

Attachment F: Response to Submissions

Item	Submission	Issue	Response
1.	Emeritus Professor Garth Nettheim	No specific issues were raised.	
2.	Mr Dalrymple	CATSI Bill does not provide for the establishment of Aboriginal Councils.	The Review recommended that the Councils provisions be repealed on the basis that this provision has never been used and that legislative developments at a Commonwealth, state and territory level have superseded the need for the Councils provisions. For example several states have legislation in place providing for the delivery of local government type services by Aboriginal and Torres Strait Islander communities. In addition the review found that there was strong support for this part to be repealed.
3.	Mr Dalrymple	CATSI Bill allows membership of corporations by non-Indigenous members.	The Bill provides corporations with the option of having a minority of non-Indigenous members and also to appoint a minority of non-Indigenous people to the board. There is no obligation for corporations to admit non-Indigenous people to the membership or the Board. Indigenous corporations are the only provider of essential services in many remote communities and not allowing for non-Indigenous members may disadvantage these persons. Also allowing non-Indigenous membership avoids uncertainty relating to the definition of “spouse” and other familial relationships.
4.	Mr Dalrymple	CATSI Bill imposes onerous regulatory and administrative requirements on Indigenous	The Bill is designed to reduce the administrative burden on most corporations by allowing for more

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		corporations.	flexible and responsive administrative practices. For instance, reporting requirements can be adjusted for individual corporations or classes of corporations. The specific content of the reports and related obligations will largely be prescribed in regulations allowing for the reporting requirements to be modified and updated over time. For most corporations, this will mean reduced reporting requirements. In addition the Bill provides a statutory basis for increased assistance by clarifying that the Registrar can provide public information and advice, conduct public education programs and research in relation to matters affecting Aboriginal and Torres Strait Islander corporations and assist with complaints. The aims of the Registrar expressly state that the Registrar can have regard to Aboriginal and Torres Strait Islander tradition and circumstances, and to administer the laws of the Commonwealth with a minimum of procedural requirements to provide support for flexible administration of the Bill. Refer Chapter 16, Part 16-3 Registrar's powers and functions.
5.	Coalition of Aboriginal Legal Services of NSW (COALS)	The appointment of an authorised officer to examine the books of an Indigenous corporation (clause 453-1) to enable 'healthy organisation checks' is costly, time-consuming, stressful and groundless. It may also duplicate performance and	The Bill retains and modernises the Registrar's existing power to appoint a suitably qualified person to examine a corporation's affairs. Like the existing examination power it does not require grounds, therefore enabling 'healthy organisation

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		financial reports already required by government departments.	checks' as a preventative measure. This power has been retained to allow early intervention and problem solving. The scope of the power will include the examination of issues that are broader than financial management to support dispute resolution and improved effectiveness of corporations. The new examination provisions also contain greater procedural safeguards than currently exist under the <i>Aboriginal Councils and Associations Act 1976</i> (see also clause 453-5).
6.	COALS	ORAC does not have expertise in operational areas to examine Indigenous corporations providing legal or medical services.	The Bill permits the Registrar to appoint suitably qualified persons to examine a corporation's affairs, including persons with appropriate qualifications or experience for the corporation concerned.
7.	COALS	ORAC should not use this power to examine highly sensitive client information or information subject to legal professional privilege.	Examinations are undertaken to examine the management and governance of corporations. As is the case currently under the <i>Aboriginal Councils and Associations Act 1976</i> , this does not require the examination of sensitive or privileged client information.
8.	North Queensland Land Council Native Title Representative Body Aboriginal Corporation (North Queensland Land Council)	No transitional provisions for the CATSI Bill are available.	Transitional arrangements are currently being finalised in a second Bill. This second Bill will provide the machinery for the CATSI Bill to operate and, most importantly, the arrangements for the existing corporations to transfer to the new legislation. At this stage the second Bill is set down for introduction this year; however this will depend

