2019‑2020‑2021

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021

No. , 2021

(Indigenous Australians)

A Bill for an Act to amend the law in relation to Aboriginal and Torres Strait Islander corporations, and for related purposes

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A Bill for an Act to amend the law in relation to Aboriginal and Torres Strait Islander corporations, and for related purposes

The Parliament of Australia enacts:

1 Short title

 This Act is the *Corporations (Aboriginal and Torres Strait Islander) Amendment Act 2021*.

2 Commencement

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

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | TBA. | TBA |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Review of operation of Act

Corporations (Aboriginal and Torres Strait Islander) Act 2006

1 At the end of Chapter 15

Add:

Part 15‑8—Review of operation of Act

Division 643—Review of operation of Act

643‑1 Review of operation of Act

 (1) The Minister must cause a review to be undertaken of the operation of this Act as soon as possible after:

 (a) the seventh anniversary of the commencement of this section; and

 (b) each seventh anniversary of the day referred to in paragraph (a).

 (2) The review must consider the effectiveness of the Act as a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders.

 (3) The persons who undertake the review must give the Minister a written report of the review within 18 months after the relevant anniversary mentioned in subsection (1).

 (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 25 sitting days of that House after the completion of the report.

Part 2—Powers and functions of Registrar

Corporations (Aboriginal and Torres Strait Islander) Act 2006

2 At the end of Division 439

Add:

439‑25 Enforcement of undertakings

 (1) The Registrar may accept a written undertaking given by a person in connection with a matter in relation to which the Registrar has a function or power under this Act.

 (2) The person may withdraw or vary the undertaking at any time, but only with the Registrar’s consent.

 (3) If the Registrar considers that the person who gave the undertaking has breached any of its terms, the Registrar may apply to the Court for an order under subsection (4).

 (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:

 (a) an order directing the person to comply with that term of the undertaking;

 (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

 (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

 (d) any other order that the Court considers appropriate.

3 At the end of subsection 453‑1(1)

Add:

 ; (f) a suspected breach of any of the terms of an undertaking given under section 439‑25.

4 After section 453‑1

Insert:

453‑2 Notice to produce books

Aboriginal and Torres Strait Islander corporation or person connected to corporation

 (1) The Registrar may, by notice given to any of the following persons:

 (a) an Aboriginal and Torres Strait Islander corporation;

 (b) a person who is or has been:

 (i) an officer of an Aboriginal and Torres Strait Islander corporation; or

 (ii) an employee or agent of an Aboriginal and Torres Strait Islander corporation; or

 (iii) a banker or solicitor for an Aboriginal and Torres Strait Islander corporation; or

 (iv) an auditor of an Aboriginal and Torres Strait Islander corporation;

 (c) a person who is acting, or has acted, in any other capacity on behalf of an Aboriginal and Torres Strait Islander corporation;

require the production of specified books relating to the affairs of the corporation. The person must comply with the requirement.

Person in possession of books

 (2) The Registrar may, by notice given to a person, require the production of specified books that are in the person’s possession and that relate to the affairs of an Aboriginal and Torres Strait Islander corporation or a related body corporate or connected entity. The person must comply with the requirement.

Notice

 (3) A notice under this section:

 (a) must be in writing; and

 (b) must specify the person to whom the books are to be produced, who must be either the Registrar or a specified authorised officer; and

 (c) must specify the place and time for production of the books, which must be reasonable in all the circumstances.

 (4) A notice under this section may specify that books are to be produced immediately, if it is reasonable in all the circumstances for the Registrar to require a person to do so.

Offence

 (5) A person commits an offence if:

 (a) the person is given a notice under this section; and

 (b) the person does an act or omits to do an act; and

 (c) the result is that a requirement in the notice is not complied with.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

 (6) Subsection (5) does not apply to the extent the person has a reasonable excuse.

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

453‑3 Registrar’s power if books are not produced

 (1) If a person fails to produce books in compliance with a notice given to the person under section 453‑2, the Registrar may, by written notice given to the person, require the person to state:

 (a) where the books may be found; and

 (b) who last had possession, custody or control of the books and where that person may be found.

The person must comply with the requirement.

 (2) A person commits an offence if:

 (a) the person is given a notice under subsection (1); and

 (b) the person does an act or omits to do an act; and

 (c) the result is that a requirement in the notice is not complied with.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

 (3) Subsection (2) does not apply to the extent that:

 (a) the person has stated the required matter to the best of the person’s knowledge or belief; or

 (b) the person has a reasonable excuse.

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

453‑4 Registrar’s power to require identification of property

 (1) If, under section 453‑2, the Registrar has the power to require a person to produce books relating to the affairs of an Aboriginal and Torres Strait Islander corporation, the Registrar may, whether or not the Registrar exercises that power, by written notice given to the person, require the person:

 (a) to identify property of the corporation; and

 (b) to explain how the corporation has kept account of that property.

The person must comply with the requirement.

 (2) A person commits an offence if:

 (a) the person is given a notice under subsection (1); and

 (b) the person does an act or omits to do an act; and

 (c) the result is that a requirement in the notice is not complied with.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

 (3) Subsection (2) does not apply to the extent that:

 (a) the person has, to the extent that the person is capable of doing so, performed the acts referred to in paragraphs (1)(a) and (b); or

 (b) the person has a reasonable excuse.

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

5 Section 453‑5 (heading)

Omit “**Production of books or attendance to**”, substitute “**Notice to give information or**”.

6 Subsection 453‑5(1)

After “grounds,”, insert “suspects or”.

7 Paragraph 453‑5(1)(b)

Repeal the paragraph.

8 Subsection 453‑5(2)

Omit “Subject to section (3), the”, substitute “The”.

9 Subparagraph 453‑5(2)(c)(i)

Omit “or produce the documents”.

10 Subsection 453‑5(3)

Repeal the subsection, substitute:

 (3) The time specified in the notice for providing the information or appearing to answer questions must be reasonable in all the circumstances.

 (3A) A notice under this section may specify that information is to be provided immediately, if it is reasonable in all the circumstances for the Registrar to require a person to do so.

11 Paragraphs 456‑1(1)(a) and 456‑5(1)(a)

Omit “453‑5”, substitute “453‑2”.

12 Paragraph 456‑10(1)(a)

Omit “an authorised officer under section 453‑1 or section 453‑5”, substitute “a person under section 453‑1 or 453‑2”.

13 Paragraph 456‑10(1)(b)

Omit “an authorised officer”, substitute “a person”.

14 Subsections 456‑10(2) to (6)

Omit “authorised officer”, substitute “person”.

15 Subsection 456‑10(7)

Omit “authorised officer’s possession, the officer”, substitute “person’s possession, the person”.

16 Paragraph 456‑10(7)(a)

Omit “authorised officer’s”, substitute “first person’s”.

17 Subsection 456‑10(8)

Omit “authorised officer”, substitute “person”.

18 Subsection 456‑10(9)

Repeal the subsection, substitute:

 (9) The person may require:

 (a) an officer of the corporation; or

 (b) a person who was a party to the compilation of any of the books; or

 (c) if paragraph (1)(a) applies—a person who produced any of the books as referred to in that paragraph;

to explain any matter about the compilation of any of the books or to which any of the books relate.

19 Subsection 456‑10(10)

After “the person”, insert “of whom the requirement is made”.

20 Subsection 461‑10(1)

Omit “453‑5”, substitute “453‑2”.

21 Section 566‑5

Repeal the section.

22 At the end of Chapter 13

Add:

Part 13‑3—Infringement notices

Division 571—Infringement notices

571‑5 When an infringement notice may be given

 (1) If the Registrar believes on reasonable grounds that a person has committed an offence prescribed for the purposes of this section (a ***prescribed offence***), the Registrar may give the person an infringement notice for the alleged offence.

 (2) The infringement notice must be given within 12 months after the day on which the offence is alleged to have been committed.

 (3) A single infringement notice must relate only to a single alleged commission of a single prescribed offence unless subsection (4) applies.

 (4) The Registrar may give a person a single infringement notice relating to multiple commissions of a single prescribed offence if:

 (a) a provision requires the person to do a thing within a particular period or before a particular time; and

 (b) the person fails or refuses to do that thing within that period or before that time; and

 (c) the failure or refusal occurs on more than 1 day; and

 (d) each commission of the offence is constituted by the failure or refusal on one of those days.

571‑10 Matters to be included in an infringement notice

 (1) An infringement notice must:

 (a) be identified by a unique number; and

 (b) state the day on which it is given; and

 (c) state the name of the person to whom the notice is given; and

 (d) state the name and contact details of the person who gave the notice; and

 (e) give brief details of the alleged offence, or each alleged offence, to which the notice relates, including:

 (i) the prescribed offence that was allegedly committed; and

 (ii) the maximum penalty that a court could impose for each offence, if committed; and

 (iii) the time (if known) and day of, and the place of, each alleged offence; and

 (f) state the amount that is payable under the notice; and

 (g) give an explanation of how payment of the amount is to be made; and

 (h) state that the payment period for the notice will be 28 days, beginning on the day after the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn; and

 (i) state that, if the person to whom the notice is given pays the amount within the payment period, then (unless the notice is withdrawn) the person will not be liable to be prosecuted in a court for the alleged offence; and

 (j) state that payment of the amount is not an admission of guilt; and

 (k) state that the person may apply to the Registrar to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments; and

 (l) state that the person may choose not to pay the amount, and, if the person chooses not to pay, the person may be prosecuted in a court for the alleged offence; and

 (m) set out how the notice can be withdrawn; and

 (n) state that if the notice is withdrawn, the person may be prosecuted in a court for the alleged offence; and

 (o) state that the person may make written representations to the Registrar seeking the withdrawal of the notice.

 (2) The amount to be stated in the notice for the purposes of paragraph (1)(f) is:

 (a) for a single contravention of a prescribed offence—the penalty prescribed for the offence; and

 (b) for multiple contraventions of a prescribed offence—the amount prescribed under paragraph (a) for a single contravention multiplied by the number of contraventions.

571‑15 Payment period

Usual payment period

 (1) The ***payment period*** for an infringement notice begins on the day after the notice is given and, unless otherwise specified in this section, continues for 28 days.

Payment period extension under section 571‑20

 (2) If, under section 571‑20, the Registrar extends the payment period for the notice, the ***payment period*** is as extended.

 (3) If the Registrar refuses an application under subsection 571‑20(1) for an extension of the payment period for the notice, the ***payment periods*** ends on the later of the following days:

 (a) the last day of the period that, without the extension that has been refused, would be the payment period for the notice;

 (b) the day that is 7 days after:

 (i) the day the applicant was given notice of the Registrar’s decision not to extend; or

 (ii) the day the application is taken to have been refused under subsection 571‑20(4).

Instalments

 (4) If, under section 571‑25, the Registrar makes an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:

 (a) the last day on which an instalment is to be paid under the arrangement;

 (b) if the person fails to pay an instalment in accordance with the arrangement—the last day on which the missed instalment was to be paid.

 (5) If the Registrar refuses an application made under subsection 571‑25(1) to make an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the later of the following days:

 (a) the last day of the period that, without the instalment arrangement, would be the payment period for the notice;

 (b) the day that is 7 days after:

 (i) the day the applicant was given notice of the Registrar’s decision not to make the arrangement; or

 (ii) the day the application is taken to have been refused under subsection 571‑25(4).

Payment period if Registrar refuses to withdraw infringement notice

 (6) If the Registrar refuses a representation made under subsection 571‑30(1) for the notice to be withdrawn, the ***payment period*** ends on the later of the following days:

 (a) the last day of the period that, without the withdrawal, would be the payment period for the notice;

 (b) the day that is 7 days after:

 (i) the day the person was given notice of the Registrar’s decision not to withdraw the notice; or

 (ii) the day on which, under subsection 571‑30(5), the Registrar is taken to have refused to withdraw the infringement notice.

