



Native title

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

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

How does the new Bill interact with Native Title legislation?

The Bill has special provisions for registered native title bodies corporate (RNTBCs), and makes sure that obligations they have under the Native Title legislation do not conflict with obligations under the Bill. The main provisions that have been specifically tailored to take account of the special requirements of RNTBCs are

Names

- An RNTBC will be required to have the words 'registered native title body corporate' or the abbreviation 'RNTBC' as part of its name. This will give a signal to third parties that the corporation holds or manages native title rights and interests.
- A corporation that is not an RNTBC will not be permitted to use these words or the abbreviation.
- Once a corporation becomes an RNTBC it must notify the Registrar so that its name can be changed on the public Register of Aboriginal and Torres Strait Islander Corporations.
- If the Registrar becomes aware that the corporation has become an RNTBC the Registrar can automatically change the corporation's name to include the words 'registered native title body corporate' or 'RNTBC'. This could happen, for example, if the Registrar is advised by the National Native Title Tribunal that the corporation has become an RNTBC. This provision is designed to reduce the administrative burden on RNTBCs which may not have the capacity to notify the Registrar.

Internal governance

- The Bill makes it clear that the internal governance rules of RNTBCs or bodies applying for registration for the purpose of becoming an RNTBC must be consistent with Native Title legislation. This will ensure that the rules of an RNTBC do not conflict with requirements imposed by Native Title legislation.

Reporting

- Corporations will be streamed into small, medium and large for reporting purposes. Small and medium corporations won't have to provide as many reports as they did under the ACA Act. Large corporations will prepare a more comprehensive report.
- Small corporations will only have to provide a minimum 'general' report and may only have to provide this every second year. Small corporations may also only have to hold an annual general meeting every second year and can hold these by video or teleconference.
- Many RNTBCs will fall into the category of 'small' and will therefore have fewer reporting requirements.
- Native title rights and interests held by an RNTBC will not be included in determining the value of the assets of an RNTBC for reporting purposes. This avoids any possibility that a corporation only holding or managing native title rights and interests might be determined as large for reporting purposes.

Duties of directors and other managers

- The Bill clarifies the duties of directors and includes duties for chief executive officers and other people who manage the corporation. Directors and these managers are called officers. These duties are in line with the *Corporations Act 2001* and are designed to make sure that good corporate governance standards are applied to Aboriginal and Torres Strait Islander corporations.
- These duties include a duty of care, a duty of honesty, duties of disclosure and to avoid conflicts of interest, and a duty not to trade while insolvent.
- The Bill provides tailored provisions making it clear that a director, officer or employee of an RNTBC who is acting in good faith with the belief that the action is necessary to ensure that the corporation complies with a Native Title legislation obligation does not breach provisions of the Bill. This makes sure that conflicting duties are not imposed on a director, officer or employee of an RNTBC.
- An exception to this is the duty not to trade while insolvent. If a conflict arises between the duty in the Bill not to trade while insolvent and the duty to comply with a Native Title legislation obligation, the primary duty is to make sure that the corporation does not trade while insolvent. This is a fundamental duty that directors and other managers must comply with.
- The Bill also makes it clear that a person will not be regarded as a director or officer merely because they participate in the making of native title decisions.
- 'Native Title legislation obligation' is defined as an obligation imposed by the Native Title legislation on an RNTBC. This includes obligations to consult with, act in accordance with the directions of, and to act only with the consent of the common law holders of native title.

Further information

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Members' rights

- The Bill brings members' rights into line with the *Corporations Act*—for example, members can apply to a court to inspect a corporation's books or to stop a corporation from acting in a way that is unfair to the members.
- The Registrar can act for members in some circumstances, for example, when a corporation is acting unfairly towards members.
- The Bill makes sure that provisions about members' rights cannot be used to prevent an RNTBC from meeting its Native Title legislation obligations. Tailored provisions for RNTBCs prevent a court from granting orders where an officer or employee is acting in good faith with the belief that the action is necessary to ensure that the corporation complies with a Native Title legislation obligation.

Registrar's powers

- The Registrar can appoint an expert to examine a corporation's affairs. This means 'healthy organisation checks' can be carried out to help prevent any problems arising or increasing.
- The Registrar can appoint a special administrator—this power can be used to provide a safety net against the possibility of corporate failure, especially for corporations providing essential services, infrastructure or holding land.
- The Registrar can examine a corporation's books and if they are not produced, seek a warrant from a magistrate to support the Registrar's other powers.
- The Registrar can investigate matters where necessary.
- A power in the Bill allows regulations to be made to modify the provisions of the Bill that relate to RNTBCs. This means regulations can be made to deal with any practical or unforeseen problems that arise with the interaction of the Bill and the Native Title legislation. This makes it clear that regulations cannot be inconsistent with the Native Title legislation.
- Under the Bill regulations can be made clarifying the powers and obligations of administrators, receivers, liquidators and special administrators who may be appointed to an RNTBC. This regulation-making power ensures that if practical issues arise in the interaction between the external administration provisions of the Bill and Native Title legislation, the issues can be resolved quickly and without legislative amendments.

Deregistration

- The Bill prevents the Registrar from deregistering an RNTBC in recognition of the special position of RNTBCs under the Native Title legislation.