



Australian Government
National Indigenous
Australians Agency



NIAA

CATSI Amendment Bill 2021

Submission to the Senate Finance and Public
Administration Committee

CATSI Amendment Bill 2021

1. The Corporations (Aboriginal and Torres Strait Islander) (CATSI) Amendment Bill supports the self determination of Aboriginal and Torres Strait Islander peoples by making it easier for Indigenous corporations to do business, provide jobs and deliver critical services to their communities while at the same time strengthening the governance and transparency for members over the operations of their corporations.
2. The CATSI Amendment Bill recognises the role all CATSI corporations can play in delivering benefits and services to communities, from small two-member corporations through to larger community-controlled corporations and Registered Native Title Bodies Corporate (RNTBCs).
3. The Bill also modernises the CATSI Act and provides the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) with proportionate and graduated powers to better support the effective operation of CATSI corporations.
4. The amendments outlined in the Bill have been developed through extensive and genuine consultation with Aboriginal and Torres Strait Islander peoples over a number of years. The Bill enacts recommendations from a comprehensive review of the CATSI Act launched by the Minister for Indigenous Australians in 2019 and conducted by the National Indigenous Australians Agency (NIAA) over the course of 2020 and 2021.
5. That work also took account of a review of the Office of the Registrar of Indigenous Corporations (ORIC) undertaken by KPMG in 2016 and a Technical Review of the CATSI Act completed by law firm, DLA Piper, in 2017. Feedback provided during consultation on the Corporations (Aboriginal and Torres Strait Islander) Amendment (Strengthening Governance and Transparency) Bill 2018 (2018 Bill) was also considered.

Key features of the Bill

6. Importantly the Bill, and the comprehensive review that preceded it, endorse the role of the CATSI Act as a special measure to ensure Aboriginal and Torres Strait Islander corporations can be run by their members in a way that reflects their cultural practices and receive targeted support to ensure they can continue to meet the needs and aspirations of their communities. The amendments in this Bill will ensure the CATSI Act is reviewed every 7 years to make sure it is continuing to do so.
7. The amendments in this Bill will support CATSI corporations to:
 - make better use of modern technology to manage their membership bases, hold meetings, pass resolutions and store information
 - satisfy meeting and reporting obligations when faced with unexpected events
 - more easily determine their size and reporting requirements
 - opt for a review instead of an audit of their financial statements if they are medium sized
 - keep members better informed of their operations
 - more easily access, and expand the benefits provided by, special administration
 - demonstrate to stakeholders the Registrar's satisfaction with the outcomes of examinations and compliance notices
 - appoint independent directors without a specific rule in their constitution and have employees as directors with agreement from the Registrar
 - access information from the Registrar, such as notices, more quickly and in more accessible ways

- enter into related party transactions with less red tape while maintaining transparency
 - maintain the privacy of their members' information
 - voluntarily deregister more easily when the time is right.
8. The Bill also includes a number of amendments designed to enable members of CATSI corporations to:
- keep their personal information private
 - access increased information about how their corporation is run and stay informed
 - be employees as well as directors
 - participate and vote in virtual meetings
 - be aware of, and make more decisions in relation to, the rules of their corporation.
9. A further focus area was around providing the Registrar with a broader suite of powers to respond to non-compliance with the CATSI Act. Reflecting that the CATSI Act is a special measure, it is important the Registrar has a range of graduated powers that are designed to assist corporations to fulfil their obligations and function well. The existing powers for the Registrar are narrow and not aligned with contemporary regulatory administration. The amendments in this Bill will provide the Registrar with:
- a graduated suite of regulatory powers to ensure proportionate responses to non-compliance
 - increased reporting from CATSI corporations to support the release of de-identified salary benchmark information to help corporations set appropriate remuneration points for senior executives
 - the ability to publish notices in a range of different ways to better target the intended audience, and contact individuals and corporations using modern contact methods
 - funds to maintain properties vested with himself or herself
 - improved powers to place a CATSI corporation under special administration
 - simplified processes to wind up or deregister a CATSI corporation when it is appropriate to do so.
10. Lastly, the amendments will also bring selected provisions within the CATSI Act in line with relevant provisions in the *Corporations Act 2001* (Corporations Act), such as whistleblower provisions and qualified privilege for auditors.