571‑20 Extension of time to pay amount

 (1) A person to whom an infringement notice has been given may, during the payment period for the notice, apply to the Registrar for an extension of the payment period for the notice.

 (2) The Registrar may, in writing, extend the payment period for an infringement notice:

 (a) if a person makes an application in accordance with subsection (1); or

 (b) on the Registrar’s own initiative.

The Registrar may do so before or after the end of the payment period.

 (3) The Registrar must do each of the following within 14 days after an application in accordance with subsection (1) is made:

 (a) grant or refuse to grant an extension of the payment period for the infringement notice;

 (b) give the applicant notice in writing of the Registrar’s decision.

 (4) If the Registrar does not comply with subsection (3):

 (a) the Registrar is taken to have refused to grant an extension of the payment period for the infringement notice; and

 (b) the refusal is taken to have occurred on the last day of the 14 day period.

 (5) The Registrar may extend the payment period more than once under subsection (2).

571‑25 Payment by instalments

 (1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, apply to the Registrar to make an arrangement to pay the amount payable under the infringement notice by instalments.

 (2) The Registrar may, in writing, make an arrangement for a person to pay the amount payable under an infringement notice by instalments:

 (a) if a person makes an application in accordance with subsection (1); or

 (b) on the Registrar’s own initiative.

The Registrar may do so before or after the end of the payment period.

 (3) The Registrar must do each of the following within 14 days after an application in accordance with subsection (1) is made:

 (a) decide to make, or refuse to make, an arrangement for the applicant to pay the amount payable under the infringement notice by instalments;

 (b) give the applicant notice in writing of the Registrar’s decision;

 (c) if the Registrar decides to make the arrangement—specify in the notice:

 (i) the day by which each instalment is to be paid; and

 (ii) the amount of each instalment.

 (4) If the Registrar does not comply with subsection (3):

 (a) the Registrar is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and

 (b) the refusal is taken to have occurred on the last day of the 14 day period.

 (5) The Registrar may vary an arrangement for a person to pay the amount payable under an infringement notice by instalments.

 (6) If:

 (a) a person does not pay all of the instalments in accordance with an arrangement under this section; and

 (b) the person is prosecuted for the alleged offence;

the Registrar must refund to the person the amount of any instalments paid.

571‑30 Withdrawal of an infringement notice

Representations seeking withdrawal of notice

 (1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, make written representations to the Registrar seeking the withdrawal of the notice.

Withdrawal of the notice

 (2) The Registrar may withdraw an infringement notice given to a person:

 (a) if the person makes representations to the Registrar in accordance with subsection (1); or

 (b) on the Registrar’s own initiative.

The Registrar may do so before or after the end of the payment period.

 (3) The Registrar must, within 14 days after a representation is made in accordance with subsection (1):

 (a) decide to withdraw, or refuse to withdraw, the infringement notice; and

 (b) if the Registrar decides to withdraw the notice—give the applicant a withdrawal notice in accordance with subsection (6); and

 (c) if the Registrar decides to refuse to withdraw the notice—give the applicant notice of that fact.

 (4) When deciding whether to withdraw, or refuse to withdraw, an infringement notice, the Registrar:

 (a) must take into account any written representations seeking the withdrawal that were given by the person to the Registrar; and

 (b) may take into account the following:

 (i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;

 (ii) the circumstances of the alleged offence;

 (iii) whether the person has paid an amount, stated in an earlier infringement notice, for commission of an offence against a provision of this Act;

 (iv) any other matter the Registrar considers relevant.

 (5) If the Registrar does not comply with subsection (3):

 (a) the Registrar is taken to have refused to withdraw the notice; and

 (b) the refusal is taken to have occurred on the last day of the 14 day period.

Notice of withdrawal

 (6) The withdrawal notice must state:

 (a) the person’s name and address; and

 (b) the day the infringement notice was given; and

 (c) the identifying number of the infringement notice; and

 (d) that the infringement notice is withdrawn; and

 (e) that the person may be prosecuted in a court for the alleged commission of the offence.

Refund of amount if infringement notice withdrawn

 (7) If:

 (a) the Registrar withdraws the infringement notice; and

 (b) the person has already paid all or part of the amount stated in the notice;

the Registrar must refund to the person an amount equal to the amount paid.

571‑35 Effect of payment of amount

 (1) If the person to whom an infringement notice for an alleged commission of a prescribed offence is given pays the amount stated in the notice before the end of the payment period for the notice:

 (a) any liability of the person for the alleged offence is discharged; and

 (b) the person may not be prosecuted in a court for the alleged offence; and

 (c) the person is not regarded as having admitted guilt for the alleged offence; and

 (d) the person is not regarded as having been convicted of the alleged offence.

 (2) Subsection (1) does not apply if the notice has been withdrawn.

571‑40 Effect of this Division

 This Division does not:

 (a) require an infringement notice to be given to a person for an alleged commission of a prescribed offence; or

 (b) affect the liability of a person for an alleged commission of a prescribed offence if:

 (i) the person does not comply with an infringement notice given to the person for the offence; or

 (ii) an infringement notice is not given to the person for the offence; or

 (iii) an infringement notice is given to the person for the offence and is subsequently withdrawn; or

 (c) prevent the giving of 2 or more infringement notices to a person for an alleged commission of a prescribed offence; or

 (d) limit a court’s discretion to determine the amount of a penalty to be imposed on a person who is found to have committed a prescribed offence.

23 Section 700‑1

Insert:

***payment period***, in relation to an infringement notice issued under Division 571, has the meaning given by section 571‑15.

***prescribed offence*** has the meaning given by subsection 571‑5(1).

Part 3—Membership applications, member contact details and electronic communication

Corporations (Aboriginal and Torres Strait Islander) Act 2006

24 Paragraph 21‑1(1)(a)

Omit “and address”, substitute “, address and other contact details”.

25 Paragraph 21‑1(1)(g)

Omit “and addresses”, substitute “, addresses and other contact details”.

26 Paragraph 21‑1(1)(h)

Omit “director details”, substitute “personal details”.

27 Paragraphs 21‑1(1)(i) and (j)

Omit “name and address”, substitute “personal details”.

28 Subsection 21‑1(1) (note)

Repeal the note.

29 Subsection 21‑1(3) (heading)

Omit “*Director*”, substitute “*Personal*”.

30 Subsection 21‑1(3)

Omit all the words before paragraph (a), substitute:

 (3) For the purposes of paragraphs (1)(h), (i) and (j), the personal details of a person are the following:

31 At the end of paragraph 21‑1(3)(d)

Add “and other contact details”.

32 Paragraph 21‑1(3)(f)

Before “a declaration in writing”, insert “for a person who consents to become a director—”.

33 At the end of subsection 21‑1(3)

Add:

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

34 Paragraph 22‑1(2)(a)

Omit “and address”, substitute “, address and other contact details”.

35 Paragraph 22‑1(2)(k)

Omit “director details”, substitute “personal details”.

36 Paragraphs 22‑1(2)(l) and (m)

Omit “name and address”, substitute “personal details”.

37 Subsection 22‑1(2) (note)

Repeal the note.

38 Subsection 22‑1(4) (heading)

Omit “*Director*”, substitute “*Personal*”.

39 Subsection 22‑1(4)

Omit all the words before paragraph (a), substitute:

 (4) For the purposes of paragraphs (2)(k), (l) and (m), the personal details of a person are the following:

40 At the end of paragraph 22‑1(4)(c)

Add “and other contact details”.

41 Paragraph 22‑1(4)(e)

Before “a declaration in writing”, insert “for a person who consents to become a director—”.

42 At the end of subsection 22‑1(4)

Add:

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

43 Paragraph 23‑1(2)(a)

Omit “and address”, substitute “, address and other contact details”.

44 Paragraph 23‑1(2)(h)

Omit “director details”, substitute “personal details”.

45 Paragraphs 23‑1(2)(i) and (j)

Omit “name and address”, substitute “personal details”.

46 Subsection 23‑1(2) (note)

Repeal the note.

47 Subsection 23‑1(4) (heading)

Omit “*Director*”, substitute “*Personal*”.

48 Subsection 23‑1(4)

Omit all the words before paragraph (a), substitute:

 (4) For the purposes of paragraphs (2)(h), (i) and (j), the personal details of a person are the following:

49 At the end of paragraph 23‑1(4)(c)

Add “and other contact details”.

50 Paragraph 23‑1(4)(e)

Before “a declaration in writing”, insert “for a person who consents to become a director—”.

51 At the end of subsection 23‑1(4)

Add:

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

52 Paragraph 26‑5(a)

Omit “and address”, substitute “, address and other contact details”.

53 Subsection 120‑1(1)

Omit “(1)”.

54 Paragraph 120‑1(1)(c)

Omit “sending it by post to his or her address”, substitute “sending it to the contact person using his or her address or other contact details”.

55 Subsection 138‑1(1) (note)

Omit “and addresses”, substitute “, addresses and other contact details”.

56 After subsection 144‑10(1)

Insert:

 (1A) Subject to sections 144‑12 and 144‑13, the directors must make a decision on an application for membership within the period of 6 months beginning on the day the application is made.

57 Subsection 144‑10(3)

Repeal the subsection, substitute:

When membership application may be refused

 (3) Subject to subsection (3AA), the directors may refuse to accept the membership application, even if paragraphs (2)(a) and (b) are complied with, if the corporation is not a registered native title body corporate.

 (3AA) The constitution of an Aboriginal and Torres Strait Islander corporation that is not a registered native title body corporate may provide for a process for considering membership applications, including:

 (a) limiting the discretion of the directors to refuse a membership application when paragraphs (2)(a) and (b) are complied with; and

 (b) providing for review of a decision or proposed decision by the directors to refuse a membership application when paragraphs (2)(a) and (b) are complied with.

The decision on the membership application must be made in accordance with any such process.

58 After section 144‑10

Insert:

144‑12 Extension of period or exemption from period for deciding application

 (1) The Registrar may, on receiving an application made in accordance with subsection (2) or on the Registrar’s own initiative, make a determination in writing in relation to an Aboriginal and Torres Strait Islander corporation:

 (a) extending the period within which the directors of the corporation must make a decision on:

 (i) a particular application for membership; or

 (ii) applications for membership generally; or

 (b) exempting the corporation from the requirement that the corporation’s directors make a decision on an application for membership within a period, in relation to:

 (i) a particular application for membership; or

 (ii) applications for membership generally.

 (2) The application must:

 (a) specify the determination 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.

 (3) In deciding whether to make a determination under subsection (1), the Registrar:

 (a) must have regard to whether assessment of an application for membership of the corporation is inherently complex or lengthy so as to prevent a decision being made within a period of 6 months; and

 (b) may have regard to any other circumstances the Registrar considers relevant.

 (4) The determination may:

 (a) be expressed to be subject to conditions; and

 (b) if the determination relates to applications for membership generally—be indefinite or limited to a specified period.

 (5) The Registrar may, in writing, revoke, vary or suspend the determination.

 (6) The Registrar must give the corporation written notice within 28 days of the making, revocation, variation or suspension of the determination.

 (7) A determination under subsection (1), or a revocation, variation or suspension under subsection (5), is not a legislative instrument.

144‑13 Registrar’s power to make determination extending or removing period for deciding membership application

 (1) The Registrar may make a determination in writing:

 (a) extending the period within which directors of a specified class of Aboriginal and Torres Strait Islander corporation must make a decision on an application for membership; or

 (b) exempting a specified class of Aboriginal and Torres Strait Islander corporation from the requirement that the corporation’s directors make a decision on an application for membership within a period.