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			on progress with drafting over the next month or so. Transitional arrangements aim to achieve as smooth a transfer for existing corporations as possible, noting that the CATSI Bill is inevitably bringing significant changes given the <i>Aboriginal Councils and Associations Act 1976</i> is 30 years old and very out of date.
9.	North Queensland Land Council	Some Indigenous corporations, especially prescribed bodies corporate (PBCs) under the <i>Native Title Act 1993</i> , have very poor financial resources. There is no proposal to provide any funding for Indigenous corporations to change their rules. Amending the rules of Indigenous corporations will be time consuming and difficult.	To support implementation ORAC will continue to target corporations transferring to the CATSI Bill for relevant education, support and capacity building. As part of this service, tools will be developed to provide useful pathways for existing corporations to migrate their constitutions into the new internal governance framework over time. The migration of existing constitutions will be assisted by the fact that most existing corporations have used one of the model constitutions provided by ORAC in the past. ORAC is setting up a transitional model constitution that will assist corporations that incorporate during 2005-06 to more easily migrate their constitutions into the new act.
10.	North Queensland Land Council	The criteria for dividing corporations into small, medium and large has not been disclosed.	The specific thresholds for small, medium and large corporations will be prescribed by regulations to be made under the Act. More information about size thresholds is provided at Attachment E to this submission.
11.	North Queensland Land	Will the provisions of CATSI apply differently to	It is anticipated that differing reporting

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	Council	different size corporations?	requirements will apply to small, medium and large corporations. Small and medium corporations will not be required to have a registered office or a company secretary. Other exemptions may apply to corporations, eg. a class determination relieving a particular class of corporations from some of the meeting requirements.
12.	North Queensland Land Council	Will the transitional provisions allow a greater period of time for small corporations to comply with provisions of the CATSI Bill than larger ones?	The policy for transitionals is still being finalised however the aim is to achieve as smooth a transfer for existing corporations as possible. Exemptions and determinations can be used to effectively delay the application of some elements of the Bill for existing corporations. This could be done on a class basis.
13.	North Queensland Land Council	Modification of replaceable rules may lead to litigation where there is doubt that the corporation's constitution effectively covers the matter provided for by replacement rules.	The replaceable rules regime in the Bill is based on the replaceable rules regime of the <i>Corporations Act 2001</i> . Interpretation of the replaceable rules regime in the CATSI Bill will therefore have the benefit of any Corporations Act caselaw and practice. In addition, all constitutions, and any amendments to constitutions, must be approved by the Registrar and must satisfy certain minimum standards. That the constitution covers the matters provided for in the replaceable rules is part of this minimum standard as are the requirements that the constitution be internally consistent, adequate and workable (see clauses 29-20, 66-1 and 69-30).
14.	North Queensland Land	CATSI Bill sets the minimum age of members at 15	This minimum age is lower than the existing

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	Council	years of age.	requirement in the <i>Aboriginal Councils and Associations Act 1976</i> which is currently 18 years and allows for more young people to participate in corporations. Allowing for a minimum age lower than 15 years may raise concerns regarding the legal capacity of minors. This is also the minimum age for Community Development Employment Projects (CDEP) participants. There is nothing preventing minors from being observers of a corporation (see Part 4-3 of the Bill).
15.	North Queensland Land Council	Clause 183-1 may prevent Indigenous Land Councils using information from a corporation's membership register when contacting or sending out material (including Native Title Representative Bodies using register information when sending out notices required by the <i>Native Title Act 1993</i>).	Clause 183-1 is based on section 177 of the <i>Corporations Act 2001</i> . It is intended to prevent the commercial exploitation of membership registers from unsolicited 'junk' mail or spam. ORAC does not consider that this provision will prevent the use of the information for the purposes described. In ORAC's opinion, the use of this information for these purposes is likely to be relevant to the person's membership of the corporation concerned. In any case, if there were any doubts as to this, it would be possible to obtain the approval of the corporation concerned.
16.	North Queensland Land Council	Concerns about the ability of a small number (greater of 5 or 10% of members) of corporation members to request a general meeting.	This requirement should be contrasted with the existing provision in the <i>Aboriginal Councils and Associations Act 1976</i> which allows a single aggrieved member to request a special general meeting (section 58B(2)). The formula used in this clause is based on the existing formula referred to

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			in section 58B(5) dealing with member requests to the Registrar to call a special general meeting.
17.	North Queensland Land Council	Directors should be able to apply to the Registrar for a decision that a proposed member's resolution under clause 201-40 which is patently unworkable, nonsensical or ludicrous does not need to be distributed to members (for consideration at next general meeting).	This provision allows for appropriate member participation in a corporation. It is based on section 249N of the <i>Corporations Act 2001</i> and contains the additional safeguard that defamatory resolutions are not to be circulated. In any case, a corporation which finds some of the procedural requirements of clause 201-40 inappropriate or imposing an unreasonable burden could seek an exemption from the Registrar for this provision (see clause 225-5).
18.	North Queensland Land Council	North Queensland Land Council has in excess of 900 members. The cost of copying and distributing corporate information for general meetings for Native Title Representative Bodies can be significant.	Most Indigenous corporations have relatively small memberships. In any case, a large corporation which finds some of the procedural requirements of Chapter 5, which deals with meetings, inappropriate or imposing an unreasonable burden could seek an exemption from some, or all, of the procedural requirements of these provisions (see clause 225-5).
19.	North Queensland Land Council	Whether auditors may attend the whole of general meetings or only those parts of business that concern the auditor.	Clause 201-80 is based on section 249V of the <i>Corporations Act 2001</i> . It will only apply to those corporations which have an auditor, likely to be medium and large corporations.
20.	North Queensland Land Council	The replaceable rule that a directors meeting may be called by a director giving reasonable notice individually to every other director is undesirable.	Clause 212-5 is a replaceable rule and may be replaced by a corporation's constitution. It is based on section 248C of the <i>Corporations Act 2001</i> . It will only apply to existing corporations who repeal their existing constitutions and do not modify or

