strait Islander corporation) include:
- 24 (a) the promotion or formation of the body; and
- 25 (b) the membership of the body; and
- 26 (c) the control of the body; and
- 27 (d) the body's business, trading, transactions and dealings
28 (whether alone or jointly with any other person or persons
29 and including transactions and dealings as agent, bailee or
30 trustee); and
- 31 (e) the body's property (whether held alone or jointly with any
32 other person or persons and including property held as agent,
33 bailee or trustee); and
- 34 (f) the body's liabilities (including liabilities owed jointly with
35 any other person or persons and liabilities as trustee); and
- 36 (g) the body's profits and other income, receipts, losses,
37 outgoings and expenditure; and
-

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- 1 (h) if the body is a trustee but not an authorised trustee
2 corporation (without limiting the generality of paragraphs (a)
3 to (g))—matters concerned with:
4 (i) the ascertainment of the identity of the persons who are
5 beneficiaries under the trust; and
6 (ii) their rights under the trust; and
7 (iii) any payments that they have received, or are entitled to
8 receive, under the terms of the trust; and
9 (i) the body’s internal management and proceedings; and
10 (j) any act or thing done (including any contract made and any
11 transaction entered into) by or on behalf of the body, or to or
12 in relation to the body or its business, operations or property,
13 at a time when:
14 (i) a receiver, or a receiver and manager, is in possession
15 of, or has control over, property of the body; or
16 (ii) if the body is an Aboriginal and Torres Strait Islander
17 corporation—the body is under special administration;
18 or
19 (iii) the corporation is under administration; or
20 (iv) a deed of company arrangement, or deed of corporation
21 arrangement, executed by the body has not yet
22 terminated; or
23 (v) a compromise or arrangement made between the body
24 and any other person or persons is being administered;
25 or
26 (vi) the body is being wound up; and
27 (k) without limiting paragraph (j), any conduct of:
28 (i) such a receiver; or
29 (ii) such a receiver and manager; or
30 (iii) such a special administrator of the body; or
31 (iv) such an administrator of the body; or
32 (v) an administrator of such a deed of company
33 arrangement or corporation arrangement; or
34 (vi) a person administering such a compromise or
35 arrangement; or
36 (vii) a liquidator or provisional liquidator of the body; and

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- 1 (l) the ownership of shares in, debentures of, and interests in a
2 managed investment scheme made available by, the body;
3 and
4 (m) the power of persons:
5 (i) to exercise, or to control the exercise of, the rights to
6 vote attached to shares in the body; or
7 (ii) to dispose of, or to exercise control over the disposal of,
8 such shares; and
9 (n) if the body is an Aboriginal and Torres Strait Islander
10 corporation—the power of persons to exercise, or to control
11 the exercise of, the rights to vote attached to membership of
12 the corporation; and
13 (o) matters concerned with the ascertainment of the persons who
14 are or have been financially interested in the success or
15 failure, or apparent success or failure, of the body or are or
16 have been able to control or materially to influence the policy
17 of the body; and
18 (p) the circumstances under which a person acquired or disposed
19 of, or became entitled to acquire or dispose of, shares in,
20 debentures of, or interests in a managed investment scheme
21 made available by, the body; and
22 (q) where the body has made available interests in a managed
23 investment scheme—any matters concerning the financial or
24 business undertaking, scheme, common enterprise or
25 investment contract to which the interests relate; and
26 (r) matters relating to or arising out of the audit of, or working
27 papers or reports of an auditor concerning, any matters
28 referred to in a preceding paragraph.

29 ***age of members requirement*** has the meaning given by
30 section 29-10.

31 ***AGM*** means an annual general meeting of an Aboriginal and
32 Torres Strait Islander corporation.

33 ***amount*** includes a nil amount and zero.

34 ***applied provision*** means a provision of the Corporations Act that is
35 applied in relation to Aboriginal and Torres Strait Islander
36 corporations by a provision of this Act.