Development of the Bill

11. The CATSI Amendment Bill includes 45 amendments to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The Bill includes around 15 items that were considered previously in the 2018 Bill. These items have been subject to intensive consultation and scrutiny including by the Senate Finance and Public Administration Committee in 2018, and again through the NIAA's comprehensive review of the CATSI Act (details below).
12. Amendments previously brought forward and incorporated in the current Bill include providing the Registrar with a graduated suite of regulatory powers to ensure a more proportionate response to non-compliance, and changing the directorship and membership provisions in the CATSI Act to make it easier to establish subsidiaries and joint ventures. Stakeholders have continued to support these changes across a number of years.
13. Eight items in this Bill were brought forward in the 2018 Bill but have been modified based on feedback from stakeholders. Through the comprehensive review of the CATSI Act, the NIAA has consulted with stakeholders as to the best way to take forward these amendments to address their concerns. For example, while the 2017 Technical Review recommended changes to the membership cancellation provisions when a member is uncontactable, there was mixed agreement among stakeholders regarding those changes; in particular, stakeholders raised concerns about reducing the timeframe within which the member has been uncontactable and the number of contact attempts that

should be made, before a membership is cancelled. Based on this feedback and input received during the comprehensive review of the CATSI Act, the 2021 Bill updates the existing cancellation provisions making them a replaceable rule. This means corporations can tailor the provisions to suit their own unique circumstances.¹

14. Twenty-two items in this Bill are new and have been identified from research, feedback and experience with administering the CATSI Act. In the first phase of consultation for the comprehensive review, one submission suggested that applicants who have their membership applications rejected should be able to request a meeting of members be called to reconsider the refusal. This suggestion was canvassed during the second phase of consultation and while stakeholders agreed that a rejected applicant should have access to a review mechanism, they did not agree with conferring membership rights to someone who was not yet a member.
15. The final report recommended that corporations include a dispute resolution process for membership applications in their rule books. However, when drafting the amendments, it became clear that the absolute discretion of directors to accept or reject a membership application needed to be considered to properly give effect to this recommendation. As a result, item 62 of the CATSI Amendment Bill inserts subsection 144-10 (3AA) which allows corporations to outline a process in their rule books for considering membership applications that limits the discretion of directors to refuse an eligible membership application and provides for the review of decisions to reject an eligible membership application.
16. Proposed changes to the CATSI Act that did not receive support from stakeholders during the comprehensive review have not been taken forward in the Bill. The 2017 Technical Review recommended CATSI corporations include their Chief Executive Officer's (CEO) and senior executives' names, addresses, contact details and employment history over the last 10 years in their annual reports. In the draft report released as part of the comprehensive review, the NIAA proposed that as a minimum requirement, all corporations include the names of key management personnel (CEO, Chief Financial Officer and Chief Operating Officer) and their qualifications in their annual reports.
17. While there was some support for this proposal, there was also strong opposition with concerns raised about the privacy of executives, the accuracy of information reported and the potential consequences for the autonomy of Boards. Most significantly, a number of stakeholders did not think this solution would solve the problem of unqualified and sometimes rogue executives taking advantage of the Indigenous corporate sector. Instead, stakeholders suggested that this problem would be better solved through increased support from ORIC to corporations undertaking executive recruitment, so this proposal was not taken forward and the feedback was referred to ORIC for consideration.
18. Further, the NIAA received feedback as part of the comprehensive review that the Act needs to support the self-determination of Aboriginal and Torres Strait Islander peoples, and any amendments need to enable people to make decisions about how they structure and manage their corporations. For this reason, a number of amendments in this Bill are designed to provide greater flexibility to CATSI corporations in how they manage their affairs. This includes the introduction of more replaceable rules that can be tailored to suit the unique circumstances of each corporation.

CATSI Act Review and Consultation

22. On 11 December 2019 the Minister for Indigenous Australians, the Hon. Ken Wyatt AM MP, announced a comprehensive review of the CATSI Act building on a series of reviews undertaken in recent years. These reviews included a 2016 review undertaken by KPMG and the 2017 Technical Review undertaken by law firm, DLA Piper.
23. The NIAA led the review as the responsible policy agency. This approach mitigated concerns expressed by stakeholders that the Registrar had been too closely involved in reviewing their own powers in earlier reviews.

¹ Only CATSI corporations that are not RNTBCs can tailor these provisions as the *Native Title Legislation Amendment Act 2021* prevents RNTBCs from changing the membership cancellation requirements from what is set out in the CATSI Act.

