



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

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Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006

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

Date introduced: 14 September 2006

House: House of Representatives

Portfolio: Families, Community Services and Indigenous Affairs

Commencement: The operative schedules of both Bills commence on the same day as the commencement of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Purpose

The purpose of these Bills is to make amendments to the *Corporations Act 2001* required for compatibility with the new regime for Aboriginal and Torres Strait Islander corporations under the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 (CATSI Bill), and to make associated transitional and consequential amendments to other Acts.

Background

These Bills supplement the CATSI Bill, introduced last year, but yet to commence. A discussion of the original CATSI Bill can be found in the relevant Bills Digest.¹ All three Bills have been subject to review by the Senate Standing Committee on Legal and Constitutional Affairs, which recently released its report.² In its majority report, the Committee recommended that:

Recommendation 1

5.5 The committee recommends that the government should monitor funding to assist corporations with the transition to the new regime and make provision in the 2007-08 budget to increase this funding if necessary.

Recommendation 2

Warning:

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

5.6 The committee recommends the government consider restricting to voting members the right of members to request directors call a general meeting and amend sections 201-5 and 201-10 of the 2005 Bill accordingly.

Recommendation 3

5.7 The committee recommends the government monitor the practical interaction of the bills with other legislation, particularly the Native Title Act, and at the end of the two-year transition period report to the Parliament on this matter.

Recommendation 4

5.8 Subject to the preceding recommendations, the committee recommends that the Senate pass the bills.³

Labor members of the Committee (Senators Crossin, Ludwig and Kirk) made a separate recommendation that:

To ensure that the impact of the legislation is closely monitored and with appropriate transparency, the Labor Senators of the committee recommend that for the next three financial years ORAC [Office of the Registrar of Aboriginal Corporations] include in its annual report a review of the operation of the new legislation and results of a statistical survey of stakeholder satisfaction.⁴

Main provisions

Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006

Schedule 1 – Amendment of the Native Title Act 1993

The *Native Title Act 1993* makes reference to ‘prescribed bodies corporate’ (PBCs). These are bodies established under that Act to perform various functions required under the native title regime. PBCs are currently required to be registered under the *Aboriginal Councils and Associations Act 1976* (ACA Act). On passage of the CATSI Bill, they will need to be registered under it. Schedule 1 makes the necessary changes in the Native Title Act to reflect the new requirements of the CATSI Bill and the repeal of the ACA Act.

Schedule 2 – Repeal and Amendment of other Acts

Schedule 2 repeals the ACA Act and makes consequential amendments to several other Acts, substituting references to the ACA Act with references to the CATSI Bill.

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Schedule 3 – Matters pending under old Act immediately before commencement

This schedule provides for the transitional matters necessary upon conversion from one incorporation regime to another, such as pending applications for incorporation, continuity of receivership and administrations, continuity of legal status etc.

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

All of the amendments relate to the Corporations Act 2001.

Schedule 1, items 2, 24 and 25 amend the Corporations Act so as to make plain that the provisions of that Act relating to winding up and receivership of corporations do not apply to corporations registered under the Corporations (Aboriginal and Torres Strait Islander) Bill 2006 (ATSI corporations), or, in some instances, apply only as modified by the CATSI Act.

Schedule 1, item 3 amends section 57A of the Corporations Act to make plain that ATSI corporations are covered by the provisions of that Act.

Schedule 1, items 4 and 5 amend the Corporations Act so as to exclude ATSI corporations from the provisions of that Act relating to director's duties. The CATSI Bill has its own scheme for such duties and the amendment is directed at preventing duplication.

Schedule 1, items 6 to 23 make amendments necessary to align the consequences of disqualification from managing corporations under the Corporations Act with the regime for disqualification under the CATSI Bill.

Schedule 1, items 26 to 30 contain technical amendments aimed at facilitating transfers of a company's registration from the Corporations Act to the CATSI Bill.

Endnotes

1. <http://www.aph.gov.au/library/pubs/bd/2005-06/06bd082.htm>
2. The Senate Standing Committee on Legal and Constitutional Affairs, Corporations (Aboriginal and Torres Strait Islander) Bill 2005 [Provisions] and Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006 [Provisions] Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006 [Provisions], October 2006.
[http://www.aph.gov.au/Senate/committee/legcon_ctte/corporations/index.htm]

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3. *ibid.*, p. ix
4. *ibid.*, p. 40

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