Section 700-1

- 1 **approved form** has the meaning given by paragraph 638-1(6)(b).
- 2 **ASIC** means the Australian Securities and Investments
3 Commission.
- 4 **associate** has the meaning given by Division 686.
- 5 **audit** means an audit conducted for the purposes of this Act.
- 6 **audit company** means a company that consents to be appointed, or
7 is appointed, as auditor of an Aboriginal and Torres Strait Islander
8 corporation.
- 9 **audited body**, in relation to an audit of an Aboriginal and Torres
10 Strait Islander corporation, means the corporation in relation to
11 which the audit is, or is to be, conducted.
- 12 **audit firm** means a firm that consents to be appointed, or is
13 appointed, as auditor of an Aboriginal and Torres Strait Islander
14 corporation.
- 15 **auditing standard** means:
- 16 (a) a standard in force under section 336 of the Corporations
17 Act; or
- 18 (b) a provision of such a standard as it so has effect.
- 19 **auditor independence requirements of this Act** means the
20 requirements of:
- 21 (a) Subdivision 339-D; and
- 22 (b) the regulations made for the purposes of that Subdivision;
23 and
- 24 (c) the Corporations Act auditor independence provisions as
25 applied by section 339-75 of this Act.
- 26 **Australia**, when used in a geographical sense, does not include an
27 external Territory.
- 28 Note: Paragraph 17(a) of the *Acts Interpretation Act 1901* would otherwise
29 provide that **Australia** included the Territory of Christmas Island and
30 the Territory of Cocos (Keeling) Islands.
- 31 **Australian ADI** means:

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- 1 (a) an ADI (short for authorised deposit-taking institution)
2 within the meaning of the *Banking Act 1959*; and
3 (b) a person who carries on State banking within the meaning of
4 paragraph 51(xiii) of the Constitution.

5 ***Australian Capital Territory*** includes the Jervis Bay Territory.

6 ***authorised audit company*** means a company registered under
7 Part 9.2A of the Corporations Act.

8 ***authorised disclosure*** has the meaning given by subsections
9 604-25(3), (4) and (7).

10 ***authorised officer*** means a person appointed by the Registrar
11 under section 447-1 for the purposes of a provision in which the
12 expression occurs.

13 ***authorised trustee corporation*** has the same meaning as in the
14 Corporations Act.

15 ***authorised use or disclosure*** has the meaning given by subsections
16 604-25(1) and (2).

17 ***benefit*** means any benefit, whether by way of payment of cash or
18 otherwise.

19 ***body*** means a body corporate or an unincorporated body and
20 includes, for example, a society or association.

21 ***body corporate*** includes a body corporate that is being wound up
22 or has been dissolved.

23 ***books*** includes:

- 24 (a) a register; and
25 (b) any other record of information; and
26 (c) financial reports or financial records; and
27 (d) a document;

28 however compiled, recorded or stored.

29 ***business affairs*** of an entity has a meaning affected by
30 sections 694-15, 694-20, 694-25 and 694-30.

Section 700-1

- 1 ***business day*** means a day that is not a Saturday, a Sunday or a
2 public holiday or bank holiday in the place concerned.
- 3 ***business judgment*** has the meaning given by subsection 265-1(3).
- 4 ***cause*** includes procure.
- 5 ***certified*** means:
- 6 (a) in relation to a copy of, or extract from, a document—
7 certified by a statement in writing to be a true copy of, or
8 extract from, the document; or
- 9 (b) in relation to a translation of a document—certified by a
10 statement in writing to be a correct translation of the
11 document into English.
- 12 ***changed***, in relation to an Aboriginal and Torres Strait Islander
13 corporation's constitution, has the meaning given by subsection
14 69-10(1).
- 15 ***civil matter*** means a matter other than a criminal matter.
- 16 ***civil penalty order*** means any of the following:
- 17 (a) a declaration of contravention under section 386-1;
18 (b) a pecuniary penalty order under section 386-10;
19 (c) a compensation order under section 386-15;
20 (d) an order under section 279-15 disqualifying a person from
21 managing corporations.
- 22 ***civil penalty provision*** has the meaning given by subsection
23 386-1(1).
- 24 ***closely-held subsidiary*** has the meaning given by subsection
25 287-5(2).
- 26 ***coastal sea*** means:
- 27 (a) the territorial sea of Australia; and
28 (b) the sea on the landward side of the territorial sea of Australia
29 and not within the limits of a State or internal Territory;
30 and includes the airspace over, and the sea-bed and subsoil
31 beneath, any such sea.

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1 **common law holder** has the same meaning as in the Native Title
2 Act.

3 **Commonwealth authority** means an authority or other body
4 (whether incorporated or not) that is established or continued in
5 existence by or under an Act.

6 **company** means a body registered as a company under the
7 Corporations Act.