24. Submissions to the Senate Finance and Public Administration Committee’s inquiry into the 2018 Bill recommended that it not be passed as it was not based on a comprehensive and transparent review. The comprehensive review (CATSI Act Review) undertaken by the NIAA responded to stakeholder feedback that the previous reviews had been too narrow in scope, including criticism that the status of the CATSI Act as a special measure under the *Racial Discrimination Act 1975* had not been considered.
25. The comprehensive review had a broad scope, which included:
- whether the CATSI Act is meeting its objects and continues to be desirable as a special measure for the advancement and protection of Indigenous people as set out in the Act’s preamble
 - whether the functions and powers of the Registrar of Indigenous Corporations are appropriate, effective and adequate
 - possible amendments to the CATSI Act to better support the regulation of CATSI corporations.
26. Stakeholder dissatisfaction with the extent of consultation undertaken as part of earlier reviews was also addressed by the comprehensive review, which included multiple phases of consultation. Feedback and criticism from stakeholders was transparently reflected and addressed throughout the review. Submissions were made publicly available where permission was received to do so. Most importantly, the suggestions and feedback provided by stakeholders was reflected in subsequent consultation phases and informed the amendments outlined in the CATSI Amendment Bill 2021.

Phase 1 of consultation

27. The first phase of consultation for the review commenced on the day of its announcement when people were asked what aspects of the CATSI Act should be considered as part of the review. This phase of consultation was open until 14 February 2021—just over 9 weeks. A survey was available on the NIAA website during this time and we received 60 responses, and a further 8 submissions were received via email. The NIAA consolidated the feedback received during the first phase of consultation into a [feedback summary report](#) which was published on the Agency’s website.

Phase 2 of consultation

28. Feedback from stakeholders during the first phase of consultation was considered in preparing the [draft report](#) for the CATSI Act Review which formed the basis of the second phase of consultation. For example, there was a suggestion in response to the first phase online survey that boards should make a decision in relation to membership applications within a specific timeframe. This suggestion was included in the draft report, received support from other stakeholders and can be traced to items 61 and 63 of the CATSI Amendment Bill 2021.
29. The draft report also reflected feedback from ORIC staff and contractors as well as relevant recommendations from previous reviews. There were nine chapters that made proposals about potential changes to the CATSI Act. Further, the report included a series of questions or prompts to further test people’s views.
30. As an example, the 2017 Technical Review recommended that a company officer should be able to redact member information from a register of members if they considered that the disclosure of such information would compromise the safety of the member. Subsequent feedback from stakeholders to ORIC and the inquiry into the 2018 Bill was that there should not be a threshold question of safety to remove a member’s details. When canvassing this issue in the draft report, the NIAA asked six questions of stakeholders to determine the best way to take this amendment forward:
- should the relevant member have to request that their information be redacted from the register, or in some circumstances, should the corporation be able to make such a decision on behalf of the member
 - if members are required to submit a redaction request, should the request be submitted to the corporation or in some circumstances, could it be submitted to the Registrar directly
 - should there be a threshold for requesting the redaction of personal information, such as personal safety



- how would members be able to organise a meeting without access to the personal information of other members
 - how should such a request be recorded
 - should some of the points above be matters for corporations to decide?
31. Stakeholder feedback on this issue is reflected in how it has been taken forward in item 78 of the CATSI Amendment Bill which is without a threshold question of any kind and with the redaction of personal information from a register being at the request of the respective member, not the company officer.
32. The second phase of consultation commenced when the draft report was published on the NIAA’s website on 31 July 2020. After nine week of consultation on the draft report, feedback closed on 2 October 2020. To assist stakeholders, nine fact sheets written in plain English—one for each chapter of the report—were published on the NIAA website. Eight online surveys covering each of the content chapters in the Draft Report were also published on the NIAA website.
33. There was strong and constructive engagement in the second phase of consultation, including:
- 41 virtual consultation sessions, attended by 165 participants² from across Australia
 - 15 individual consultation sessions, for industry stakeholders, traditional owners and other interested stakeholders
 - 141 survey responses
 - 41 written submissions, which were published on the NIAA website where permission was received to do so
 - 3 anonymous feedback responses submitted through the web-based feedback form
 - 8 feedback responses received via email.
34. The NIAA offered 50 public virtual consultation sessions but cancelled 9 due to a lack of interest.
35. Feedback received during the second phase of consultation was summarised in the [CATSI Act Review Final Report](#) which included 72 recommendations outlining changes to the CATSI Act, suggesting further consideration of some aspects of the CATSI Act and identifying additional support that could be provided to corporations incorporated under the Act. The final report was published on the NIAA website in February 2021.
36. The Final Report was transparent in reflecting criticism from stakeholders and illustrating how feedback was considered. Suggestions during this second phase of consultation resulted in recommendations in the final report, including a suggestion that the CATSI Act include a proper purpose test for accessing member registers similar to that under the Corporations Act. This suggestion is reflected in items 74 to 77 in the CATSI Amendment Bill 2021 which introduce a proper purpose test to inspect and/or make copies of a register of members or register of former members.