 (2) In deciding whether to make a determination under subsection (1), the Registrar:

 (a) must have regard to whether assessment of an application for membership of a corporation in that class is inherently complex or lengthy so as to prevent a decision being made within a period of 6 months; and

 (b) may have regard to any other circumstances the Registrar considers relevant.

 (3) The determination may:

 (a) be expressed to be subject to conditions; and

 (b) be indefinite or limited to a specified period.

 (4) A determination made under subsection (1) is a legislative instrument.

59 After section 150‑22

Insert:

150‑24 Member of corporation that is not a registered native title body corporate not contactable

Membership may be cancelled if not contactable (replaceable rule—see section 60‑1)

 (1) The membership of a member of an Aboriginal and Torres Strait Islander corporation that is not a registered native title body corporate may be cancelled by special resolution in general meeting if:

 (a) in the 12 months before the meeting, the corporation attempted to contact the member:

 (i) at least twice using the address for the member entered in the register of members; and

 (ii) if the member provided any alternative means of contact—at least once using each of those means of contact (or at least 3 of the means of contact if there are more than 3); and

 (b) at least one of the attempts was made in the 3 months before the meeting; and

 (c) the corporation has been unable to contact the member in any of the attempts.

Notice

 (2) If the corporation does so cancel the membership, the directors must, as soon as practicable after the special resolution is passed, send a copy of the special resolution to the address last entered in the register of members for the person.

Penalty: 5 penalty units.

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

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

60 Section 150‑25 (heading)

After “**Member**”, insert “**of registered native title body corporate**”.

61 Subsection 150‑25(1)

Omit “section 150‑20 or”.

62 Subsection 150‑25(1)

After “corporation’s constitution”, insert “if the corporation is a registered native title body corporate”.

63 Subsection 150‑25(2)

After “corporation”, insert “that is a registered native title body corporate”.

64 Subsections 150‑25(3) and (4)

Repeal the subsections, substitute:

Manner and circumstances

 (3) The membership may be cancelled by special resolution in general meeting if:

 (a) in the 12 months before the meeting, the corporation attempted to contact the member:

 (i) at least twice using the address for the member entered in the register of members; and

 (ii) if the member provided any alternative means of contact—at least once using each of those means of contact (or at least 3 of the means of contact if there are more than 3); and

 (b) at least one of the attempts was made in the 3 months before the meeting; and

 (c) the corporation has been unable to contact the member in any of the attempts.

Notice

 (4) If the corporation does so cancel the membership, the directors must, as soon as practicable after the special resolution is passed, send a copy of the special resolution to the address last entered in the register of members for the person.

Penalty: 5 penalty units.

65 At the end of subsection 180‑5(1)

Add “and any other contact details the member has provided to the corporation”.

66 At the end of subsection 180‑15(1)

Add “and any other contact details the members has provided to the corporation”.

67 Section 180‑20 (heading)

Omit “**and inspection**”.

68 Subsection 180‑20(2)

Repeal the subsection.

69 Subsection 180‑25(1)

Repeal the subsection, substitute:

Right to inspect

 (1) A member of an Aboriginal and Torres Strait Islander corporation has a right to inspect the corporation’s register of members and register of former members.

Note: If a request under subsection 180‑26(1) has been made by a member or former member of an Aboriginal and Torres Strait Islander corporation and has not been withdrawn, a reference in this section to a register is taken to be a reference to a redacted copy of the register (see section 180‑27), unless *[access to the redacted material has been granted (method to be determined)]* under section 180‑28.

 (1A) An Aboriginal and Torres Strait Islander corporation must allow a person other than a member of the corporation to inspect the corporation’s register of members or register of former members if:

 (a) the person makes an application in accordance with subsection (1B); and

 (b) the person pays any fee (up to the prescribed amount) required by the corporation.

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

(a) section 180‑45 (evidentiary value); and

(b) section 376‑1 (place and times for inspection); and

(c) section 376‑20 (form of books).

 (1B) An application is in accordance with this subsection if:

 (a) the application states each purpose for which the person is inspecting the register; and

 (b) none of those purposes is a purpose prescribed by the regulations; and

 (c) the application is in a form approved by the Registrar.

70 Subsection 180‑25(4)

Repeal the subsection.

71 Subsection 180‑25(5)

Repeal the subsection, substitute:

Right to get copies

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

 (a) either:

 (i) if the person is a member of the corporation—the person asks for the copy; or

 (ii) if the person is not a member of the corporation—the person makes an application in accordance with subsection (5A); and

 (b) the person pays any fee (up to the prescribed amount) required by the corporation.

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

Penalty: 10 penalty units.

 (5A) An application is in accordance with this subsection if:

 (a) the application states each purpose for which the person is accessing the copy; and

 (b) none of those purposes is a purpose prescribed by the regulations; and

 (c) the application is in a form approved by the Registrar.

72 After section 180‑25

Insert:

180‑26 Member or former member may request redaction of information

 (1) A member or former member of an Aboriginal and Torres Strait Islander corporation who is an individual may make a written request to the corporation for particular information relating to the member or former member to be redacted from the register of members or former members.

 (2) A member or former member of an Aboriginal and Torres Strait Islander corporation who has made a request to the corporation under subsection (1) may withdraw the request in writing.

 (3) An Aboriginal and Torres Strait Islander corporation must keep a record of a request made by a member or former member under subsection (1), and any withdrawal of the request under subsection (2). The record of a request (and any withdrawal) must be kept until 7 years after whichever of the following events first occurs:

 (a) the request is withdrawn;

 (b) the individual ceases to be included on the register of former members (whether the member was a member or a former member when the request was made).

 (4) An Aboriginal and Torres Strait Islander corporation commits an offence of strict liability if it contravenes subsection (3).

Penalty: 10 penalty units.

180‑27 Redacted copy of register

 (1) At any time after a request under subsection 180‑26(1) has been made by a member or former member of an Aboriginal and Torres Strait Islander corporation and has not been withdrawn:

 (a) the corporation must ensure that there exists a copy (a ***redacted copy***) of the register of members or former members that redacts the information that is the subject of each such request; and

 (b) a reference in section 180‑25 to the register of members or former members is taken to be a reference to a redacted copy of the register.

Note: A person may request *[access to the full register (method to be determined)]* (see section 180‑28).

 (2) A redacted copy of a register must:

 (a) indicate that it is a copy made for the purposes of this section; and

 (b) indicate where information has been redacted.

 (3) The regulations may prescribe requirements that an Aboriginal and Torres Strait Islander corporation, or the directors of an Aboriginal and Torres Strait Islander corporation, must comply with in relation to copies of a register made for the purposes of this section.

180‑28 Access to full register while redacted copy exists [version with decision by Registrar]

 (1) At any time while an Aboriginal and Torres Strait Islander corporation is required by section 180‑27 to have a redacted copy of a register, a person may make a request to the Registrar, in writing, to direct the corporation to allow the person to inspect, or give the person a copy of:

 (a) the unredacted register; or

 (b) a copy of the register that includes particular information.

 (2) The Registrar may give an Aboriginal and Torres Strait Islander corporation a direction requested by a person under subsection (1) if the Registrar is satisfied that:

 (a) the person has a genuine need to inspect the register or the particular information; and

 (b) the interests of members of the corporation will not be harmed by allowing the person to inspect the register or the particular information.

 (3) If the Registrar gives the direction, section 180‑25 applies in relation to the corporation and the person as if a reference in that section to the register were (despite paragraph 180‑27(1)(b)) a reference to the unredacted register, or a copy that includes the particular information, specified in the direction.

180‑28 Access to full register while redacted copy exists [version with decision by directors]

 (1) At any time while an Aboriginal and Torres Strait Islander corporation is required by section 180‑27 to have a redacted copy of a register, a person may make a request to the corporation, in writing, to allow the person to inspect, or give the person a copy of:

 (a) the unredacted register; or

 (b) a copy of the register that includes particular information.

 (2) The directors of the corporation may grant the request if the directors are satisfied that:

 (a) the person has a genuine need to inspect the register or the particular information; and

 (b) the interests of members of the corporation will not be harmed by allowing the person to inspect the register or the particular information.

 (3) If the directors of the corporation grant the request, section 180‑25 applies in relation to the corporation and the person as if a reference in that section to the register were (despite paragraph 180‑27(1)(b)) a reference to the unredacted register, or a copy that includes the particular information, specified in the direction.

73 At the end of section 180‑30

Add:

 (3) If, at the time the AGM is held, the corporation is required by section 180‑27 to have a redacted copy of the register of members, the references in subsection (1) to the register are taken to be references to a redacted copy.

74 Subsection 180‑35(1) (note)

Omit “and addresses”, substitute “, addresses and other contact details”.

75 Paragraphs 201‑25(3)(b) to (d)

Repeal the paragraphs, substitute:

 (b) by sending it to the member using the address or other contact details the member has provided to the corporation; or

76 Paragraph 304‑5(4)(d)

After “address”, insert “and other contact details”.

77 Subsection 304‑15(1)

After “section 21‑1”, insert “, 22‑1 or 23‑1”.

78 Subparagraph 322‑5(b)(i)

Omit “and addresses”, substitute “, addresses and other contact details”.

79 After subsection 330‑5(1)

Insert:

 (1A) Despite subparagraph (1)(a)(i), the general report must not set out any information that a member has requested be redacted from the corporation’s register of members under subsection 180‑26(1), unless the request has been withdrawn.

80 Section 407‑15 (heading)

Omit “**Telephone or email**”, substitute “**Oral or written**”.

81 Subsections 407‑15(1) and (2)

Omit “telephone or email” (wherever occurring), substitute “oral or written”.

82 Paragraph 453‑5(2)(b)

Repeal the paragraph.

83 Subsection 546‑5(4)

Omit “address”, substitute “contact details”.

84 Section 617‑1 (after table item 16)

Insert:

|  |  |  |
| --- | --- | --- |
| 16AA | To refuse to make a determination extending the period to make a decision or exempting an Aboriginal and Torres Strait Islander corporation from the period for making a decision | subsection 144‑12(1) |
| 16AB | To revoke, vary or suspend a determination extending the period to make a decision or exempting an Aboriginal and Torres Strait Islander corporation from the period for making a decision | subsection 144‑12(5) |

85 Section 700‑1

Insert:

***redacted copy***, in relation to a register of members or former members of an Aboriginal and Torres Strait Islander corporation, means a copy made for the purposes of section 180‑27.

Part 4—Subsidiaries and joint ventures

Corporations (Aboriginal and Torres Strait Islander) Act 2006

86 After paragraph 21‑1(1)(c)

Insert:

 (ca) if the applicant intends that paragraph 77‑5(1)(b) or (c) will apply to the corporation—an indication of whether the corporation is intended to be a wholly‑owned subsidiary or a corporation whose only members are bodies corporate;

87 After paragraph 22‑1(2)(g)

Insert:

 (ga) if the applicant intends that paragraph 77‑5(1)(b) or (c) will apply to the corporation—an indication of whether the corporation is intended to be a wholly‑owned subsidiary or a corporation whose only members are bodies corporate;

88 After paragraph 23‑1(2)(d)

Insert:

 (da) if the applicant intends that paragraph 77‑5(1)(b) or (c) will apply to the amalgamated corporation—an indication of whether the corporation is intended to be a wholly‑owned subsidiary or a corporation whose only members are bodies corporate;

89 Subsection 77‑5(1)

Repeal the subsection, substitute:

Minimum number of members

 (1) An Aboriginal and Torres Strait Islander corporation must have at least the following number of members:

 (a) unless paragraph (b) or (c) applies to the corporation:

 (i) 5 members; or

 (ii) if the Registrar has determined a lesser number of members on a request under subsection (2), (3) or (4)—that number;

 (b) if the corporation is a wholly‑owned subsidiary of a body corporate (including an Aboriginal and Torres Strait Islander corporation)—one member;

 (c) if paragraph (b) does not apply and the corporation’s only members are bodies corporate—2 members.

