

# CHAPTER 3

## OVERVIEW OF THE 2006 TRANSITIONAL BILL AND 2006 AMENDMENT BILL

3.1 This chapter summarises the two 2006 bills referred to the committee. When introducing the Transitional Bill, the Minister for Families, Community Services and Indigenous Affairs, the Hon Mal Brough, said that some of the amendments included in the bill have resulted from the committee's inquiry into the 2005 Bill.<sup>1</sup> This chapter will focus on provisions that relate to a number of the issues that arose in relation to the 2005 Bill.

3.2 Chapter 4 discusses those issues and others in relation to the 2006 bills in more detail.

### **2006 Transitional Bill<sup>2</sup>**

3.3 The purpose of this bill is essentially to support the transition to, and implementation of, the 2005 Bill. The bill consists of three schedules: amendments to the *Native Title Act 1993*, consequential amendments and transitional provisions.

3.4 Schedule 1 amends several provisions in the Native Title Act dealing with prescribed bodies corporate (PBCs). PBCs are established in accordance with the Native Title Act to manage native title rights and interests on behalf of common law native title holders. The Native Title (PBC) Regulations 1999 require PBCs to be incorporated under the ACA Act. Schedule 1 alters the Native Title Act to recognise PBCs will be incorporated under the 2005 Bill.

3.5 It also corrects a technical error in the definition of a registered native title body corporate.<sup>3</sup>

3.6 As discussed in earlier chapters, the 2005 Bill will replace the ACA Act. Schedule 2 in the Transitional Bill gives effect to this by repealing the ACA Act.

3.7 Schedule 2 also deals with consequential amendments resulting from the 2005 Bill replacing the ACA Act. For instance, it replaces references to the ACA Act in other Commonwealth Acts with references to the 2005 Bill. Similarly, references to incorporated Aboriginal associations in legislation will be replaced with references to corporations registered under the 2005 Bill. Since provisions relating to Aboriginal

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1 *House of Representatives Hansard*, 14 September 2006, pp 3-6.

2 This section draws heavily on the *Explanatory Memorandum* of the Transitional Bill.

3 *Explanatory Memorandum*, pp 2-3.

councils in the ACA Act are not being replaced with the 2005 Bill, references to these entities in other legislation will be removed.

### ***Transitional provisions***

3.8 Schedule 3 provides for transitional provisions. The major component is the provision for a transitional period of up to two years, with special provision for the Registrar to determine an extra six months in some circumstances, to allow corporations time to comply with the new framework.

3.9 The other important feature of the transitional provisions is that, according to the Bill, they have been 'tailored to reduce as much of the administrative burden on corporations as possible'.<sup>4</sup> Provision is made for transitional corporations to be registered automatically under the 2005 Bill. Similarly, existing members and directors automatically retain their membership and status under the 2005 Bill. The existing rules of transitional corporations are also recognised as constitutions under the 2005 Bill. The Transitional Bill states that this is designed to 'alleviate... the burden of transitional corporations immediately having to amend their rules and lodge them with the ... Registrar'.<sup>5</sup>

3.10 The Transitional Bill is intended to also alleviate some of the restrictions or obligations imposed under the 2005 Bill. For example, the limit on the number of directors to 12 does not apply during the transitional period, nor does the obligation on a corporation to hold its first annual general meeting within three months of registration.

3.11 Financial reporting obligations under the 2005 Bill are also relaxed for the financial year ending 30 June 2007, with corporations able to report under the requirements of the old ACA Act. Corporations may also elect in writing to report under the old Act for the financial year 30 June 2008. Schedule 3 provides for a number of other reporting exemptions.

3.12 All transitional corporations become 'medium corporations' when the Transitional Bill commences. A corporation's size may be altered from medium to small or large if the Registrar is satisfied that it is likely to be small or large. The Transitional Bill does not define the thresholds or criteria that will be used to determine a corporation as 'small', 'medium' or 'large'. As discussed in chapter 4, it is the government's intention to specify the thresholds in regulations rather than legislation.

3.13 Many of the above provisions are also discussed further in chapter 4.

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4 *Explanatory Memorandum*, p. 16.

5 *Explanatory Memorandum*, p. 19.

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## 2006 Amendment Bill<sup>6</sup>

3.14 The 2006 Amendment Bill amends the *Corporations Act 2001* as a consequence of the 2005 Bill. The amendments deal mainly with removing both duplications between the Corporations Act and the 2005 Bill, and areas of doubt and potential regulatory gaps that might arise once the bill comes into force. In other words, the Amendment Bill seeks to align the 2005 Bill and the Corporations Act.

3.15 The Amendment Bill confirms that a corporation under the 2005 Bill is a corporation for the purpose of the Corporations Act. According to the Explanatory Memorandum, this is necessary because '[w]ithout this amendment it may have been argued that the [2005] Bill, being a more recent Commonwealth enactment than the Corporations Act, would displace' the relevant section of the Corporations Act which defines the meaning of a corporation.<sup>7</sup>

3.16 The Amendment Bill removes duplication in relation to the duties of officers and employees, winding-up, receivers, courts, proceedings and offences. It also removes the possibility of confusion if there were dual regulators (the Registrar and the Australian Securities and Investments Commission) responsible for compliance, for example, in relation to the duties of officers and employees.<sup>8</sup>

3.17 The Amendment Bill complements the measures in the 2005 Bill for disqualifying persons from managing corporations. The 2005 Bill and the Corporations Act are intended to be mutually reinforcing in that disqualifications under one result in automatic disqualification under the other. The Amendment Bill amends the Corporations Act to ensure this happens.

3.18 The Amendment Bill also ensures that the current provisions which disqualify a person involved in two or more failed companies, one of which was an ACA Act corporation and the other a Corporations Act corporation, continue in the same fashion once the 2005 Bill comes into force.

3.19 The Registrar informed the committee that the amendments contained in the Amendment Bill have been considered and approved by the Ministerial Council of Corporations as required under the Corporations Agreement 2002.<sup>9</sup>

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6 This section draws heavily on the *Explanatory Memorandum* of the Amendment Bill.

7 The relevant section is 57A of the Corporations Act. See *Explanatory Memorandum*, p. 2. See also Attachment B to ORAC, *Supplementary Submission 5c*.

8 *Explanatory Memorandum*, p. 3. See also Attachment B to ORAC, *Supplementary Submission 5c*.

9 ORAC, *Supplementary Submission 5c*, Attachment B, p. 1.

## **Draft Parliamentary Amendments**

3.20 In addition to the two 2006 bills discussed above, Parliamentary Amendments to the 2005 Bill have been drafted and will be introduced during the committee stages of the consideration of the bills. As mentioned in chapter 1, Minister Brough provided the amendments to the committee to consider as confidential information as they include measures responding to concerns raised during the inquiry in 2005. As also noted in chapter 1, the minister subsequently authorised the publication of the amendments.

3.21 The Registrar also provided the committee with a summary of the draft Parliamentary Amendments. The Registrar indicated that the amendments relate to provisions in the 2005 Bill dealing with transfer and amalgamation of corporations. The amendments also extend the Registrar's ability to exempt corporations and directors, or a class of corporations and directors, from provisions in the 2005 Bill to do with internal governance and provide more flexibility for a corporation's particular circumstance to be considered.<sup>10</sup>

3.22 In the next chapter, the committee discusses some of the draft Parliamentary Amendments and provisions of the 2006 bills in conjunction with issues that arose in relation to the 2005 Bill.

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10 ORAC, *Supplementary Submission 5c*, Attachment E.