Phase 3 of consultation – Exposure Draft

37. The third phase of consultation was based on an exposure draft of the CATSI Amendment Bill 2021. The absence of an exposure draft for the 2018 Bill was a significant point of criticism from stakeholders so the NIAA considered this an important step in the consultation process. The [exposure draft](#) was published on the NIAA website and consultation was undertaken from 8 July 2021 to 9 August 2021—just over four weeks. To assist stakeholders to understand the changes in the draft legislation, one fact sheet for each Part of the draft Bill was also published on the NIAA website (20 in total) as well as a guide that mapped the recommendations in the final report to the Bill.
38. Stakeholder engagement on the exposure draft consultation period resulted in:
- 27 written submissions, which were published on the NIAA website where permission was received to do so

² Over 470 individuals registered for virtual consultation sessions, with approximately 35 per cent of registered participants attending sessions.



- 7 virtual consultation sessions, attended by 10 participants
 - 5 targeted virtual consultation sessions, including with Office of the Registrar of Indigenous Corporations staff and the Queensland Government.
39. The NIAA offered 15 public virtual consultation sessions but cancelled 8 due to a lack of interest.
40. The NIAA summarised the feedback received during this third phase of consultation in a [feedback summary report](#) that was published on its website on 27 August 2021.
41. There has been criticism that the feedback summary report only details the number of submissions received and virtual consultation held during the third phase of consultation. **This is** factually incorrect. The report also reflects feedback received from stakeholders, including criticism. For example, the report reflects feedback from the Office of the Victorian Aboriginal Heritage Council that the consultation undertaken during the comprehensive review was ‘*meaningless*’ as it considered many of the proposals considered as part of the CATSI Act Review were similar to those in the 2017 Technical Review and contends that there was strong opposition to those proposals. In response, the feedback summary report outlines the source of each amendment in the Bill to demonstrate the consideration of new amendments as well as the modification to some amendments included in the 2018 Bill.
42. Changes made to the draft legislation in response to feedback received during the third phase of consultation included: requiring corporations to provide both the redacted and unredacted versions of their register of members to the Registrar on an annual basis; and the clarification of ‘dishonesty offences’ based on changes made to the Corporations Act in 2019.
43. There were a number of suggestions made in response to the exposure draft that while meritorious, require broader consultation before being taken forward as changes to the legislation. These include allowing directors’ meetings to be held virtually without consent from all directors, and requiring the Registrar to notify the corporation and community of any decisions, prior to publishing a public notice. The NIAA will be undertaking further consultation on these suggestions with consideration to taking forward a second tranche of changes to the CATSI Act.

Governance

44. Stakeholders criticised the governance arrangements for the 2017 Technical Review, including that there was only a Steering Committee that was made up of public servants and other stakeholders were not involved in the decision-making for the review.
45. Acknowledging this feedback, the NIAA established a Stakeholder Reference Group to oversee and guide the comprehensive review. Membership of the Group was broad ranging and included the:
- Arnhem Land Progress Aboriginal Corporation
 - Attorney-General’s Department
 - Australian Indigenous Governance Institute
 - Australian Institute of Company Directors
 - CPA Australia
 - Law Council of Australia
 - Minerals Council of Australia
 - National Native Title Council
 - National Native Title Tribunal.
46. A Steering Committee was also convened for the review which comprised senior officials from the NIAA, ORIC and other Commonwealth regulatory bodies.
47. Together these groups provided a diverse range of views and experience, including direct experience with the CATSI Act and also broader experience relevant to aspects of the CATSI Act being considered as part of this Review. Between July 2020 and December 2020, the Steering Committee and Stakeholder Reference Group met five times each.

Criticism of the Bill

Review Period

48. There has been some criticism of aspects of this Bill. One area of concern is the new Division 643 which requires the CATSI Act be reviewed every 7 years with specific consideration of the effectiveness of the Act as a special measure under the *Racial Discrimination Act 1975*. Each review must be completed within 18 months and the Minister must table a report of that review in the Australian Parliament within 25 sitting days of the completion of the report.
49. It has been suggested that the review timeframe should be 6 months, with the option to extend by 3 months if necessary, and that if the 18 month timeframe cannot be reduced, then the interval between reviews should be lengthened.
50. Feedback during the second phase of consultation of the CATSI Act Review was that 10 years would be too long between reviews, while 5 years would be too short; hence the timeframe of 7 years.
51. Further, as part of this comprehensive review of the CATSI Act, 22 weeks—almost 6 months—of consultation has been undertaken. Nevertheless, some stakeholders have commented that this level consultation is insufficient. It would not be feasible to complete a review of the Act that considered whether it is meeting its objects as a special measure under the *Racial Discrimination Act 1975* and provide sufficient opportunity for consultation in 6 months. Nevertheless, as it is drafted, the provision is that the review be undertaken within 18 months so there is the opportunity for a shorter review period if considered appropriate.

