

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 156**

Issued by the Authority of the Parliamentary Secretary to the Minister for Finance and Administration

*Lands Acquisition Act 1989*

*Lands Acquisition Amendment Regulations 2005 (No. 2)*

Section 140 of the *Lands Acquisition Act 1989* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 6 of the Act defines “Commonwealth Authority” for the purposes of the Act. That definition includes an authority ‘that is not declared by the regulation to be an exempt authority.’

Schedule 1 to the *Lands Acquisition Regulations 1989* (the Principal Regulations) lists authorities which are exempted from the provisions of the Act. The effect of exempting an authority is that it would not, at any time in the future, have access to the use of the compulsory acquisition powers in the Act on its behalf, while ever it remains exempt. It will, however, provide a measure of flexibility to operate in the commercial property market.

The purpose of the Regulations is to make the Indigenous Business Australia (IBA) an exempt body for the purposes of the Act, giving it the necessary flexibility to perform the functions for which it has been created.

The IBA was established in 1990 to perform a range of commercial activities following the passage of the *Aboriginal and Torres Strait Islander Act 1989*. Specifically, its legislative charter requires that it advance the commercial and economic interests of Aboriginal persons and Torres Strait Islanders by accumulating and using a substantial capital asset for the benefit of the Aboriginal and Torres Strait Islander peoples. It is required under section 147 of the *Aboriginal and Torres Strait Islander Act 2005* to engage in commercial activities.

The IBA is currently involved in some 30 business activities as joint ventures, partnerships or outright ownership. Many of these investments resulted in acquiring business assets including land. These include equity in mining joint ventures, tourism resorts, waste disposal facilities etc. The IBA also owns a portfolio of office buildings, which have a variety of commercial lease arrangements attached to them.

These investments are in complex legal structures in order to make immune unrelated businesses from the failure of any one of the investments. The IBA uses trusts and nominee companies as a matter of course.

Following passage of the *Aboriginal and Torres Strait Islander Act 2005*, the responsibility for the Indigenous home ownership programme and the Indigenous business development programme has been transferred to the IBA. The home ownership programme comprises a \$351 million home loan portfolio with over 4,000 current loans and a related trust account with current cash balances of \$56 million. The business development programme comprises some \$70 million in current loans and an annual recurrent element of \$30 million per annum.

The *Aboriginal and Torres Strait Islander Act 2005* also provides for the scheduling of assets and liabilities to be transferred to the IBA from the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Commonwealth. These are, in the main, existing housing and business loans and a number of mortgagee-in-possession properties.

The IBA has an investment charter and is not on annual appropriation for its equity investment activities. The enabling legislation clearly requires that the IBA act in a commercial environment. The IBA needs to have the flexibility to carry out its functions to engage in commercial activities and to promote and encourage Indigenous self-management and economic self-sufficiency, and the prescription of IBA as an exempt authority would provide that flexibility.

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.