90 After paragraph 77‑5(2)(a)

Insert:

 (aa) neither paragraph (1)(b) nor (c) will apply to the corporation; and

91 After paragraph 77‑5(3)(b)

Insert:

 and (ba) neither paragraph (1)(b) nor (c) applies to the corporation;

92 After paragraph 77‑5(4)(b)

Insert:

 and (ba) neither paragraph (1)(b) nor (c) applies to the corporation;

93 At the end of section 201‑115

Add:

Note 3: Different rules apply for an Aboriginal and Torres Strait Islander corporation that has only 2 members, only one of which is an Aboriginal and Torres Strait Islander person (see section 201‑117).

94 After section 201‑115

Insert:

201‑117 How many votes a member has—corporation with only 2 members

 (1) At a general meeting of an Aboriginal and Torres Strait Islander corporation that has only 2 members, only one of which is an Aboriginal and Torres Strait Islander person, the member that is an Aboriginal and Torres Strait Islander person must have a casting vote.

 (2) A provision of the corporation’s constitution has no effect to the extent that it is inconsistent with subsection (1).

95 After subsection 246‑5(1)

Insert:

 (1A) The requirement in subsection (1) is met, in relation to an Aboriginal and Torres Strait Islander corporation that has 2 directors, if:

 (a) both directors are Aboriginal and Torres Strait Islander persons; or

 (b) if only one of the directors is an Aboriginal and Torres Strait Islander person—that director has a casting vote.

96 Subsection 246‑5(3)

Repeal the subsection, substitute:

 (3) One of the following must be met in relation to the corporation:

 (a) a majority of the directors of the corporation are members of the corporation;

 (b) the corporation is a wholly‑owned subsidiary of a body corporate;

 (c) the corporation’s only members are bodies corporate.

Part 5—Classification of corporations

Corporations (Aboriginal and Torres Strait Islander) Act 2006

97 Section 37‑10

Repeal the section, substitute:

37‑10 Small, medium and large corporations

 (1) An Aboriginal and Torres Strait Islander corporation is a ***small corporation*** for a financial year if the consolidated revenue for the financial year of the corporation and the entities it controls (if any) is less than the amount prescribed by the regulations for the purposes of this subsection.

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

 (2) An Aboriginal and Torres Strait Islander corporation is a ***medium corporation*** for a financial year if:

 (a) it is not a small corporation for the financial year; and

 (b) the consolidated revenue for the financial year of the corporation and the entities it controls (if any) is less than the amount prescribed by the regulations for the purposes of this paragraph.

 (3) An Aboriginal and Torres Strait Islander corporation is a ***large corporation*** for a financial year if it is not a small corporation for the financial year and not a medium corporation for the financial year.

98 Sections 37‑20 and 37‑25

Repeal the sections, substitute:

37‑25 Accounting standards

 In working out revenue for the purposes of section 37‑10, apply the accounting standards in force at the relevant time (even if the standards do not otherwise apply to the financial year of some or all of the bodies concerned).

99 Section 700‑1

Insert:

***large corporation*** has the meaning given by subsection 37‑10(3).

***medium corporation*** has the meaning given by subsection 37‑10(2).

***small*** ***corporation*** has the meaning given by subsection 37‑10(1).

Part 6—Meetings and reports

Corporations (Aboriginal and Torres Strait Islander) Act 2006

100 At the end of subsection 37‑5(5)

Add “, and if the alteration means that a special resolution under section 201‑175 (resolution by corporation not to hold upcoming AGMs) ceases to have effect, the notice must indicate this”.

101 Paragraph 201‑35(1)(a)

Repeal the paragraph, substitute:

 (a) set out the place, date and time for the meeting; and

 (aa) if the meeting is to be held in 2 or more places or using technology without a physical venue (as permitted by section 201‑65)—include instructions for participating in the meeting; and

102 At the end of Subdivision 201‑B

Add:

201‑37 Altering place, date or time of meeting in certain circumstances

 (1) An Aboriginal and Torres Strait Islander corporation may issue a new notice of a general meeting that changes the date or time of a meeting to a later date or time, or changes the place of the meeting, if the ability to hold the meeting is affected by any of the following:

 (a) a death in a community;

 (b) a cultural activity;

 (c) a natural disaster.

 (2) If the new notice changes the date of the meeting, the new date must not be more than 30 days after the original date of the meeting.

 (3) If the new notice changes the place of the meeting, and it is to be held in 2 or more places or using technology without a physical venue (as permitted by section 201‑65), the new notice must include instructions for participating in the meeting.

 (4) The new notice must include the same information for the purposes of paragraphs 201‑35(1)(b) to (d) as the original notice.

 (5) Sections 201‑25 and 201‑30 apply to the new notice.

201‑38 Cancellation of meeting

General meeting may be cancelled by directors (replaceable rule—see section 60‑1)

 (1) The directors of an Aboriginal and Torres Strait Islander corporation may, by resolution, cancel a general meeting.

Note: See Subdivision 201‑G for the obligations of a corporation to hold general meetings within certain periods.

Meetings called by Registrar

 (2) Despite subsection (1), the directors of a corporation do not have the power to cancel a meeting called by the Registrar under section 439‑10 or 439‑15.

Notice of cancellation

 (3) Notice of the cancellation of a general meeting must be given as soon as practicable.

 (4) Sections 201‑25 and 201‑30 apply in relation to the cancellation as if:

 (a) a reference to a notice of a general meeting were a reference to notice of the cancellation of a general meeting; and

 (b) a reference to a member entitled to vote at the meeting were a reference to a member who would have been entitled to vote at the meeting; and

 (c) a reference an observer entitled to attend the meeting were a reference to an observer who would have been entitled to attend the meeting.

103 Section 201‑65

Before “An Aboriginal”, insert “(1)”.

104 Section 201‑65 (before the note)

Insert:

 (2) An Aboriginal and Torres Strait Islander corporation may hold a general meeting without a physical venue, using any technology that gives the members as a whole a reasonable opportunity to participate.

105 At the end of section 201‑125

Add:

 (4) If a physical show of hands is not possible at a general meeting, the chair may determine another method of voting, in substitution for a show of hands, that allows the members to clearly indicate whether they are for or against a resolution. A vote using the determined method is taken to have been on a show of hands.

106 At the end of section 201‑150

Add:

 (5) Subsection (1) does not apply in relation to an AGM if:

 (a) the 5 month period mentioned in that subsection is extended under subsection 201‑153(1) for the AGM (see subsection 201‑153(2) instead); or

 (b) the corporation has been granted an extension for the AGM under subsection 201‑155(2) (see subsection 201‑155(3) instead); or

 (c) at the end of the 5 month period mentioned in subsection (1) of this section, the AGM is covered by a special resolution in effect under section 201‑175; or

 (d) the AGM is required to be held within a different period specified in a direction given by the Registrar under section 201‑190.

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

107 After section 201‑150

Insert:

201‑153 Automatic extension of time for holding AGM

 (1) If an Aboriginal and Torres Strait Islander corporation makes a statement to the Registrar under section 348‑10 (grounds for automatic extension) in relation to its AGM and reports for a financial year, the 5 month period specified in subsection 201‑150(1) for the AGM is extended by 30 days.

Note: The statement also extends the time for lodgment of reports (see sections 330‑15 and 348‑3).

 (2) The corporation must hold the AGM within the extended period.

Penalty: 10 penalty units.

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

 (4) The period for holding the AGM is extended only once (regardless of how many statements are made under section 348‑10 and how many grounds for making statements apply in relation to the financial year).

108 Section 201‑155 (at the end of the heading)

Add “**on application to Registrar**”.

109 Subsection 201‑155(1)

After “section 201‑150”, insert “or 201‑153”.

110 At the end of Division 201

Add:

Subdivision 201‑H—Resolution by corporation not to hold upcoming AGMs

201‑175 Resolution by corporation not to hold upcoming AGMs

 (1) An Aboriginal and Torres Strait Islander corporation may, at an AGM, pass a special resolution:

 (a) not to hold the next AGM, or the next 2 AGMs; and

 (b) to appoint directors who are members of the corporation until an AGM is held;

if the corporation:

 (c) is registered as a small corporation; and

 (d) is not a registered entity under the *Australian Charities and Not‑for‑profits Commission Act 2012*; and

 (e) had a consolidated revenue in the previous financial year less than $1,000.

 (2) The special resolution cannot be passed by circulating resolution (despite subsection 204‑1(6)).

 (3) The directors of the corporation must not vote on the special resolution if there are members of the corporation who are not directors.

 (4) However, subsection (3) does not apply if the Registrar, by written notice given to the corporation before the special resolution is passed, exempts the directors from the subsection.

 (5) A notice under subsection (4) is not a legislative instrument.

 (6) The appointment of directors under the special resolution takes effect immediately.

 (7) The special resolution takes effect in relation to AGMs when a copy is lodged with the Registrar within the time required under section 201‑180.

 (8) The special resolution ceases to have effect in relation to AGMs if:

 (a) the Registrar alters the registered size of the corporation under section 37‑5; or

 (b) the Registrar directs the corporation to hold an AGM under section 201‑190; or

 (c) the Registrar determines under section 487‑1 that the corporation is to be under special administration.

201‑180 Lodgment of copy of resolution etc. with Registrar

 An Aboriginal and Torres Strait Islander corporation must, within 28 days after a special resolution is passed under section 201‑175, lodge with the Registrar:

 (a) a copy of the notice of the meeting at which the special resolution was passed; and

 (b) a copy of the special resolution; and

 (c) a copy of those parts of the minutes of the meeting at which the special resolution was passed that relate to the passing of the special resolution; and

 (d) a directors’ statement (see subsection 69‑20(5)).

201‑185 Notice of material changes while AGMs not being held by corporation

 (1) If:

 (a) a material change occurs in relation to the affairs of an Aboriginal and Torres Strait Islander corporation; and

 (b) at the time the change occurs, an AGM that the corporation would otherwise be required to hold will not be held because of a special resolution in effect under section 201‑175;

the corporation must lodge written notice of the change with the Registrar, no later than 28 days after the change occurs.

Penalty: 5 penalty units.

 (2) Subsection (1) is an offence of strict liability.

201‑190 Direction by Registrar to hold AGM despite resolution

 (1) The Registrar may direct an Aboriginal and Torres Strait Islander corporation to hold an AGM that the corporation would otherwise not hold because of a special resolution in effect under section 201‑175, if the Registrar is satisfied that, in the circumstances of the corporation, there is a need for an AGM.

Note: If the Registrar gives a direction under this section, the special resolution ceases to have effect (see subsection 201‑175(8)).

 (2) The direction must:

 (a) be given by notice in writing to the corporation; and

 (b) specify the period within which the AGM must be held.

111 At the end of subsection 204‑1(6)

Add:

Note: There is an exception to this subsection in subsection 201‑175(2).

112 Subsection 246‑25(2)

Omit “subsection (4)”, substitute “subsections (2A) and (4)”.

113 After subsection 246‑25(2)

Insert:

 (2A) A director of an Aboriginal and Torres Strait Islander corporation appointed by a special resolution under section 201‑175 (resolution not to hold upcoming AGMs) is appointed until the next annual general meeting.

114 Subsection 330‑10(1)

After “the Registrar”, insert “within the time for lodgment under subsection (2) (as extended under section 330‑15, if applicable)”.

115 At the end of subsection 330‑10(2)

Add:

Note: The time for lodgment under this subsection is extended if section 330‑15 applies.