Executive remuneration and penalties

52. Another aspect of the Bill that has been criticised is the new remuneration reporting requirement that is considered to be ‘discriminatory’ compared with other incorporation and regulatory frameworks. This amendment is a good example of where feedback from stakeholders has been reflected in taking forward this change, which has been revised from the proposal in the second phase of consultation to make remuneration information publicly available. Due to the consistent feedback during the second phase of consultation that this information should not be publicly available, this amendment now requires the remuneration reporting be made available to members, but it will be exempt from being made public through proposed changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017.³
53. Executives are remunerated from corporate funds and in the context of CASTI corporations, these funds are often—although not always—grant funding which will be used to deliver critical services to communities such as housing, health and municipal services. In the context of RNTBCs, the native title benefits held by the corporation have been determined for the relevant common law holders, who may be making a personal sacrifice by choosing to have those benefits used for the benefit of the community rather than distributed to them personally. Members and common law holders should be entitled to understand how corporate and native title funds are used.
54. Reporting of this information will enable the Registrar to prepare de-identified sectoral analysis to assist CATSI corporations in setting appropriate remuneration for their executives. There was strong support for this type of assistance throughout the comprehensive review, including in submissions regarding the exposure draft.
55. Further and as emphasised during the second phase of consultation, Indigenous corporations are sometimes taken advantage of by executive office holders, who defraud the corporation of much-needed funds by way of exorbitant remuneration. These situations have occurred in the past due to the lack of transparency around executive remuneration, which this amendment aims to address.

³ The NIAA intends to undertake consultation on the proposed changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 later this year.

56. There was another suggestion that the penalties for directors and officers set out in the Bill were also discriminatory. Some concerns were raised by the Senate Standing Committee for the Scrutiny of Bills in relation to a few of the penalties included in the Bill. In response to these comments, the Bill will be amended to:
- provide that the offence-specific defences which are set out in section 201-150, i.e. the exceptions to holding an Annual General Meeting (AGM) within 5 months of the end of the financial year, are instead elements of the offence
 - remove the penalty of imprisonment from subsection 180-37(3) for failing to lodge registers of members with the Registrar on an annual basis.
57. Concern was raised that penalties outlined in the Bill were higher than those imposed by other legislation. However, in most cases, the penalties are based on those set out in other legislation. For example, revised powers for the Registrar in relation to the production of books as set out in sections 453-2, 453-3 and 453-4 are based on the *Australian Securities and Investments Commission Act 2001* (ASIC Act). The penalties for non-compliance are the same as those in the ASIC Act which is 100 penalty units or imprisonment for 2 years, or both.
58. One stakeholder has suggested that there needs to be a detailed justification of provisions in this Bill that diverge from the Corporations Act as it considers such provisions to be ‘offensive’. While the CATSI Act is based on the Corporations Act, it is also designed to meet the special incorporation needs of Aboriginal and Torres Strait Islander peoples.
59. The CATSI Act sets out a minimum basic standard aimed at helping corporations to achieve their priorities which may include delivering vital services, pursuing native title recognition or facilitating economic opportunities. This is in-part recognition that groups establishing corporations under the CATSI Act may not have experience with establishing and managing a corporation like some groups that establish Prescribed Bodies Corporates (PBCs) to pursue native title recognition, who may have limited or no experience with running a corporation.
60. There are explanations of the provisions in this Bill in materials such as the CATSI Act Review reports, fact sheets and submissions that detail their development, as well as in the Explanatory Memorandum.
61. This Bill includes amendments that bring the CATSI Act more in line with the Corporations Act, such as the incorporation of whistleblower and qualified privilege for auditors provisions.
62. Amendments in this Bill also adapt provisions from the Corporations Act but tailor them to the unique circumstances of CATSI corporations. For example, the incorporation of provisions that prevent the cancellation of contracts for insolvent companies under the Corporations Act. These provisions are proposed to be applied to CATSI corporations that are placed under special administration.
63. There are also provisions that diverge from the Corporations Act and this is again to take account of the different circumstances of corporations under the CATSI Act. By way of an example, an existing requirement of CATSI corporations is that they have a rule book—that is a unique provision under the CATSI Act to ensure corporations put in place rules to support the governance of their corporations. Changes in this Bill require corporations to refer to all replaceable rules in their rule books, whether they have been replaced or modified, to ensure members and directors are aware of all of the rules that apply to the operation of their corporation. Further, there are provisions in this Bill aimed at benefiting members, such as enabling them to provide a variety of contact details to corporations to ensure they are kept engaged and informed, because CATSI corporations are membership-based entities.

