





# **Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Act 2006**

**No. 126, 2006**

**An Act to amend the *Corporations Act 2001*, and for  
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Act 2006

No. 126, 2006

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## An Act to amend the *Corporations Act 2001*, and for related purposes

[Assented to 4 November 2006]

The Parliament of Australia enacts:

### 1 Short title

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

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	4 November 2006
2. Schedule 1	At the same time as the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> commences.	1 July 2007

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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 of the Corporations Act 2001 relating to Aboriginal and Torres Strait Islander corporations**

### *Corporations Act 2001*

#### **1 Section 9**

Insert:

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

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

Repeal the definition, substitute:

*Part 5.7 body* means:

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

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

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

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

Add:

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

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

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

Add:

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

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

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

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

Add:

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

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

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

Add:

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

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

Repeal the subsection, substitute:

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

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

Repeal the paragraph, substitute:

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

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

Add:

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

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

Insert:

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

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

Repeal the paragraph, substitute:

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

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

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

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

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

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

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

Insert:

- (2A) The reference in paragraph (2)(c) to a deed of company arrangement includes a reference to a deed of corporation arrangement (within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*).
- (2B) For the purposes of subsection (1), a person is an *officer* of an Aboriginal and Torres Strait Islander corporation if the person is an officer of that corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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

Add:

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

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

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

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

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

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

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Insert:

- (1A) For the purposes of subsection (1), a person is an *officer* of an Aboriginal and Torres Strait Islander corporation if the person is an officer of that corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

**19 At the end of section 206E**

Add:

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

**20 Subparagraph 206F(1)(a)(ii)**

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

**21 After subsection 206F(1)**

Insert:

- (1A) To avoid doubt, the references in paragraph (1)(a) to corporations include references to Aboriginal and Torres Strait Islander corporations.

**22 After subsection 206F(2)**

Insert:

- (2A) To avoid doubt, the references in subsection (2) to a corporation includes a reference to an Aboriginal and Torres Strait Islander corporation.

**23 At the end of Part 2D.6**

Add:

**206HB Part does not apply to Aboriginal and Torres Strait Islander corporations**

This Part does not apply, of its own force, to disqualify a person from managing a corporation that is an Aboriginal and Torres Strait Islander corporation.

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

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

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

**24 Section 417**

Before “Except”, insert “(1)”.

**25 At the end of section 417**

Add:

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

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

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

**26 Section 601AI**

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

**27 Section 601AI**

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

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

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

**29 Paragraph 601AK(c)**

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

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

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

**31 At the end of section 1309**

Add:

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

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

**32 At the end of section 1318**

Add:

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

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

**33 Section 1321**

Before “A person”, insert “(1)”.

**34 At the end of section 1321**

Add:

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

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

**35 After subsection 1335(1)**

Insert:

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

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

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*[Minister's second reading speech made in—  
House of Representatives on 14 September 2006  
Senate on 16 October 2006]*

(125/06)

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*10 Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Act  
2006 No. 126, 2006*