116 At the end of Division 330

Add:

330‑15 Automatic extension of time for lodgment of general report

 (1) If an Aboriginal and Torres Strait Islander corporation makes a statement to the Registrar under section 348‑10 (grounds for automatic extension) in relation to its AGM and reports for a financial year, the time for lodgment under subsection 330‑10(2) for the general report for the financial year is extended by 30 days.

Note: The statement under section 348‑10 also extends the time for lodgment of all other reports (see section 348‑3) and the period within which the AGM must be held (see section 201‑153).

 (2) The time for lodgment of the general report for the financial year is extended only once (regardless of how many statements are made under section 348‑10 and how many grounds for making statements apply in relation to the financial year).

117 Subsection 348‑1(1)

After “the Registrar”, insert “within the time for lodgment under subsection (3) (as extended under section 348‑3, if applicable)”.

118 At the end of subsection 348‑1(3)

Add:

Note: The time for lodgment under this subsection is extended if section 348‑3 applies.

119 After section 348‑1

Insert:

348‑3 Automatic extension of time for lodgment of reports

 (1) If an Aboriginal and Torres Strait Islander corporation makes a statement to the Registrar under section 348‑10 (grounds for automatic extension) in relation to its AGM and reports for a financial year, the time for lodgment under subsection 348‑1(3) for all reports to which that subsection applies for the financial year is extended by 30 days.

Note: The statement under section 348‑10 also extends the time for lodgment of the general report (see section 330‑15) and the period within which the AGM must be held (see section 201‑153).

 (2) The time for lodgment of the reports is extended only once (regardless of how many statements are made under section 348‑10 and how many grounds for making statements apply in relation to the financial year).

120 At the end of Division 348

Add:

348‑10 Statement of grounds for automatic extension

 (1) An Aboriginal and Torres Strait Islander corporation may state that the corporation considers that one or more of the grounds in subsection (2) applies to the corporation in relation to its AGM and reports for a financial year.

 (2) A ground in this subsection applies to the corporation if the corporation’s ability to hold its AGM within a period after the end of the financial year, or lodge its reports for the financial year within the time for lodgment, is affected by any of the following:

 (a) a death in a community;

 (b) a cultural activity;

 (c) a natural disaster;

 (d) if the corporation is required to have a report audited or reviewed—an unavoidable delay in obtaining the audit or review.

Note: The time for holding the AGM and lodging the reports is automatically extended if a statement is made (see sections 201‑153, 330‑15 and 348‑3).

 (3) The statement:

 (a) may be made orally or in writing; and

 (b) must be made to the Registrar; and

 (c) must specify the corporation and indicate who is making the statement on its behalf; and

 (d) must indicate when the corporation intends to hold its AGM and lodge its reports.

 (4) If a corporation makes a statement under this section orally, the Registrar must give the corporation a written acknowledgement that the statement was made.

 (5) If statements made under this section by an Aboriginal and Torres Strait Islander corporation have had effect in relation to its AGM and reports for 3 consecutive financial years, a statement made in relation to the fourth consecutive financial year has no effect (despite sections 201‑153, 330‑15 and 348‑3).

121 At the end of Part 7‑3

Add:

Division 349—Laying reports before AGM

349‑1 Laying reports before AGM

 (1) If an Aboriginal and Torres Strait Islander corporation is required to hold an AGM after the end of a financial year, the directors of the corporation must lay before the AGM any report in respect of the financial year that is prescribed by the regulations for the purposes of this subsection.

Penalty: 5 penalty units.

 (2) Subsection (1) is an offence of strict liability.

 (3) A report prescribed for the purposes of subsection (1) must be a report that an Aboriginal and Torres Strait Islander corporation is required to prepare or obtain under this Part in respect of a financial year.

122 At the end of section 439‑10

Add:

Cancellation of meeting

 (12) The Registrar may cancel a meeting that the Registrar has called under this section.

 (13) Notice of the cancellation of the meeting is not a legislative instrument.

123 Subsection 439‑15(1)

Omit “or 201‑155”, substitute “, 201‑153 or 201‑155, or by a direction given under section 201‑190”.

124 At the end of section 439‑15

Add:

Cancellation of meeting

 (6) The Registrar may cancel a meeting that the Registrar has called under this section.

 (7) Notice of the cancellation of the meeting is not a legislative instrument.

Part 7—Constitutions

Corporations (Aboriginal and Torres Strait Islander) Act 2006

125 After subsection 66‑1(4)

Insert:

 (4A) The corporation’s constitution must identify the replaceable rules (if any) that apply to the corporation.

126 Paragraph 69‑30(3)(a)

Omit “and”, substitute “or”.

127 After subsection 69‑30(3)

Insert:

Proposed change after special administrator’s change

 (3A) In addition to being satisfied as required by subsection (2), and subsection (3) if applicable, the Registrar must not register a constitutional change lodged after a special administrator has changed the constitution under section 499‑5 unless the Registrar is satisfied that:

 (a) the lodged change is consistent with the change made by the special administrator, having regard to the purposes of making that change; or

 (b) the circumstances of the corporation have changed sufficiently that the lodged change does not need to be consistent with the change made by the special administrator.

Part 8—Officers of corporations

Corporations (Aboriginal and Torres Strait Islander) Act 2006

128 Subsection 246‑5(5)

After “a chief executive officer function”, insert “or a chief financial officer function”.

129 Subsection 246‑5(5) (note)

Omit “***function***,” substitute “***function*** and ***chief financial officer function***,”.

130 Paragraph 265‑40(1)(e)

Repeal the paragraph, substitute:

 (e) subsection 304‑5(1), (3), (3A), (5) or (6) (requirement to lodge details of directors, secretaries and persons performing CEO function or CFO function);

131 Section 304‑1 (heading)

After “**secretary**”, insert “**, person performing CEO function or CFO function**”.

132 Subsection 304‑1(1)

After “secretary”, insert “, person performing a chief executive officer function or a chief financial officer function”.

133 At the end of subsection 304‑1(1)

Add:

Note: For ***chief executive officer function*** and ***chief financial officer function***, see section 694‑85.

134 Section 304‑5 (heading)

Omit “**directors and secretaries**”, substitute “**directors, secretaries and persons performing CEO function or CFO function**”.

135 After subsection 304‑5(3)

Insert:

New person performing CEO function or CFO function

 (3A) An Aboriginal and Torres Strait Islander corporation must lodge with the Registrar a notice of the personal details of a person performing a chief executive officer function or chief financial officer function in relation to the corporation within 28 days after the person begins to perform that function.

Note: For ***chief executive officer function*** and ***chief financial officer function***, see section 694‑85.

Penalty: 10 penalty units.

136 Before subsection 304‑5(4)

Insert:

Personal details

137 Subsections 304‑5(4), (5) and (6)

After “secretary”, insert “, person performing a chief executive officer function or chief financial officer function”.

138 Subsection 304‑5(8)

After “(3),”, insert “(3A),”.

139 Subsection 304‑5(8) (Note 2)

After “(3),”, “insert “(3A),”.

140 Section 304‑10 (heading)

After “**secretary**”, insert “**, person performing CEO function or CFO function**”.

141 Subsection 304‑10(1)

After “secretary”, insert “, person performing a chief executive officer function or chief financial officer function”.

142 Subsection 304‑10(1)

Omit “or (3)”, substitute “, (3) or (3A)”.

143 Subsection 304‑10(2)

After “secretary”, insert “, person performing a chief executive officer function or chief financial officer function”.

144 Subsection 304‑15(1)

After “(3)”, insert “, (3A)”.

145 Section 307‑1 (heading)

After “**secretary**”, insert “**, person performing CEO function or CFO function**”.

146 Paragraphs 307‑1(1)(a) and (b)

After “secretary” (wherever occurring), insert “, person performing a chief executive officer function, person performing a chief financial officer function”.

147 At the end of subsection 307‑1(1)

Add:

Note: For ***chief executive officer function*** and ***chief financial officer function***, see section 694‑85.

148 Section 333‑5 (heading)

After “**directors’ reports**”, insert “**, remuneration reports**”.

149 Subsection 333‑5(3)

Omit “either or both”, substitute “any or all”.

150 After paragraph 333‑5(3)(b)

Insert:

 ; (c) a remuneration report for a financial year.

151 At the end of section 333‑10

Add:

Remuneration reports

 (4) If a section 333‑5 report is a remuneration report for a financial year, regulations made for the purposes of subsection (1) may require the report to include information about the remuneration of key management personnel of any of the following:

 (a) the corporation;

 (b) a related body corporate;

 (c) an entity that the corporation controls;

 (d) a trust that is connected with the corporation.

Note: For ***related body corporate***, see sections 700‑1 and 689‑20. For when a corporation controls an entity, see section 689‑25. For when a trust is connected with a corporation, see subsection 694‑45(4).

152 Subsection 333‑15(3)

Omit “or a directors’ report”, substitute “, directors’ report or remuneration report”.

153 Subsection 333‑15(3) (note)

Omit “or a directors’ report”, substitute “, directors’ report or remuneration report”.

154 After paragraph 342‑5(1)(b)

Insert:

 or (c) a remuneration report for a financial year;

155 Subsection 342‑5(3A) (heading)

After “*director’s report*”, insert “*, remuneration report*”.

156 After paragraph 342‑5(3A)(b)

Insert:

 (ba) a remuneration report for a financial year; or

157 After subparagraph 348‑1(3)(ii)

Insert:

 (iia) a remuneration report for a financial year; or

158 Subsection 348‑5(1)

Omit “or a directors’ report”, substitute “, directors’ report or remuneration report”.

159 Section 694‑85 (at the end of the heading)

Add “**and *chief financial officer function***”.

160 Subsection 694‑85(1) (heading)

Repeal the heading, substitute:

Chief executive officer function

161 Subsection 694‑85(3) (heading)

Repeal the heading, substitute:

Chief financial officer function

162 Subsection 694‑85(3)

Omit “a CEO function in relation to the corporation”, substitute “a ***chief financial officer function*** (***CFO function***) in relation to an Aboriginal and Torres Strait Islander corporation”.

163 Subsection 694‑85(4)

Omit “a CEO function” (wherever occurring), substitute “a CFO function”.

164 Section 700‑1

Insert:

***key management personnel*** has the same meaning as in the accounting standards.

Part 9—Related party transactions

Corporations (Aboriginal and Torres Strait Islander) Act 2006

165 After section 287‑1

Insert:

287‑3 Small amounts given to related entity

 (1) Member approval is not needed to give a financial benefit to a related party of an Aboriginal and Torres Strait Islander corporation in a financial year if the total of the following amounts or values is less than or equal to the amount prescribed by the regulations for the purposes of this section:

 (a) the amount or value of the financial benefit;

 (b) the total of all other amounts or values of financial benefits given to the related party, in the financial year, for which member approval was not needed because of this section.

 (2) In working out the total of the amounts or values referred to in paragraphs (1)(a) and (b):

 (a) add in all amounts or values of financial benefits given to the related party in the financial year by the following:

 (i) the corporation;

 (ii)any entity that the corporation controls;

 (iii) any entity controlled by an entity mentioned in subparagraph (ii); and

 (b) disregard:

 (i) amounts that have been repaid; and

 (ii) amounts that fall under any other exception in this Part.

For the purposes of this subsection, the time at which an entity must be controlled is the time at which the financial benefit is given.

166 Sections 290‑5 to 290‑15

Repeal the sections.

167 Subsection 290‑20(1)

Repeal the subsection, substitute:

 (1) The notice convening the meeting where approval will be sought to give a financial benefit to a related party must set out:

 (a) the text of the proposed resolution; and

 (b) the related parties to whom the proposed resolution would permit financial benefits to be given; and

 (c) the nature of the financial benefits; and

 (d) the value of the financial benefits.

Penalty: 5 penalty units.