Objects of the Bill

64. Disappointment has been expressed that recommendation 1 of the CATSI Act Review Final Report has not been incorporated into the Bill. Recommendation 1 was to amend the objects of the CATSI Act to refer to capacity building, promoting modern governance and accommodating Aboriginal and Torres Strait Islander tradition and circumstance.

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65. Section 658-1 of the CATSI Act specifies that functions of the Registrar includes conducting public education programs on the operation of the Act and on the governance of Aboriginal and Torres Strait Islander corporations, and conducting research in relation to matters affecting Aboriginal and Torres Strait Islander corporations.
66. Section 658-5 of the CATSI Act requires that in performing his or her functions and exercising his or her powers, the Registrar must have as aims (among others): to facilitate and improve the effectiveness, efficiency, sustainability and accountability of Aboriginal and Torres Strait Islander corporations; and to have regard to Aboriginal and Torres Strait Islander tradition and circumstances.
67. On further consideration, implementation of recommendation 1 was not considered necessary as these considerations are already appropriately addressed by the Registrar’s functions, powers and aims, and are specifically addressed in the Act.

Annual General Meetings

68. One stakeholder has suggested that the amendment enabling small corporations that meet certain criteria to pass a special resolution to not an AGM for up to 2 years, should not be taken forward.⁴ There was concern that this amendment would impede transparency and accountability to members.
69. A decision to not hold an AGM for up to 2 years must be passed by special resolution which requires at least 75 per cent of the votes cast by members entitled to vote on the resolution. Therefore, it is in the hands of members as to whether they agree not to hold an AGM. Further, corporations that pass such a special resolution will be required to advise the Registrar of any significant changes in their circumstances during the time they are not holding an AGM, and the Registrar will have the power to require the corporation to hold an AGM if she or he considers it necessary. Alternatively, the Registrar can also call a meeting. Lastly, corporations are still required to prepare reporting during the time they are not holding meetings, which is accessible to members by request or on ORIC’s website.

Size classification framework

70. One stakeholder has raised concerns about the adoption of the Australian Charities and Not-for-profits size classification framework. This amendment will change the criteria for size classification, which is based on a tripartite income/assets/employees test, to a single criterion based on consolidated revenue. It has been suggested that this approach will increase the regulatory burden of CATSI corporations and instead, it would be more appropriate to adopt a two-tier size classification framework based on that of Proprietary Limited corporations under the Corporations Act.
71. During the second phase of consultation for the CATSI Act Review, the proposal to have a 2 size classification framework was canvassed and received almost no support. It should also be noted that if the revised ACNC size classification thresholds are adopted, around 50 CATSI corporations will have increased reporting requirements, while around 200 will have reduced reporting requirements.

RNTBC specific measures

72. There was also some feedback in relation to recommendations in the final report that are not being taken forward at this time, including recommendation 62 which is for the creation of a separate division in the CATSI Act for specific provisions relating to RNTBCs. Of the references to RNTBCs in the CATSI Act, there are at present:
- 5 stand-alone sections
 - 6 sections that need to be read in conjunction with other parts of the CATSI Act
 - 12 paragraphs

⁴ These criteria are that the corporation is not registered with the Australian Charities and Not-for-profits Commission and had a consolidated revenue of less than \$1,000 in the previous financial year.



- 2 sentences
 - 21 subsections
 - 1 note.
73. Unfortunately, the 5 stand-alone sections were insufficient for a dedicated chapter in the CATSI Act. To help RNTBCs to understand their obligations under the CATSI Act, the NIAA and ORIC will be drafting a guide that identifies the references to RNTBCs, and comprehensively outlines both specific and general requirements for RNTBCs. This will provide greater flexibility to explain in plain English the sections that RNTBCs may be subject to and exempt from, including a brief description as to why this may be the case. It will also enable the inclusion of key requirements that apply to all CATSI corporations to ensure that RNTBCs are aware of and can meet their obligations, such as having a rule book and holding their AGMs within 5 months of the end of the financial year.
74. The CATSI Act Review Final Report made a number of recommendations requiring further work; particularly in relation to RNTBCs and the CATSI Act. Development of a standalone chapter in the CATSI Act for RNTBCs will be considered further as the work around the outstanding recommendations progresses and will be deliberated as part of the second tranche of changes to the CATSI Act.