8 **connected entity** of a corporation means:

- 9 (a) a body corporate that is, or has been, related to the
10 corporation; or
11 (b) an entity that is, or has been, connected (as defined by
12 section 694-45) with the corporation.

13 **consolidated entity** means an Aboriginal and Torres Strait Islander
14 corporation together with all the entities it is required to include in
15 a consolidated financial report.

16 **constitution** has the meaning given by subsection 69-1(2).

17 **constitutional change** has the meaning given by subsection
18 69-10(2).

19 **contributory** of an Aboriginal and Torres Strait Islander
20 corporation means:

- 21 (a) a person liable as a member, or past member, to contribute to
22 the property of the corporation if it is wound up; and
23 (b) before the final determination of the persons who are
24 contributories because of paragraph (a)—a person alleged to
25 be such a contributory.

26 **control** has the meaning given by section 689-25.

27 **Corporations Act** means the *Corporations Act 2001*.

28 **Corporations Act administration provisions** has the meaning
29 given by subsection 521-1(4).

30 **Corporations Act auditor independence provisions** has the
31 meaning given by subsection 339-75(4).

Section 700-1

- 1 ***Corporations Act corporation*** means a corporation within the
2 meaning of the *Corporations Act 2001*.
- 3 ***Corporations Act employees' entitlements provisions*** has the
4 meaning given by subsection 536-1(3).
- 5 ***Corporations Act insolvent trading provisions*** has the meaning
6 given by subsection 531-1(3).
- 7 ***Corporations Act pre-winding up provisions*** has the meaning
8 given by subsection 526-40(3).
- 9 ***Corporations Act receiver provisions*** has the meaning given by
10 subsection 516-1(3).
- 11 ***Corporations Act winding up provisions*** has the meaning given by
12 subsection 526-35(3).
- 13 ***court*** has the meaning given by section 694-35.
- 14 ***Court*** has the meaning given by section 694-35.
- 15 ***court of summary jurisdiction*** means any justice or justices of the
16 peace or other magistrate sitting as a court for the making of
17 summary orders or the summary punishment of offences:
18 (a) under a law of the Commonwealth or of a State or Territory;
19 or
20 (b) by virtue of his or her commission or their commissions.
- 21 ***cover the matters provided for in the replaceable rules***, in relation
22 to the internal governance rules of an Aboriginal and Torres Strait
23 Islander corporation, has the meaning given by section 66-5.
- 24 ***current reporting obligations*** has the meaning given by subsection
25 358-10(1).
- 26 ***daily newspaper*** means a newspaper that is ordinarily published on
27 each day that is a business day in the place where the newspaper is
28 published (whether or not the newspaper is ordinarily published on
29 other days).
- 30 ***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 corporation's document access address under section 42-20.

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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- 1 (e) for a trust that has only 1 trustee—the trustee;
2 (f) for a trust that has more than 1 trustee—the trustees together.
3 Otherwise, entity has the meaning given by section 694-40.

4 ***examinable affairs*** of an Aboriginal and Torres Strait Islander
5 corporation means:

- 6 (a) the promotion, formation, management, administration or
7 winding up of the corporation; or
8 (b) any other affairs of the corporation (including anything that
9 is included in the corporation's affairs because of the
10 definition of affairs in this section); or
11 (c) the business affairs of a connected entity of the corporation,
12 in so far as they are, or appear to be, relevant to:
13 (i) the corporation; or
14 (ii) anything that is included in the corporation's
15 examinable affairs because of paragraph (a) or (b).

16 ***examinable assets and liabilities*** of an entity means all of the
17 following:

- 18 (a) the entity's property and assets:
19 (i) whether present or future; and
20 (ii) whether held alone or jointly with any other person or
21 persons; and
22 (iii) whether or not held as agent, bailee or trustee;
23 (b) the entity's liabilities:
24 (i) whether present or future; and
25 (ii) whether actual or contingent; and
26 (iii) whether owed alone or jointly with any other person or
27 persons; and
28 (iv) whether or not owed as trustee.