168 Section 290‑25

Repeal the section.

169 Section 290‑30

Omit “proposed notice lodged under section 290‑5”, substitute “notice convening the meeting”.

170 Subsections 290‑35(3) to (6)

Repeal the subsections.

171 Section 617‑1 (table item 26)

Repeal the item.

Part 10—Power to exempt corporation from employee‑director requirement

Corporations (Aboriginal and Torres Strait Islander) Act 2006

172 After paragraph 310‑5(2)(a)

Insert:

 (aa) subsection 246‑5(4); and

173 After paragraph 310‑15(2)(a)

Insert:

 (aa) subsection 246‑5(4); and

Part 11—Independent directors

Corporations (Aboriginal and Torres Strait Islander) Act 2006

174 Subsection 246‑1(3)

Repeal the subsection.

175 Section 246‑15

After “person”, insert “who is a member of the corporation”.

176 After section 246‑15

Insert:

246‑17 Directors may appoint independent directors (replaceable rule—see section 60‑1)

 The directors of an Aboriginal and Torres Strait Islander corporation may appoint an individual who is not a member of the corporation as a director.

177 After subsection 246‑25(1)

Insert:

Independent directors (replaceable rule—see section 60‑1)

 (1A) A director of an Aboriginal and Torres Strait Islander corporation who is not a member of the corporation must not be appointed for a period exceeding 1 year.

Note: A rule in a corporation’s constitution that modifies or replaces this replaceable rule cannot provide for a term of appointment that is inconsistent with this Act (see paragraph 66‑1(5)(c)).

Part 12—Modernising publication requirements

Corporations (Aboriginal and Torres Strait Islander) Act 2006

178 Subsection 187‑5(1)

Omit all the words before paragraph (a), substitute:

 (1) The Registrar may, on an application made in accordance with subsection (3) or on the Registrar’s own initiative, make a determination in writing in relation to an Aboriginal and Torres Strait Islander corporation exempting any of the following from the exemptible provisions of this Chapter specified in the Registrar’s determination:

179 Subsection 187‑5(6)

Omit “applicant”, substitute “corporation”.

180 Subsection 187‑15(1)

Omit “may determine in writing”, substitute “may, by legislative instrument, determine”.

181 Paragraph 187‑15(1)(a)

Omit “a specified Aboriginal and Torres Strait Islander corporation or”.

182 Paragraph 187‑15(1)(b)

Omit “a specified Aboriginal and Torres Strait Islander corporation or of”.

183 Paragraph 187‑15(1)(b)

Omit “(as the case may be)”.

184 Subsections 187‑15(4) to (7)

Repeal the subsections.

185 Subsection 225‑5(1)

Omit all the words before paragraph (a), substitute:

 (1) The Registrar may, on an application made in accordance with subsection (2) or on the Registrar’s own initiative, make a determination in writing in relation to an Aboriginal and Torres Strait Islander corporation exempting any of the following from the provisions of this Chapter specified in the Registrar’s determination:

186 Subsection 225‑5(5)

Omit “applicant”, substitute “corporation”.

187 Subsection 225‑15(1)

Omit “may determine in writing”, substitute “may, by legislative instrument, determine”.

188 Paragraph 225‑15(1)(a)

Omit “a specified Aboriginal and Torres Strait Islander corporation or”.

189 Paragraph 225‑15(1)(b)

Omit “a specified Aboriginal and Torres Strait Islander corporation or of”.

190 Paragraph 225‑15(1)(b)

Omit “(as the case may be)”.

191 Subsections 225‑15(3) to (6)

Repeal the subsections.

192 Subsection 268‑25(8)

Repeal the subsection, substitute:

 (8) Notice of the making, revocation or suspension of the order must be published in one or more of the following ways:

 (a) on the Registrar’s website;

 (b) for an order that is not a legislative instrument—in the Gazette;

 (c) in a national newspaper;

 (d) in a daily newspaper that circulates generally in each State or Territory.

193 Subsection 310‑5(1)

Omit all the words before paragraph (a), substitute:

 (1) The Registrar may, on an application made in accordance with subsection (3) or on the Registrar’s own initiative, make a determination in writing in relation to an Aboriginal and Torres Strait Islander corporation exempting any of the following from the exemptible provisions of this Chapter specified in the Registrar’s determination:

194 Subsection 310‑5(6)

Omit “applicant”, substitute “corporation”.

195 Subsection 310‑15(1)

Omit “may determine in writing”, substitute “may, by legislative instrument, determine”.

196 Paragraph 310‑15(1)(a)

Omit “a specified Aboriginal and Torres Strait Islander corporation or”.

197 Paragraph 310‑15(1)(b)

Omit “a specified Aboriginal and Torres Strait Islander corporation or of”.

198 Paragraph 310‑15(1)(b)

Omit “(as the case may be)”.

199 Subsections 310‑15(4) to (7)

Repeal the subsections.

200 Subsections 336‑5(9) and (10)

Repeal the subsections.

201 Subsection 353‑3(1)

Omit all the words before paragraph (a), substitute:

 (1) The Registrar may, on an application made in accordance with subsection (2) or on the Registrar’s own initiative, make a determination in writing in relation to an Aboriginal and Torres Strait Islander corporation exempting any of the following from the provisions of Part 7‑2 or 7‑3, or of regulations made for the purposes of Part 7‑2 or 7‑3, that are specified in the Registrar’s determination:

202 Subsection 353‑3(5)

Omit “applicant”, substitute “corporation”.

203 Subsection 353‑10(1)

Omit “may determine in writing”, substitute “may, by legislative instrument, determine”.

204 Paragraph 353‑10(1)(a)

Omit “a specified Aboriginal and Torres Strait Islander corporation or”.

205 Paragraph 353‑10(1)(b)

Omit “a specified Aboriginal and Torres Strait Islander corporation or of”.

206 Paragraph 353‑10(1)(b)

Omit “(as the case may be)”.

207 Subsections 353‑10(3) to (6)

Repeal the subsections.

208 Subsection 493‑1(4)

Repeal the subsection, substitute:

 (4) The Registrar must, as soon as practicable, publish a notice of the decision in one or more of the following ways:

 (a) on the Registrar’s website;

 (b) in the Gazette;

 (c) in a national newspaper;

 (d) for each State or Territory in which the corporation has its registered office (if any) or carries on business or other operations—in a daily newspaper that circulates generally in that State or Territory.

209 Subsection 526‑20(8)

Repeal the subsection, substitute:

 (8) The Registrar must, within 21 days after a corporation lodges a notice of the passing of a resolution under subsection (6), publish a notice of the passing of the resolution in one or more of the following ways:

 (a) on the Registrar’s website;

 (b) in the Gazette;

 (c) in a national newspaper;

 (d) for each State or Territory in which the corporation has its registered office (if any) or carries on business or other operations—in a daily newspaper that circulates generally in that State or Territory.

210 Paragraph 546‑5(3)(d)

Repeal the paragraph, substitute:

 (d) to the public in in one or more of the following ways:

 (i) on the Registrar’s website;

 (ii) in the Gazette;

 (iii) in a national newspaper;

 (iv) for each State or Territory in which the corporation has its registered office (if any) or carries on business or other operations—in a daily newspaper that circulates generally in that State or Territory.

211 Subsection 546‑5(3)

Omit “the *Gazette* notice”, substitute “the Registrar gave notice to the public in accordance with paragraph (d)”.

212 Subsection 546‑40(4)

Repeal the subsection, substitute:

Registrar to give notice of reinstatement

 (4) The Registrar must give notice of a reinstatement in one or more of the following ways:

 (a) on the Registrar’s website;

 (b) in the Gazette;

 (c) in a national newspaper;

 (d) for each State or Territory in which the corporation had its registered office (if any) before deregistration or carried on business or other operations—in a daily newspaper that circulates generally in that State or Territory.

 (4A) If the Registrar exercises the reinstatement power under subsection (1) in response to an application by a person, the Registrar must also give notice of the reinstatement to the applicant.

213 Section 658‑15

Repeal the section, substitute:

658‑15 Registrar to have a seal

 The Registrar must have and use as the seal of the Registrar’s office a seal in such form as the Minister, by notifiable instrument, determines.

214 Paragraph 694‑95(2)(b)

After “published”, insert “on a website,”.

Part 13—Storage of information

Corporations (Aboriginal and Torres Strait Islander) Act 2006

215 After section 376‑20

Insert:

376‑22 Location of books when matters recorded in another location

 (1) This section applies if:

 (a) an Aboriginal and Torres Strait Islander corporation records, other than in writing, matters (the ***stored matters***) this Act requires to be contained in a book; and

 (b) the record of the stored matters is kept at a place (the ***place of storage***) other than the place (the ***place of inspection***) where the book is required to be kept or required to be available for inspection; and

 (c) at the place of inspection, means are provided by which the stored matters are made available for inspection in written form.

Example: Matters are stored on a server in another location and are made available at the place of inspection via a computer.

 (2) The corporation is taken to have complied with the requirements of this Act as to the location of the book, but only in so far as the book is required to contain the stored matters.

 (3) The book is taken to be kept at the place of inspection, even though the record of the stored matters is kept at the place of storage.

Part 14—Improving consistency with Corporations Act

Corporations (Aboriginal and Torres Strait Islander) Act 2006

216 Part 10‑5

Repeal the Part, substitute:

Part 10‑5—Protection for whistleblowers

Division 466—Protection for whistleblowers

466‑1 Applying Corporations Act whistleblower protection provisions to Aboriginal and Torres Strait Islander corporations

 (1) The Corporations Act whistleblower protection 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 | APRA | the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations |
| 2 | ASIC | the Registrar |
| 3 | associate | associate (within the meaning of this Act) |
| 4 | regulated entity | regulated entity (within the meaning given by subsection (4)) |

 (2) The Corporations Act whistleblower protection 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:

 (a) increase, or have the effect of increasing, the maximum penalty for any offence; or

 (b) widen, or have the effect of widening, the scope of any offence.

 (4) In this Act:

***Corporations Act whistleblower protection provisions*** means:

 (a) Part 9.4AAA of the Corporations Act (other than section 1317AAB, subsection 1317AAC(2) and sections 1317AI to 1317AK); and

 (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 provisions referred to in paragraph (a); and

 (c) the regulations and rules made under that Act for the purposes of the provisions of that Act referred to in paragraphs (a) and (b).

***regulated entity*** means each of the following:

 (a) an Aboriginal and Torres Strait Islander corporation;

 (b) a connected entity of an Aboriginal and Torres Strait Islander corporation;

 (c) an entity prescribed by the regulations for the purposes of this paragraph.

217 Subsection 561‑1(4) (penalty)

Repeal the penalty, substitute:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

218 At the end of section 561‑5

Add:

 (5) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information was not false or misleading in a material particular if the person proves that:

 (a) the person made all inquiries (if any) that were reasonable in the circumstances; and

 (b) after doing so, the person believed on reasonable grounds that the information was not misleading or deceptive in a material particular.

 (6) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information did not have omitted from it any matter or thing the omission of which rendered the information misleading in a material respect if the person proves that:

 (a) the person made all inquiries (if any) that were reasonable in the circumstances; and

 (b) after doing so, the person believed on reasonable grounds that there was no such omission.

 (7) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information was not false or misleading in a material particular if the person proves that:

 (a) the person relied on information given to the person by:

 (i) if the person is a body—someone other than a director, employee or agent of the body; or

 (ii) if the person is an individual—someone other than an employee or agent of the individual; and

 (b) the reliance placed on that information by the person was reasonable in all the circumstances.

 (8) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information did not have omitted from it any matter or thing the omission of which rendered the information misleading in a material respect if the person proves that:

 (a) the person relied on information given to the person by:

 (i) if the person is a body—someone other than a director, employee or agent of the body; or

 (ii) if the person is an individual—someone other than an employee or agent of the individual; and

 (b) the reliance placed on that information by the person was reasonable in all the circumstances.

