



The Bill and the Corporations Act —some differences

On 23 June 2005 the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 was introduced into the Australian Parliament. It is the result of a review of the *Aboriginal Councils and Associations Act 1976* (the ACA Act) in 2001 and largely reflects its recommendations.

If agreed to by the Australian Parliament, the Bill will start on 1 July 2006, replacing the ACA Act. Some parts of the Bill are likely to start after 1 July next year to make it easier for corporations to switch over to it. More information about this will be available soon.

Consistent with a key recommendation of the review, the Bill provides Indigenous people with the key facilities of a modern incorporation statute by aligning many of its provisions with the *Corporations Act 2001*. However, the Bill differs from the Corporations Act in a number of important ways. These differences reflect the fact that the Bill is a special measure to address the special needs and circumstances of Indigenous people and is not, like the Corporations Act, a mainstream incorporation Act designed to facilitate trade and commerce. Some of the more important differences between the Bill and the Corporations Act are discussed below.

Special measure

Corporations Act

The Corporations Act is supported by the Commonwealth's corporations power and the powers referred to it by the state parliaments in 2001.

Corporations (Aboriginal & Torres Strait Islander) Bill

The Bill will be supported by the Commonwealth's race power being a special measure for the benefit of Aboriginal and Torres Strait Islander peoples.

Members

Corporations Act

For some types of companies, a member may have a proprietary interest associated with being a member, that is, ownership of shares in the company.

Corporations (Aboriginal & Torres Strait Islander) Bill

Members of an Aboriginal and Torres Strait Islander corporation will not have any proprietary interest in their corporation. These corporations will be similar to public companies limited by guarantee where the liability of members is limited to an agreed amount. A member will normally be an Indigenous person aged over 15. The corporation may impose other restrictions on membership—e.g. being part of a particular Indigenous group.

Corporations will be able to distribute profits to members if permitted by the corporate constitution.

No shares or debentures

Corporations Act

A company may be limited by shares or have share capital.

A company may issue debentures and other securities.

Corporations (Aboriginal & Torres Strait Islander) Bill

No provision is made for an Aboriginal and Torres Strait Islander corporation to be limited by shares or have share capital. This means members of an Aboriginal and Torres Strait Islander corporation will not be able to own or trade shares in their corporation.

The Bill makes no provision for an Aboriginal and Torres Strait Islander corporation to issue debentures or other securities.

Types of corporations

Corporations Act

The two main types of companies are proprietary companies and public companies. Different reporting and other requirements apply to these two types of companies. For example, small proprietary companies are excluded from many of the reporting requirements that apply to public companies.

Corporations (Aboriginal & Torres Strait Islander) Bill

The Bill recognises three different categories of Aboriginal and Torres Strait Islander corporations based purely on size: small, medium and large. Like the Corporations Act, different reporting requirements will apply to these different levels of corporations.

Internal governance rules

Corporations Act

A company may be governed by the replaceable rules in the Corporations Act without adopting a constitution.

Corporations (Aboriginal & Torres Strait Islander) Bill

Like the Corporations Act, the Bill provides for a system of replaceable rules. However an Aboriginal and Torres Strait Islander corporation must also have a constitution which must, at a minimum, contain the objects and name of the corporation and a dispute resolution process. The corporation may include other matters in its constitution, including any replaceable rules in the Bill which it has modified or replaced.

Financial services

Corporations Act

The Corporations Act has extensive provisions dealing with managed investment schemes and the provision of financial products or services.

Corporations (Aboriginal & Torres Strait Islander) Bill

Aboriginal and Torres Strait Islander corporations will not be able to provide financial or investment products or services.

Regulatory assistance

Corporations Act

Mainstream companies do not have access to proactive regulatory assistance.

Corporations (Aboriginal & Torres Strait Islander) Bill

The Registrar has a broad power to appoint a special administrator to a corporation. This power can be used to provide a safety net against the possibility of corporate failure, especially for corporations providing essential services, infrastructure or holding land.

The Registrar also can appoint an expert to examine a corporation's affairs. This means 'healthy organisation checks' can be carried out to prevent any problems arising or increasing.

The Registrar also has other unique powers, including the power to change a corporation's constitution or call a general meeting or an annual general meeting or act for members in certain circumstances.

Registration requirements

Corporations Act

Any group or organisation can register as a corporation if they fulfil certain mainstream incorporation requirements.

Corporations (Aboriginal & Torres Strait Islander) Bill

A body may only be registered as an Aboriginal and Torres Strait Islander corporation if the Registrar is satisfied that it can meet certain unique standards, including Indigeneity, age and internal governance requirements. These requirements are designed to ensure that a body is ready to be incorporated and supports sustainability of corporations.

Reporting

Corporations Act

The Corporations Act allows for flexibility regarding reporting requirements, including the power for regulations to modify reporting requirements for certain companies or classes of companies.

Corporations (Aboriginal & Torres Strait Islander) Bill

The Bill also allows a great deal of flexibility in reporting. However, a significant difference is that all corporations must file a general report each year which contains all the basic details of the corporation. This will allow the Registrar to maintain more accurate registers to be widely used by Aboriginal and Torres Strait Islander corporations as well as the general public.

Small and medium corporations may also be excluded from having to produce audited accounts.

Merits review

Corporations Act

The Corporations Act allows for merits review of some ASIC decisions by the Administrative Appeals Tribunal. There is no provision for internal review in the Act.

Corporations (Aboriginal & Torres Strait Islander) Bill

All reviewable decisions under the Bill must be subject to internal review (by an ORAC officer not involved in the original decision) before any appeal can be made to the Administrative Appeals Tribunal.

Native title

Corporations Act

Corporations that hold or manage native title—registered native title bodies corporate or RNTBCs—are not permitted to be registered under the Corporations Act.

Corporations (Aboriginal & Torres Strait Islander) Bill

RNTBCs are required to be registered under the ACA Act and will continue to be registered under the Bill.

The Bill ensures that there is no inconsistency between the obligations RNTBCs have under the Native Title legislation and their obligations under the Bill—see the *Native title* fact sheet for more information.

Other differences

Corporations Act

Mainstream provisions in the Corporations Act cover meetings, members and officers.

Corporations (Aboriginal & Torres Strait Islander) Bill

Many of these provisions have been modified to recognise the special circumstances of Aboriginal and Torres Strait Islander corporations—e.g. the Bill provides for a document access address, rather than a registered office, for small and medium corporations that may not have the resources to maintain a registered office.

Further information

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