29 ***examinable operations*** of an entity means all of the following:

- 30 (a) the entity's business, trading, transactions and dealings:
31 (i) whether alone or jointly with any other entity or entities;
32 and
33 (ii) whether or not as agent, bailee or trustee;
34 (b) the entity's profits, income and receipts;

- 1 (c) the entity's losses, outgoings and expenditure.
- 2 ***excluded winding up provisions*** of the Corporations Act has the
3 meaning given by subsection 526-35(3).
- 4 ***expert***, in relation to a matter, means a person whose profession or
5 reputation gives authority to a statement made by him or her in
6 relation to that matter.
- 7 ***extend***, in relation to a period:
- 8 (a) includes further extend; and
9 (b) has a meaning affected by section 694-50.
- 10 ***Family Court*** means the Family Court of Australia.
- 11 ***Federal Court*** means the Federal Court of Australia.
- 12 ***financial benefit*** has a meaning that is affected by section 293-5.
- 13 ***financial records*** includes:
- 14 (a) invoices, receipts, orders for the payment of money, bills of
15 exchange, cheques, promissory notes and vouchers; and
16 (b) documents of prime entry; and
17 (c) working papers and other documents needed to explain:
18 (i) the methods by which a financial report is made up; and
19 (ii) adjustments to be made in preparing a financial report.
- 20 ***financial report*** means a financial report prepared under Chapter 7.
- 21 ***financial year*** has the meaning given by subsections 333-5(4) and
22 (5).
- 23 ***general law*** means the principles and rules of the common law and
24 equity.
- 25 ***general meeting*** means a general meeting of the members of an
26 Aboriginal and Torres Strait Islander corporation.
- 27 ***general report*** means a report that section 330-1 requires an
28 Aboriginal and Torres Strait Islander corporation to prepare.
- 29 ***giving a financial benefit*** has the meaning given by section 293-5.

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- 1 ***giving information*** has a meaning affected by section 694-1.
- 2 ***have***, in relation to information, includes be in possession of the
3 information.
- 4 ***holding body corporate***, in relation to a body corporate, means a
5 body corporate of which the first body corporate is a subsidiary.
- 6 ***ICN***: see ***Indigenous Corporation Number***.
- 7 ***Indigeneity requirement*** has the meaning given by section 29-5.
- 8 ***Indigenous Corporation Number*** or ***ICN*** means the number given
9 by the Registrar to an Aboriginal and Torres Strait Islander
10 corporation on registration under subsection 26-1(2).
- 11 ***individual auditor*** means an individual who consents to be
12 appointed, or is appointed, as auditor of an Aboriginal and Torres
13 Strait Islander corporation.
- 14 ***information*** includes complaint.
- 15 ***insolvent*** has the meaning given by subsection 694-80(2).
- 16 ***internal governance framework rules*** has the meaning given by
17 subsection 72-5(7).
- 18 ***internal governance rules*** has the meaning given by section 63-1.
- 19 ***internal governance rules requirements*** means the requirements
20 set out in Division 66.
- 21 ***involved in***, in relation to a contravention, has the meaning given
22 by section 694-55.
- 23 ***Judge*** means a judge of the Court.
- 24 ***judgment*** means a judgment, decree or order, whether final or
25 interlocutory.
- 26 ***lead auditor*** has the meaning given by subsection 339-20(1).
- 27 ***lodge*** means lodge with the Registrar.

Section 700-1

- 1 **lower court** means a court of a State or Territory that is not a
2 superior court.
- 3 **member** of an Aboriginal and Torres Strait Islander corporation
4 has the meaning given by section 138-1.
- 5 **minimum number of members requirement** has the meaning given
6 by section 29-1.
- 7 **modifications** includes additions, omissions and substitutions.
- 8 **money** includes a payment order.
- 9 **name requirement** means a requirement under section 85-1.
- 10 **national business names register** means the record or records of
11 information identified in a notice under subsection 147(5) of the
12 Corporations Act.
- 13 **national newspaper** means a daily newspaper that circulates
14 generally in each State and each internal Territory.
- 15 **native title** has the same meaning as in the Native Title Act.
- 16 **Native Title Act** means the *Native Title Act 1993*.
- 17 **Native Title legislation** means:
18 (a) the Native Title Act and any regulations made under that Act;
19 and
20 (b) a prescribed law, or a prescribed provision of a law, of the
21 Commonwealth or of a State or Territory.
- 22 **Native Title legislation obligations** means the following
23 obligations imposed by the Native Title legislation on a registered
24 native title body corporate:
25 (a) an obligation to consult with the common law holders of
26 native title;
27 (b) an obligation to act in accordance with the directions of the
28 common law holders of native title;
29 (c) an obligation to act only with the consent of the common law
30 holders of native title;

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1 (d) an obligation to take any other action in relation to the
2 common law holders of native title.

