

2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Corporations Amendment (Aboriginal
and Torres Strait Islander Corporations)
Bill 2006**

No. , 2006

(Families, Community Services and Indigenous Affairs)

**A Bill for an Act to amend the *Corporations Act
2001*, and for related purposes**

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1 **A Bill for an Act to amend the *Corporations Act***
2 ***2001, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

- 8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	At the same time as the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> commences.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2 **Schedule 1—Amendments of the Corporations**
3 **Act 2001 relating to Aboriginal and**
4 **Torres Strait Islander corporations**
5

6 *Corporations Act 2001*

7 **1 Section 9**

8 Insert:

9 *Aboriginal and Torres Strait Islander corporation* means a
10 corporation registered under the *Corporations (Aboriginal and*
11 *Torres Strait Islander) Act 2006.*

12 **2 Section 9 (definition of Part 5.7 body)**

13 Repeal the definition, substitute:

14 *Part 5.7 body* means:

- 15 (a) a registrable body that is a registrable Australian body and:
16 (i) is registered under Division 1 of Part 5B.2; or
17 (ii) is not registered under that Division but carries on
18 business in this jurisdiction and outside its place of
19 origin; or
20 (b) a registrable body that is a foreign company and:
21 (i) is registered under Division 2 of Part 5B.2; or
22 (ii) is not registered under that Division but carries on
23 business in Australia; or
24 (c) a partnership, association or other body (whether a body
25 corporate or not) that consists of more than 5 members and
26 that is not a registrable body;

27 but does not include an Aboriginal and Torres Strait Islander
28 corporation.

29 Note: The winding up of Aboriginal and Torres Strait Islander corporations
30 is dealt with in Part 11-5 of the *Corporations (Aboriginal and Torres*
31 *Strait Islander) Act 2006.*

32 **3 At the end of section 57A**

33 Add:

1 (3) To avoid doubt, an Aboriginal and Torres Strait Islander
2 corporation is taken to be a *corporation* for the purposes of this
3 Act.

4 Note: Various provisions of this Act that generally apply to corporations do
5 not apply to Aboriginal and Torres Strait Islander corporations
6 because of express provisions to that effect: see section 190B,
7 subsection 197(5), section 206HB and subsections 1309(6), 1318(5),
8 1321(2) and 1335(3).

9 **4 At the end of Division 1 of Part 2D.1**

10 Add:

11 **190B Division does not apply to Aboriginal and Torres Strait**
12 **Islander corporations**

13 This Division does not apply to a corporation that is an Aboriginal
14 and Torres Strait Islander corporation.

15 Note: Division 265 of the *Corporations (Aboriginal and Torres Strait*
16 *Islander) Act 2006* deals with the general duties of directors,
17 secretaries, officers and employees of Aboriginal and Torres Strait
18 Islander corporations.

19 **5 At the end of section 197**

20 Add:

21 (5) This section does not apply to a corporation that is an Aboriginal
22 and Torres Strait Islander corporation.

23 Note: Section 271-1 of the *Corporations (Aboriginal and Torres Strait*
24 *Islander) Act 2006* deals with the liability of directors of Aboriginal
25 and Torres Strait Islander corporations for debts and other liabilities
26 incurred by those corporations as trustee.

27 **6 At the end of section 206B**

28 Add:

29 (5) A person is disqualified from managing corporations at a particular
30 time if the person is, at that time, disqualified from managing
31 Aboriginal and Torres Strait Islander corporations under Part 6-5
32 of the *Corporations (Aboriginal and Torres Strait Islander) Act*
33 *2006*.

34 **7 Subsection 206BA(1)**

35 Repeal the subsection, substitute:

- 1 (1) This section applies if:
2 (a) under subsection 206B(1); or
3 (b) as a result of the operation of subsection 279-5(1) of the
4 *Corporations (Aboriginal and Torres Strait Islander) Act*
5 *2006* and subsection 206B(5) of this Act;
6 a person is disqualified from managing corporations on being
7 convicted of an offence.

8 **Paragraph 206C(1)(a)**

9 Repeal the paragraph, substitute:

- 10 (a) a declaration is made under:
11 (i) section 1317E (civil penalty provision) that the person
12 has contravened a corporation/scheme civil penalty
13 provision; or
14 (ii) section 386-1 (civil penalty provision) of the
15 *Corporations (Aboriginal and Torres Strait Islander)*
16 *Act 2006* that the person has contravened a civil penalty
17 provision (within the meaning of that Act); and

18 **9 At the end of section 206C**

19 Add:

- 20 (3) To avoid doubt, the reference in paragraph (2)(a) to a corporation
21 includes a reference to an Aboriginal and Torres Strait Islander
22 corporation.

23 **10 After subsection 206D(1)**

24 Insert:

- 25 (1A) To avoid doubt, the references in paragraphs (1)(a) and (b) to a
26 corporation include references to an Aboriginal and Torres Strait
27 Islander corporation.

28 **11 Paragraph 206D(2)(a)**

29 Repeal the paragraph, substitute:

- 30 (a) a Court orders the corporation to be wound up under:
31 (i) section 459B of this Act; or
32 (ii) section 526-1 of the *Corporations (Aboriginal and*
33 *Torres Strait Islander) Act 2006*;

1 because the Court is satisfied that the corporation is
2 insolvent; or

3 **12 Paragraph 206D(2)(g)**

4 After “Part 5.1”, insert “(including that Part as applied by section 45-1
5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*)”.