Appendix A: Source of amendments

Table A1: Source of amendments in the CATSI Amendment Bill

Amendment	Source
Part 1 Review of operation of Act	
Introduce review of the CATSI Act every 7 years.	New.
Part 2 Powers and functions of Registrar	
Enable the Registrar to accept enforceable undertakings, and for an authorised officer to report to the Registrar in relation to a suspected breach of an enforceable undertaking.	Included in the 2018 Bill.
Align the Registrar’s powers with those of ASIC’s regarding the production of books.	Included in the 2018 Bill.
Provide the Registrar with the same powers as authorised officers	Included in the 2018 Bill.
Revised infringement notice provisions	New. The 2018 Bill did not include the revised provisions for infringement notices.
Part 3 Membership applications, member contact details and electronic communication	
Allowing the collection of contact details such as email addresses and phone numbers when addresses are required.	New.
Enable the Registrar to contact corporations and individuals using other contact details that are available, such as email.	New.
Amend existing sections of the CATSI Act that refer to corporations collecting address details from members, to also enable the corporation to collect, record and use other contact details such as email addresses, phone numbers and alternative addresses.	New.
<ul style="list-style-type: none"> Directors to make a decision on a membership application within 6 months of the application being made. New powers for the Registrar to extend or remove this timeframe for a corporation or class of corporations. Enable corporations to introduce rules to limit the discretion of directors when considering membership applications or provide a review process for applications that are rejected despite being eligible. 	New.
A replaceable rule for cancelling memberships for CATSI corporations that are not RNTBCs. The proposed provisions change the existing requirements for corporations when considering membership cancellation by changing the number of member contact attempts, the means by which the member should be contacted and timeframe within which contact must be attempted.	Included in the 2018 Bill but modified in this Bill to be a replaceable rule for non-RNTBC corporations so that the cancellation provisions can be tailored to suit the circumstances of the corporation.
Introduce a proper-purpose test when non-members seek to inspect a corporation’s register of members or register of former members, or request a copy of the register of members or register of former members.	New.
Empower members and former members to request a corporation to redact their personal information from a corporation’s register of members or	Included in the 2018 Bill but modified to remove the threshold question of personal safety to enable the redaction. Also did not include the option for directors to



Amendment	Source
register of former members, respectively.	be able to decide to redact information on behalf of a member which was not supported by feedback.
Part 4 Subsidiaries and joint ventures	
Change the directorship and membership provisions to more easily facilitate corporations with only body corporate members.	Included in the 2018 Bill.
Allow for the incorporation of 2-member corporations where only one member is Indigenous as long as that member has the deciding vote.	Included in the 2018 Bill.
Part 5 Classification of corporations	
Replace the current section 37-10 of the CATSI Act to change the current criteria for classification, based on a tripartite income/assets/employees test, to a single criterion based on consolidated revenue.	Included in the 2018 Bill.
Part 6 Meetings and reports	
Small corporations that are not registered entities with the Australian Charities and Not-for-profits Commission (ACNC) and that had less than \$1,000 in consolidated revenue in the previous financial year, will be able to pass a special resolution not to hold the next one or 2 AGMs.	Included in the 2018 Bill but modified to add the additional registration and consolidated revenue criteria for the types of small corporations that can access these provisions. Also modified from 3 years to 2 years and to appoint directors terms until the next AGM is held.
Allow corporations to hold meetings virtually using a means that is accessible to members and that affords them a reasonable opportunity to participate. Enable the chair of a general meeting to decide how a vote will be held when a physical show of hands is not possible.	New.
Enable a CATSI corporation to defer a meeting for up to 30 days after a meeting notice has already been issued. A deferral may include a change to the date, time and/or place of the meeting, and would be allowable in the case of death in a community, a cultural activity or natural disaster.	New.
Introduce a replaceable rule that enables directors of a corporation to cancel a general meeting—that is not one called by the Registrar—by resolution.	New.
Allow all corporations to activate an automatic, one-off extension of 30 days in which to hold an AGM and lodge their reports. These extensions are available where there has been a death in a community, a cultural activity, a natural disaster, or an unavoidable delay in the audit or review of the corporation’s report(s).	Included in the 2018 Bill.
Directors are required to lay before an AGM (where the corporation is required to hold an AGM after the end of a financial year) any reports they have been required to prepare and submit to the Registrar.	Included in the 2018 Bill.
Part 7 Constitutions	
Require corporations to ensure their rule books identify the replaceable rules in the CATSI Act, that apply to the corporation and that have not been modified or replaced.	Included in the 2018 Bill but modified to require corporations to refer to replaceable rules rather than reproduce those rules.
Explicit power for the Registrar to reject changes to a corporation’s constitution that are inconsistent with ones made by a special administrator, unless the circumstances of the corporation has changed to the extent that the changes previously made by the special administrator are no longer relevant.	New.
Part 8 Officers of corporations	
<ul style="list-style-type: none"> Amend section 694-85 to provide 2 separate definitions for the meaning 	New.