3 ***negotiable instrument***, in relation to an Aboriginal and Torres
4 Strait Islander corporation, means:

5 (a) a bill of exchange, promissory note, cheque or other
6 negotiable instrument; or

7 (b) an indorsement on, or order in, a bill of exchange,
8 promissory note, cheque or other negotiable instrument; or

9 (c) a letter of credit;

10 of, or purporting to be issued or signed by or on behalf of, the
11 corporation.

12 ***observer*** means a person appointed under section 158-5.

13 ***offence against this Act*** includes an offence against Chapter 7 of
14 the *Criminal Code* that relates to this Act.

15 ***officer*** of an Aboriginal and Torres Strait Islander corporation has
16 the meaning given by section 683-1.

17 ***officer of the Commonwealth*** has the same meaning as in
18 paragraph 75(v) of the Constitution.

19 ***on behalf of*** includes on the instructions of.

20 ***party***, in relation to a transaction that has been completed, given
21 effect to, or terminated, includes a person who was a party to the
22 transaction.

23 ***person involved in the conduct of an audit*** has the meaning given
24 by subsection 339-90(6).

25 ***possession*** has a meaning affected by section 694-60.

26 ***power*** includes an authority.

27 ***pre-incorporation requirement*** has the meaning given by
28 section 29-15.

29 ***premises*** includes:

30 (a) a structure, building, aircraft, vehicle or vessel; and

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- 1 (b) any land or place (whether enclosed or built on or not); and
2 (c) a part of a structure, building, aircraft, vehicle or vessel or of
3 such a place.

4 **proceeding** includes:

- 5 (a) a proceeding in a court; or
6 (b) a proceeding or hearing before, or an examination by or
7 before, a tribunal;

8 whether the proceeding, hearing or examination is of a civil,
9 administrative, criminal, disciplinary or other nature.

10 **procure** includes cause.

11 **produce** includes (except in Chapter 10) permits access to.

12 **property** means any legal or equitable estate or interest (whether
13 present or future and whether vested or contingent) in real or
14 personal property of any description and includes a thing in action.

15 **proposed reporting obligations** has the meaning given by
16 subsection 358-10(2).

17 **protected information** has the meaning given by section 604-5.

18 **prove** includes establish in any way (for example, but without
19 limitation, through the operation of a presumption for which this
20 Act or a law of a State or Territory provides).

21 **provision** of a law includes:

- 22 (a) a subsection, section, Subdivision, Division, Part or Chapter
23 of the law; and
24 (b) a Schedule, or an item in a Schedule, to the law.

25 **public authority** means an authority or body (whether a body
26 corporate or not) established or incorporated for a public purpose
27 by a law of the Commonwealth or of a State or Territory and
28 includes a body corporate incorporated under a law of the
29 Commonwealth or of a State or Territory being a body corporate in
30 which the Commonwealth or a State or Territory has a controlling
31 interest.

32 **public document** has the meaning given by section 694-65.

Section 700-1

1 **public money** includes the meaning given by subsection 487-10(3).

2 **receiver and manager** has a meaning affected by section 694-70.

3 **register** means register under this Act.

4 **registered company auditor** means a person registered as an
5 auditor under Part 9.2 of the Corporations Act.

6 **registered native title body corporate** has the same meaning as in
7 the Native Title Act.

8 **registered office** of an Aboriginal and Torres Strait Islander
9 corporation means the corporation's registered office under
10 section 42-15.

11 **Register of Aboriginal and Torres Strait Islander Corporations**
12 means the register kept under paragraph 418-1(a).

13 **Register of Disqualified Officers** means the register kept under
14 paragraph 418-1(b).

15 **register of former members** means a register provided for in
16 section 180-10.

17 **register of members** means a register provided for in
18 section 180-1.

19 **Registrar** means the Registrar of Aboriginal and Torres Strait
20 Islander Corporations appointed under section 653-1.

21 **related body corporate**, in relation to a body corporate, means a
22 body corporate that is related to the first-mentioned body by virtue
23 of section 689-20.

24 **related party** has the meaning given by section 293-1.