6 **13 Paragraph 206D(2)(h)**

7 After “subsection 533(1)”, insert “(including that subsection as applied
8 by section 526-35 of the *Corporations (Aboriginal and Torres Strait
9 Islander) Act 2006*)”.

10 **14 After subsection 206D(2)**

11 Insert:

12 (2A) The reference in paragraph (2)(c) to a deed of company
13 arrangement includes a reference to a deed of corporation
14 arrangement (within the meaning of the *Corporations (Aboriginal
15 and Torres Strait Islander) Act 2006*).

16 (2B) For the purposes of subsection (1), a person is an *officer* of an
17 Aboriginal and Torres Strait Islander corporation if the person is an
18 officer of that corporation within the meaning of the *Corporations
19 (Aboriginal and Torres Strait Islander) Act 2006*.

20 **15 At the end of section 206D**

21 Add:

22 (4) To avoid doubt, the reference in paragraph (3)(a) to a corporation
23 includes a reference to an Aboriginal and Torres Strait Islander
24 corporation.

25 **16 Subparagraph 206E(1)(a)(i)**

26 After “this Act”, insert “or the *Corporations (Aboriginal and Torres
27 Strait Islander) Act 2006*”.

28 **17 Subparagraph 206E(1)(a)(ii)**

29 After “this Act”, insert “or the *Corporations (Aboriginal and Torres
30 Strait Islander) Act 2006*”.

31 **18 After subsection 206E(1)**

Schedule 1 Amendments of the Corporations Act 2001 relating to Aboriginal and Torres Strait Islander corporations

1 Note 1: Subsection 279-5(5) of the *Corporations (Aboriginal and Torres*
2 *Strait Islander) Act 2006* provides that a person who is disqualified
3 from managing corporations under this Part will be automatically
4 disqualified under Part 6-5 of that Act from managing Aboriginal and
5 Torres Strait Islander corporations.

6 Note 2: Similarly, subsection 206B(5) of this Act provides that a person who
7 is disqualified from managing Aboriginal and Torres Strait Islander
8 corporations under Part 6-5 of the *Corporations (Aboriginal and*
9 *Torres Strait Islander) Act 2006* will be automatically disqualified
10 under this Part from managing corporations.

11 **24 Section 417**

12 Before “Except”, insert “(1)”.

13 **25 At the end of section 417**

14 Add:

15 (2) To avoid doubt, this Part does not apply, of its own force, to the
16 property of a corporation that is an Aboriginal and Torres Strait
17 Islander corporation.

18 Note 1: The definition of *property* in section 416 does not define that term in
19 relation to a corporation that is an Aboriginal and Torres Strait
20 Islander corporation.

21 Note 2: Section 516-1 of the *Corporations (Aboriginal and Torres Strait*
22 *Islander) Act 2006* applies this Part to a corporation that is an
23 Aboriginal and Torres Strait Islander corporation with the
24 modifications provided for in that section.

25 **26 Section 601AI**

26 Omit “a State or Territory”, substitute “the Commonwealth, or of a
27 State or Territory,”.

28 **27 Section 601AI**

29 After “its registration” (last occurring), insert “to registration under the
30 law of a State or Territory”.

31 **28 Paragraph 601AJ(1)(a)**

32 After “the law of the”, insert “Commonwealth or of the”.

33 **29 Paragraph 601AK(c)**

34 After “the law of the”, insert “Commonwealth or of the”.

35 **30 Paragraph 601AL(1)(b)**

1 After “the law of the”, insert “Commonwealth or of the”.

2 **31 At the end of section 1309**

3 Add:

4 (6) Paragraphs (1)(a) and (b) do not apply in relation to a corporation
5 that is an Aboriginal and Torres Strait Islander corporation.

6 Note: Similar offences are created in relation to Aboriginal and Torres Strait
7 Islander corporations under section 561-5 of the *Corporations*
8 (*Aboriginal and Torres Strait Islander*) Act 2006.

9 **32 At the end of section 1318**

10 Add:

11 (5) This section does not apply to a corporation that is an Aboriginal
12 and Torres Strait Islander corporation.

13 Note: Similar provision is made in relation to Aboriginal and Torres Strait
14 Islander corporations under section 576-1 of the *Corporations*
15 (*Aboriginal and Torres Strait Islander*) Act 2006.

16 **33 Section 1321**

17 Before “A person”, insert “(1)”.

18 **34 At the end of section 1321**

19 Add:

20 (2) Paragraph (1)(b) does not apply to a corporation that is an
21 Aboriginal and Torres Strait Islander corporation.

22 Note: Similar provision is made in relation to Aboriginal and Torres Strait
23 Islander corporations under section 576-10 of the *Corporations*
24 (*Aboriginal and Torres Strait Islander*) Act 2006.

25 **35 After subsection 1335(1)**

26 Insert:

27 (1A) Subsection (1) does not apply to a corporation that is an Aboriginal
28 and Torres Strait Islander corporation.

29 Note: Similar provision is made in relation to Aboriginal and Torres Strait
30 Islander corporations under section 581-20 of the *Corporations*
31 (*Aboriginal and Torres Strait Islander*) Act 2006.