219 Part 15‑3 (heading)

Omit “**for Registrar, Minister etc.**”.

220 At the end of Part 15‑3

Add:

Division 610—Qualified privilege for auditors

610‑1 Auditors and other persons to enjoy qualified privilege in certain circumstances

Qualified privilege for auditor

 (1) An auditor of an Aboriginal and Torres Strait Islander corporation has qualified privilege in respect of:

 (a) a statement that the auditor makes (orally or in writing) in the course of the auditor’s duties as auditor; or

 (b) a statement that the auditor makes (orally or in writing) on:

 (i) a report required to be prepared by the auditor under this Act or the regulations; or

 (ii) any statement, report or other document that is taken, for any purpose, to be part of that report; or

 (c) a notification of a matter that the auditor gives the Registrar.

Note: If the auditor is an audit company, the company has qualified privilege under this subsection in respect of statements made, and notices given, by individuals on behalf of the company if those statements and notices can be properly attributed to the company.

Qualified privilege for registered company auditor acting on behalf of audit company

 (2) If the auditor of the Aboriginal and Torres Strait Islander corporation is an authorised audit company, a registered company auditor acting on behalf of the company has qualified privilege in respect of:

 (a) a statement that the registered company auditor makes (orally or in writing) in the course of the performance, on behalf of the company, of the company’s duties as auditor; or

 (b) a statement that the registered company auditor makes (orally or in writing), on behalf of the company, on:

 (i) a report required to be prepared by the auditor under this Act or the regulations; or

 (ii) any statement, report or other document that is taken, for any purpose, to be part of that report; or

 (c) a notification of a matter that the registered company auditor gives the Registrar, on behalf of the company.

Extent of auditor’s duties—answering questions put to auditor by members

 (3) For the purposes of this section, an auditor’s duties as auditor include answering questions put to the auditor (or the auditor’s representative) at an AGM.

Qualified privilege for person representing auditor at AGM

 (4) A person who represents an auditor at an AGM has qualified privilege in respect of any statement that the person makes in the course of representing the auditor at that AGM.

Qualified privilege for subsequent publication

 (5) A person has qualified privilege in respect of the publishing of a document:

 (a) prepared by an auditor of the Aboriginal and Torres Strait Islander corporation in the course of the auditor’s duties; or

 (b) required by or under this Act to be lodged (whether or not the document has been lodged).

 (6) A person has qualified privilege in respect of the publishing of any statement:

 (a) made by an auditor as mentioned in subsection (1); or

 (b) made by a registered company auditor as mentioned in subsection (2); or

 (c) made by a person as mentioned in subsection (4).

221 After section 694‑65

Insert:

694‑67 Qualified privilege

 (1) If this Act provides that a person has ***qualified privilege*** in respect of an act, matter or thing, the person:

 (a) has qualified privilege in proceedings for defamation; or

 (b) is not, in the absence of malice on the person’s part, liable to an action for defamation at the suit of a person;

as the case requires, in respect of that act, matter or thing.

 (2) In subsection (1):

***malice*** includes ill will to the person concerned or any other improper motive.

 (3) Neither this section nor a provision of this Act that provides as mentioned in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as a defendant in proceedings, or an action, for defamation.

222 Section 700‑1

Insert:

***Corporations Act whistleblower protection provisions*** has the meaning given by subsection 466‑1(4).

***qualified privilege*** has the meaning given by section 694‑67.

***regulated entity*** has the meaning given by subsection 466‑1(4).

Part 15—Finalising processes

Corporations (Aboriginal and Torres Strait Islander) Act 2006

223 After subsection 439‑20(6)

Insert:

Notice that Registrar satisfied required action has been taken

 (6A) If:

 (a) the Registrar has sent a notice to an Aboriginal and Torres Strait Islander corporation or its directors under subsection (1), (3) or (5); and

 (b) the Registrar is satisfied that the action specified in the notice has been taken;

the Registrar must, by notice in writing, inform the corporation or the directors (as the case requires) that the Registrar is so satisfied.

 (6B) A notice under subsection (6A) is not a legislative instrument.

224 At the end of section 453‑1

Add:

 (8) If, after receiving a report on the results of an examination of the books of an Aboriginal and Torres Strait Islander corporation or a related body corporate, the Registrar concludes that the Registrar will not take any action under this Act on the basis of the report, the Registrar may notify the corporation or related body corporate of that conclusion.

Part 16—Dealing with unclaimed property

Corporations (Aboriginal and Torres Strait Islander) Act 2006

225 Subsection 551‑15(2)

Omit “section 551‑30”, substitute “sections 551‑30 and 551‑32”.

226 Section 551‑25 (heading)

After “**amounts to**”, insert “**the Aboriginal and Torres Strait Islander Corporations Unclaimed Money**”.

227 Section 551‑25

After “credited to the”, insert “Aboriginal and Torres Strait Islander Corporations Unclaimed Money”.

228 Section 551‑30 (heading)

After “**Purposes of**”, insert “**the** **Aboriginal and Torres Strait Islander Corporations Unclaimed Money**”.

229 Subsection 551‑30(1)

After “The purposes of the”, insert “Aboriginal and Torres Strait Islander Corporations Unclaimed Money”.

230 At the end of subsection 551‑30(2)

Add:

Note: Amounts equal to amounts debited under this subsection must be credited to the Aboriginal and Torres Strait Islander Corporations Assets Protection Account under section 551‑37.

231 Subsection 551‑30(3)

Repeal the subsection.

232 After section 551‑30

Insert:

551‑32 Payment of claims after 6 years have elapsed

 If:

 (a) a person makes a claim under paragraph 551‑15(2)(a) to money that is unclaimed property, or to money that represents the proceeds of unclaimed property, after 6 years have elapsed since the property was first held by the Registrar as unclaimed property; and

 (b) the Registrar is satisfied under paragraph 551‑15(2)(b) that the person is entitled to the money;

the Registrar must pay the money to the person out of money that is appropriated by the Parliament for the purpose.

233 Paragraphs 551‑35(1)(b) and (2)(b)

Omit “subsection 551‑30(3)”, substitute “section 551‑32”.

234 After section 551‑35

Insert:

551‑36 Establishment of the Aboriginal and Torres Strait Islander Corporations Assets Protection Account

 (1) The Aboriginal and Torres Strait Islander Corporations Assets Protection Account is established by this section.

 (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

551‑37 Credits of amounts to the Aboriginal and Torres Strait Islander Corporations Assets Protection Account

 There must be credited to the Aboriginal and Torres Strait Islander Corporations Assets Protection Account amounts equal to the amounts debited from the Aboriginal and Torres Strait Islander Corporations Unclaimed Money Account under subsection 551‑30(2).

551‑38 Purposes of the Aboriginal and Torres Strait Islander Corporations Assets Protection Account

 The purposes of the Aboriginal and Torres Strait Islander Corporations Assets Protection Account, in relation to which amounts may be debited from the Account, are:

 (a) to pay costs in relation to unclaimed property that is not money, including but not limited to costs associated with the management, upkeep, maintenance and protection of the property and ensuring public safety; and

 (b) meeting the expenses of administering the account.

Part 17—External administration and deregistration

Corporations (Aboriginal and Torres Strait Islander) Act 2006

235 At the end of section 166‑10

Add:

Note: If an application is made under this section and the Court is satisfied that the corporation is insolvent, the Court may order that the corporation be wound up (see section 526‑17).

236 Paragraph 487‑5(1)(a)

Repeal the paragraph, substitute:

 (a) there is a serious irregularity in the financial affairs of the corporation;

237 Subsection 487‑10(1)

Omit “subsection (2)”, substitute “subsections (1A) and (2)”.

238 After subsection 487‑10(1)

Insert:

 (1A) Subsection (1) does not apply if a majority of the corporation’s directors have requested the Registrar in writing to appoint a special administrator.

239 After paragraph 499‑10(1)(d)

Insert:

 (da) sections 451E to 451H;

240 Paragraph 499‑10(1)(e)

Omit “(d)”, substitute “(da)”.

241 Subsection 526‑1(3)

After “section 526‑15”, insert “or 166‑10”.

242 After section 526‑10

Insert:

526‑12 Presumptions of insolvency

 (1) For the purposes of paragraph 526‑5(i), an Aboriginal and Torres Strait Islander corporation is presumed to be insolvent if:

 (a) an authorised officer has stated in a written report to the Registrar under subsection 453‑1(1) that, in the officer’s opinion, the corporation:

 (i) has failed to keep financial records as required by subsection 322‑10(1); or

 (ii) has failed to retain financial records for 7 years as required by subsection 322‑10(2); and

 (b) before the officer made the statement, the corporation was given at least 14 days to produce the financial records to the officer.

Note: There may be other grounds on which a corporation is presumed to be insolvent, under the provisions of the Corporations Act applied by sections 526‑35 and 526‑40.

 (2) For the purposes of paragraph 526‑5(i), an Aboriginal and Torres Strait Islander corporation is also presumed to be insolvent if a special administrator for the corporation has stated in a written report given to the Registrar for the purposes of this subsection that, in the special administrator’s opinion, the corporation:

 (a) has failed to keep financial records as required by subsection 322‑10(1); or

 (b) has failed to retain financial records for 7 years as required by subsection 322‑10(2).

Note: There may be other grounds on which a corporation is presumed to be insolvent, under the provisions of the Corporations Act applied by sections 526‑35 and 526‑40.

 (3) Subsections (1) and (2) do not apply in relation to a contravention of subsection 322‑10(1) that is only minor or technical.

 (4) A presumption for which this section provides operates except so far as the contrary is proved for the purposes of the proceeding concerned.

243 Paragraph 526‑15(4)(c)

Omit “director;”, substitute “director.”.

244 Paragraph 526‑15(4)(d)

Repeal the paragraph.

245 After section 526‑15

Insert:

526‑17 Order made on application under section 166‑10

 If, on application under section 166‑10, the Court is satisfied that an Aboriginal and Torres Strait Islander corporation is insolvent, the Court may order that the corporation be wound up on the ground that the corporation is insolvent.

246 Subsection 546‑1(2)

After “only if”, insert “all of the following conditions are met”.

247 Paragraphs 546‑1(2)(a) to (e)

Omit “; and”, substitute “;”.

248 After subsection 546‑1(2)

Insert:

 (2A) Despite subsection (2), a person may apply even if one or more of the conditions mentioned in paragraphs (2)(a) to (e) are not met. The application must specify the conditions that are not met and reasons they are not met.

249 Subsection 546‑1(4)

Repeal the subsection, substitute:

Deregistration procedure

 (4) If the Registrar is not aware of any failure to comply with subsection (1) or (3), and is also not aware of any condition mentioned in subsection (2) not being met, the Registrar must give notice of the proposed deregistration in one or more of the following ways:

 (a) on the Registrar’s website;

 (b) in the Gazette;

 (c) in a national newspaper;

 (d) for each State or Territory in which the corporation has its registered office (if any) or carries on business or other operations—in a daily newspaper that circulates generally in that State or Territory.

 (4A) The Registrar may also give notice of the proposed deregistration in one or more of the ways mentioned in subsection (4) if:

 (a) the Registrar is not aware of any failure to comply with subsection (1) or (3) and is also not aware of the condition mentioned in paragraph (2)(f) not being met; and

 (b) the Registrar is aware of one or more of the conditions mentioned in paragraphs (2)(a) to (e) not being met and is satisfied that it is justified to proceed with the deregistration despite this.

250 Subsection 546‑1(5)

Omit “in the *Gazette*”.