25 **remuneration** of an officer or employee of an Aboriginal and
26 Torres Strait Islander corporation. A benefit given to an officer or
27 employee of an Aboriginal and Torres Strait Islander corporation is
28 **remuneration** if and only if the benefit, were it received by a
29 director of the corporation, would be remuneration of the director
30 for the purposes of an accounting standard that deals with
31 disclosure in companies' financial reports of information about

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1 directors' remuneration. For the purposes of this definition, the
2 following are not officers of a corporation:

- 3 (a) a receiver, or receiver and manager, of the property of the
4 corporation;
5 (b) an administrator of the corporation;
6 (c) an administrator of a deed of company arrangement executed
7 by the corporation;
8 (d) a liquidator of the corporation;
9 (e) a trustee or other person administering a compromise or
10 arrangement made between the corporation and someone
11 else;
12 (f) a special administrator.

13 **reproduction**, in relation to a document, means a machine-copy of
14 the document or a print made from a negative of the document.

15 **required to be conducted in accordance with the auditing**
16 **standards** has the meaning given by section 339-15.

17 **required to comply with the accounting standards** has the
18 meaning given by section 339-10.

19 **result** includes:

- 20 (a) when used as a verb—result indirectly; and
21 (b) when used as a noun—an indirect result.

22 **reviewable decision** has the meaning given by section 617-1.

23 **review auditor** has the meaning given by subsection 339-20(2).

24 **rules** means:

- 25 (a) rules of the Federal Court; or
26 (b) rules of the Supreme Court of a State or internal Territory;
27 as the case requires.

28 **section 333-5 report** means a report that an Aboriginal and Torres
29 Strait Islander corporation is required to prepare by regulations
30 made for the purposes of section 333-5.

31 **securities** has the meaning given by section 694-75.

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1 **senior manager** of an Aboriginal and Torres Strait Islander
2 corporation means a person (other than a director or secretary of
3 the corporation) who:

- 4 (a) makes, or participates in making, decisions that affect the
5 whole, or a substantial part, of the business of the
6 corporation; or
7 (b) has the capacity to affect significantly the corporation's
8 financial standing.

9 **solvent** has the meaning given by subsection 694-80(1).

10 **special administrator** means a person appointed under subsection
11 490-1(1).

12 **special resolution** means, in relation to an Aboriginal and Torres
13 Strait Islander corporation, a resolution:

- 14 (a) of which notice as set out in paragraph 201-35(c) has been
15 given; and
16 (b) that has been passed by at least 75% of the votes cast by
17 members entitled to vote on the resolution.

18 **State Family Court**, in relation to a State, means a court of that
19 State to which section 41 of the *Family Law Act 1975* applies
20 because of a Proclamation made under subsection 41(2) of that
21 Act.

22 **State or Territory court** means a court of a State, the Australian
23 Capital Territory or the Northern Territory.

24 **State or Territory Supreme Court** means the Supreme Court of:

- 25 (a) a State; or
26 (b) the Australian Capital Territory; or
27 (c) the Northern Territory.

28 **subsection 586-5(3) proceeding** means a proceeding with respect
29 to a matter referred to in subsection 586-5(3).

30 **subsidiary**, in relation to a body corporate, means a body corporate
31 that is a subsidiary of the first-mentioned body by virtue of
32 Division 689.

Section 700-1

1 **superior court** means the Federal Court of Australia, the Supreme
2 Court of a State or Territory, the Family Court or a State Family
3 Court.

4 **superior court matter** means a civil matter that this Act clearly
5 intends (for example, by use of the expression **the Court**) to be
6 dealt with only by a superior court.

7 **territorial sea** has the same meaning as in the *Seas and Submerged*
8 *Lands Act 1973*.

9 **this Act** includes:

- 10 (a) the regulations; and
11 (b) any provision of the Corporations Act as applied by a
12 provision of this Act.

13 **Torres Strait Islander** means a descendant of an Indigenous
14 inhabitant of the Torres Strait Islands.

15 **unclaimed property** has the meaning given by section 551-1.

16 **under special administration** has the meaning given by
17 section 487-25.

18 **unincorporated body** includes:

- 19 (a) an unincorporated association; and
20 (b) an unincorporated society.

21 **wholly-owned subsidiary**, in relation to a body corporate (the
22 **holding body corporate**), means a body corporate none of whose
23 members is a person other than:

- 24 (a) the holding body corporate; or
25 (b) a nominee of the holding body corporate; or
26 (c) a subsidiary of the holding body corporate, being a subsidiary
27 none of whose members is a person other than:
28 (i) the holding body corporate; or
29 (ii) a nominee of the holding body corporate; or
30 (d) a nominee of such a subsidiary.