Amendment	Source
<p>for a CFO function and a CEO function.</p> <ul style="list-style-type: none"> Require that a corporation must lodge with the Registrar a notice of the personal details of a person performing a CEO or CFO function in relation to the corporation within 28 days after they begin to perform that function. 	
Introduce the concept of a Remuneration Report.	Included in the 2018 Bill.
Part 9 Related party transactions	
Remove the Registrar from having a role in the related party transaction approval process.	New.
Remove member approval to give a financial benefit to a related party if the total amount of the benefit across the financial year is less than a threshold that will be prescribed in the CATSI Regulations.	Included in the 2018 Bill.
Part 10 Power to exempt corporation from employee-director requirement	
Provide the Registrar with the power to exempt a corporation from, or make a determination exempting a class of corporations from, the requirement that the majority of directors must not be employees.	New.
Part 11 Independent directors	
Allow directors to appoint independent directors noting that the proposed new section 246-17 is a replaceable rule and corporations can change this rule to prevent the appointment of independent directors if they so wish.	Included in the 2018 Bill but modified to refer to an independent director as a person who is not a member of a corporation.
Part 12 Modernising publication requirements	
Change the requirement for the Registrar to publish notices in the Australian Government Gazette.	Included in the 2018 Bill but modified enable the Registrar to publish notices on a range of different platforms.
Modernise legislative instrument provisions.	New.
Part 13 Storage of information	
Inserts a new section 376-22, based on section 1301 of the Corporations Act, which explicitly allows corporations to store information on storage platforms such as cloud servers which may be in a location other than the place of inspection.	New.
Part 14 Improving consistency with Corporations Act	
Repeals the existing Part 10-5 that outlines provisions for the protection of whistleblowers and refers to Part 9.4AAA from Corporations Act with appropriate changes to reflect the context of Aboriginal and Torres Strait Islander corporations.	New.
Replace the existing penalty for a person who, related to a document required under the CATSI Act or lodged with the Registrar, makes or authorises the making of a statement that is false or misleading in a material way, or omits or authorises the omission of something without which the document is materially misleading. Provide an explanation of the actions that could be considered as reasonable steps to prevent providing, or authorising the provision of, information to a director, auditor or member that is materially false or misleading.	New.
Introduce qualified privilege for auditors.	Included in the 2018 Bill.
Part 15 Finalising processes	
<ul style="list-style-type: none"> Require the Registrar to provide notice to a corporation if he or she is 	New.



Amendment	Source
<p>satisfied that the action specified in a compliance notice have been taken by that corporation.</p> <ul style="list-style-type: none"> Provide for the Registrar to notify a corporation at the conclusion of an examination, that he or she has concluded that they will take no further action. 	
Part 16 Dealing with unclaimed money	
<p>Create a new special account called the Aboriginal and Torres Strait Islander Corporations Assets Protection Account, ensuring that the funds deposited in that account are taken from the existing Aboriginal and Torres Strait Islander Corporations Unclaimed Money Account.</p>	New.
Part 17 External administration and deregistration	
<p>Repeals the existing ground for appointing a special administrator which is that the corporation has traded at a loss for at least 6 of the last 12 months and replacing it with a new ground, ‘there is a serious irregularity in the financial affairs of the corporation’.</p>	Included in the 2018 Bill but modified to replace the existing ground that the corporation has traded at a loss for at least 6 of the last 12 months.
<p>Remove the requirement for the Registrar to issue a show cause notice when the majority of directors of a corporation have requested the Registrar in writing to appoint a special administrator.</p>	Included in the 2018 Bill.
<p>Provide that for a corporation under special administration, sections 451E to 451H of the Corporations Act apply. These sections relate to enforcing rights when a corporation is under administration (etc), and would prevent the enforcement of a right to terminate a contract with a corporation under administration.</p>	New.
<p>Introduce presumptions of insolvency as recommended above, which the Court can rely on for the purposes of finding a corporation insolvent noting that they are rebuttable, so a corporation has the opportunity to prove that it is solvent.</p>	Included in the 2018 Bill.
<p>Enable corporations to apply for voluntary deregistration even if the conditions for voluntary deregistration are not all met, provided they specify which conditions are not met and the reasons why they are not met.</p>	Included in the 2018 Bill.
Part 18 Minor technical amendments	
<p>Amendments to correct errors, provide clarification on matters, and improve the accuracy, consistency and readability of the CATSI Act.</p>	Included in the 2018 Bill but modified to include additional amendments.
Part 19 Review of financial reports	
<p>Allow medium corporations to have their financial reports reviewed rather than audited.</p>	Included in the 2018 Bill.
Part 20 Native Title Register	
<p>Amend the <i>Native Title Act 1993</i> to allow the Registrar of the National Native Title Tribunal to update the National Native Title Register with the name or address of a prescribed body corporate (PBC) as well as the name or address of an agent PBC</p>	New.