251 Subsection 546‑1(6)

Omit “the *Gazette* notice”, substitute “the Registrar gave notice of the proposed deregistration”.

Part 18—Minor technical amendments

Corporations (Aboriginal and Torres Strait Islander) Act 2006

252 Subsection 69‑20(3) (note)

Repeal the note, substitute:

Note: A secretary of an Aboriginal and Torres Strait Islander corporation may be liable for a civil penalty for a contravention of subsection (1) or (2) (see sections 265‑40 and 386‑10).

253 Subsection 69‑20(5) (note)

Repeal the note.

254 Subsection 85‑15(3)

Omit “this must be done”, substitute “the information required by subsection (2) must be set out”.

255 Subsection 201‑15(2)

Omit “21 days”, substitute “28 days”.

256 Section 246‑20 (heading)

Omit “**to make up a quorum**”.

257 Subsection 249‑10(2)

Repeal the subsection.

258 Subparagraph 279‑25(1)(a)(iii)

Omit “; or”, substitute “; and”.

Part 19—Review of financial reports

Corporations (Aboriginal and Torres Strait Islander) Act 2006

259 Paragraph 201‑170(1)(a)

Omit “the audit”, substitute “an audit or review”.

260 At the end of paragraph 201‑170(1)(d)

Add “or review”.

261 Subsection 333‑15(2) (heading)

Repeal the heading, substitute:

Audit or review of financial report

262 Subsection 333‑15(2)

Omit “regulations made for the purposes of subsection (1) of this section”, substitute “the regulations”.

263 Paragraph 333‑15(2)(a)

After “audited”, insert “or reviewed”.

264 After paragraph 333‑15(2)(a)

Insert:

 (aa) prescribe circumstances in which a financial report, or a part of it, may be reviewed instead of audited;

265 Paragraphs 333‑15(2)(c) and (d)

After “the audit”, insert “or review”.

266 Subsection 333‑15(2) (note)

After “audit”, insert “or review”.

267 Section 333‑20 (heading)

After “**if** **audit**”, insert “**or review**”.

268 Paragraph 333‑20(b)

After “audited”, insert “or reviewed”.

269 Paragraph 336‑1(7)(a)

After “audited”, insert “or reviewed”.

270 Paragraphs 336‑1(7)(c) and (d)

After “the audit”, insert “or review”.

271 Paragraph 336‑5(7)(a)

After “audited”, insert “or reviewed”.

272 Paragraphs 336‑5(7)(c) and (d)

After “the audit”, insert “or review”.

273 Division 339 (heading)

After “**Audit**”, insert “**or review**”.

274 Paragraph 339‑5(1)(a)

After “an audit”, insert “or review”.

275 Paragraph 339‑5(1)(b)

After “to be audited”, insert “or reviewed”.

276 Subsection 339‑5(2)

After “to be audited”, insert “or reviewed”.

277 Section 339‑15 (heading)

After “**audit**”, insert “**or review**”.

278 Section 339‑15

After “audit” (wherever occurring), insert “or review”.

279 Subsection 339‑20(1)

After “conducts an audit”, insert “or review”.

280 Subsection 339‑20(1)

After “for the audit”, insert “or review”.

281 Subsection 339‑20(1)

After “of the audit”, insert “or review”.

282 Subsection 339‑20(2)

After “conducts an audit”, insert “or review”.

283 Subsection 339‑20(2)

After “for the audit”, insert “or review”.

284 Subsection 339‑20(2)

After “of the audit”, insert “or review”.

285 Section 339‑25

After “conducts an audit”, insert “or review”.

286 Paragraphs 339‑25(a) and (b)

After “the audit”, insert “or review”.

287 Subparagraph 339‑25(b)(iii)

After “audits”, insert “or reviews”.

288 Paragraph 339‑25(c)

After “the audit” (wherever occurring), insert “or review”.

289 At the end of Subdivision 339‑A of Division 339

Add:

339‑27 Exception from registration requirements—reviewing financial reports

 (1) This section applies if an Aboriginal and Torres Strait Islander corporation has a financial report reviewed:

 (a) in circumstances prescribed by regulations made for the purposes of paragraph 333‑15(2)(aa); or

 (b) as required by a determination made by the Registrar under section 336‑1 or 336‑5.

 (2) An individual is taken to be a registered company auditor for the purposes of the review if the individual:

 (a) is a member of a professional accounting body; and

 (b) has a designation, in respect of that membership, prescribed by the regulations for the purposes of this paragraph.

 (3) The provisions of this Act apply, with the necessary modifications, in relation to the individual accordingly.

290 Subdivision 339‑B of Division 339 (at the end of the heading)

Add “**or review**”.

291 Section 339‑30 (at the end of the heading)

Add “**in relation to audit**”.

292 Section 339‑30

Omit “The auditor of a financial report”, substitute “In the case of an audit of a financial report, the auditor”.

293 After section 339‑30

Insert:

339‑33 Auditor to form conclusion in relation to review

 In the case of a review of a financial report, the auditor must form a conclusion about:

 (a) whether, on the basis of the review, anything has come to the auditor’s attention that causes the auditor to believe that the financial report does not satisfy the requirements of any of the following:

 (i) this Act;

 (ii) any applicable regulations made for the purposes of section 333‑10 or 333‑15;

 (iii) any applicable determinations made by the Registrar under section 336‑1 or 336‑5; and

 (b) whether the auditor has been given all information, explanation and assistance necessary for the conduct of the review; and

 (c) whether the corporation has kept financial records sufficient to enable the financial report to be prepared and reviewed; and

 (d) whether the corporation has kept other records and registers as required by this Act; and

 (e) any other matter specified in the regulations.

294 Section 339‑35

After “the audit” (wherever occurring), insert “or review”.

295 Section 339‑40 (at the end of the heading)

Add “**in relation to audit**”.

296 Before subsection 339‑40(1)

Insert:

 (1A) This section applies in relation to a financial report that is required to be audited, unless section 339‑43 applies in relation to the report.

297 Subsection 339‑40(1)

Omit “a financial”, substitute “the financial”.

298 After section 339‑40

Insert:

339‑43 Auditor’s report in relation to review

 (1) This section applies in relation to a financial report that is reviewed:

 (a) in circumstances prescribed by regulations made for the purposes of paragraph 333‑15(2)(aa); or

 (b) as required by a determination made by the Registrar under section 336‑1 or 336‑5.

 (2) The auditor of the financial report must prepare a report for the corporation’s members on whether the auditor has concluded that, on the basis of the review, anything has come to the auditor’s attention that causes the auditor to believe that the financial report does not satisfy the requirements of any of the following:

 (a) this Act;

 (b) any applicable regulations made for the purposes of sections 333‑10 and 333‑15;

 (c) any applicable determinations made by the Registrar under section 336‑1 or 336‑5.

If the auditor has concluded that anything has come to the auditor’s attention that causes the auditor to so believe, the auditor’s report must say why.

Penalty: 50 penalty units.

 (3) If:

 (a) the financial report is required to comply with the accounting standards; and

 (b) the auditor believes that the financial report does not comply with an accounting standard;

the auditor’s report must, to the extent it is practicable to do so, quantify the effect that non‑compliance has on the financial report. If it is not practicable to quantify the effect fully, the report must say why.

Penalty: 50 penalty units.

 (4) The auditor’s report must describe:

 (a) any defect or irregularity in the financial report; and

 (b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 339‑33(b), (c) or (d).

Penalty: 50 penalty units.

 (5) If the review of the financial report is required to be conducted in accordance with some or all of the auditing standards, the auditor’s report must include any statements or disclosures required by those auditing standards.

Penalty: 50 penalty units.

 (6) The auditor’s report must contain any other information required by the regulations.

 (7) The report must specify the date on which it is made.

Penalty: 50 penalty units.

 (8) An offence against subsection (2), (4), (5) or (7) is an offence of strict liability.

299 Section 339‑45

Omit “The auditor’s report”, substitute “An auditor’s report under section 339‑40 or 339‑43”.

300 Paragraphs 339‑50(1)(a) and (b)

After “the audit”, insert “or review”.

301 Subparagraphs 339‑50(2)(a)(i) and (ii) and (b)(i) and (ii)

After “the audit”, insert “or review”.

302 Subsection 339‑50(4)

After “for the audit”, insert “or review”.

303 Subparagraphs 339‑50(4)(a)(i) and (ii) and (b)(i) and (ii)

After “the audit”, insert “or review”.

304 Paragraph 339‑50(6)(a)

Omit “audit”, substitute “auditor’s”.

305 Subsection 339‑55(1)

Omit “the audit”, substitute “an audit or review”.

306 Subparagraphs 339‑55(2)(b)(i) and (4)(b)(i)

Omit “audit report prepared in relation to the audit”, substitute “auditor’s report prepared in relation to the audit or review”.

307 Subparagraphs 339‑55(9)(a)(ii) and (c)(i)

After “the audit”, insert “or review”.

308 At the end of section 339‑55

Add:

References to audit working papers

 (11) A reference in this section to audit working papers is, in relation to a review, taken to be a reference to working papers for the review.

309 Paragraphs 339‑60(1)(a) and (2)(a) and (b), 339‑65(1)(a) and (2)(a) and 339‑70(1)(a), (2)(a) and (3)(a)

After “audit”, insert “or review”.

310 Subsections 339‑75(1) and (2) and 339‑80(1), (2) and (3)

After “the audit” (wherever occurring), insert “or review”.

311 At the end of paragraph 339‑85(b)

Add “or review”.

312 Subparagraphs 339‑90(1)(a)(ii) and (iii)

After “audit” (wherever occurring), insert “or review”.

313 Paragraph 339‑90(2)(a)

After “for the audit”, insert “or review”.

314 Subparagraphs 339‑90(2)(a)(ii) and (iii)

After “audit” (wherever occurring), insert “or review”.

315 Paragraph 339‑90(3)(a)

After “audit”, insert “or review”.

316 Subparagraphs 339‑90(3)(b)(ii) and (iii)

After “audit” (wherever occurring), insert “or review”.

317 Subsection 339‑90(6)

Repeal the subsection, substitute:

Person involved in conduct of an audit or review

 (6) A person is ***involved in the conduct of the audit or review*** if the person is any of the following:

 (a) the auditor;

 (b) the lead auditor for the audit or review;

 (c) the review auditor for the audit or review;

 (d) a professional member of the audit team for the audit or review;

 (e) any other person involved in the conduct of the audit or review.

318 Subsection 342‑5(2)

After “audited”, insert “or reviewed”.

319 Paragraphs 342‑5(3A)(c) and (3C)(b)

After “audited”, insert “or reviewed”.

320 Subsection 345‑5(1)

After “audits”, insert “or reviews”.

321 Paragraph 345‑5(1)(b)

After “audit”, insert “or review”.

322 At the end of subsection 345‑5(2)

Add “or reviewed”.

323 Section 345‑15

Omit “or audit”, substitute “, audit or review”.

324 Section 345‑15

Omit “or audited”, substitute “, audited or reviewed”.

325 Section 700‑1 (paragraph (r) of the definition of *affairs*)

After “the audit”, insert “or review”.

326 Section 700‑1

Insert:

***auditor*** of an Aboriginal and Torres Strait Islander corporation includes an auditor that conducts a review of a report of the corporation.

327 Section 700‑1

Insert:

***involved in the conduct of the audit or review*** has the meaning given by subsection 339‑90(6).

328 Section 700‑1 (definition of *person involved in the conduct of an audit*)

Repeal the definition.

Part 20—Native Title Register

Native Title Act 1993

329 Before paragraph 193(4)(a)

Insert:

 (aa) the name or address of a prescribed body corporate that holds native title rights and interest on trust changes; or

 (ab) the name or address of an agent prescribed body corporate in relation to native title rights and interests changes; or