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			replace the rule (see clause 60-1).
21.	North Queensland Land Council	The Board of North Queensland Land Council has 17 members to ensure representation across a broad geographic area. The maximum number of directors being set at 12 is too low.	The regulations may prescribe a larger maximum number of directors. Creating space for large boards of existing corporations will be specifically addressed in transitional arrangements. Large boards existing under the <i>Aboriginal Councils and Associations Act 1976</i> are partly a result of the inflexibility of this Act for developing representative structures. Under the CATSI Bill representative structures can be implemented using a number of approaches other than large boards including, classes of members with differential voting rights, corporate membership, committees and alternate directors.
22.	North Queensland Land Council	The term of appointment for members of the Board of North Queensland Land Council is 3 years. The maximum term of appointment of 2 years is too low.	A time limit of 2 years is imposed to support active member participation and reduce the opportunity for corporations to be 'captured' by non-member interests. Exemptions and determinations can be used to effectively delay the application of some elements of the Bill for existing corporations.
23.	North Queensland Land Council	There should be a power for the Board to remove directors that bring the corporation into disrepute, breach agreed codes of conduct or who are ineffective. Ineffectiveness could arise through inefficiency or illness.	Directors are ordinarily appointed and removed by a resolution of a general meeting (see clauses 246-15, 249-10). Clause 249-15 provides that a director can only be removed by other directors if the director has not attended three consecutive directors' meetings without reasonable excuse. Possible abuse of this process is safeguarded by the objection process set out in clause 249-15(3)(c).

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			<p>This should be contrasted with the <i>Corporations Act 2001</i> which does not allow directors to be removed by other directors on any grounds. Extending the grounds by which directors may be removed by other directors to less objective criteria may be open to abuse.</p>
24.	North Queensland Land Council	The right of directors and former directors to access corporation books (other than financial records) should not apply in circumstances where they are involved in competing legal proceedings (especially native title litigation involving a Native Title Representative Body) and the records would be subject to legal professional privilege.	<p>Clause 274-15 is based on section 198F of the <i>Corporations Act 2001</i>. It provides an important right to a director or a former director who may be subject to legal proceedings regarding their management or involvement in a corporation. Similar issues regarding the operation of this provision and legal professional privilege and confidentiality would arise in similar litigation undertaken with respect to the Corporations Act.</p>
25.	North Queensland Land Council	Provision of audited financial reports to each member (clause 342-5) is unnecessary and costly. Members should be able to request a copy of financial reports. Financial reports should be available at the AGM.	<p>It is expected that only medium and large corporations will need to prepare audited financial reports, which will then have to be provided to their members. In any case, a medium or large corporation which finds this requirement inappropriate or imposing an unreasonable burden could seek an exemption from the Registrar for this obligation (see clause 353-1).</p>
26.	Kimberley Land Council (KLC)	CATSI Bill is unnecessarily complex and overly prescriptive.	<p>The Bill has to cater for the diversity of Indigenous corporations all over Australia - from those that exist only to hold or manage land with no income through to corporations providing municipal services and those running businesses, and which</p>

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			vary in size. In addition, the Bill has to accommodate corporations that are located in metropolitan, rural, remote and very remote areas. The Bill caters for this level of diversity by maximising flexibility through exemptions and administrative discretion and therefore avoids a “one-size-fits-all” approach.
27.	KLC	The proposed CATSI Bill may impact on the ability of Indigenous corporations to most efficiently utilize limited resources.	The Bill is designed to reduce the administrative burden on most corporations through reduced reporting requirements for small and medium corporations. In addition the Bill provides a statutory basis for increased assistance by clarifying that the Registrar can provide public information and advice, conduct public education programs and research in relation to matters affecting Aboriginal and Torres Strait Islander corporations and assist with complaints. The aims of the Registrar expressly state that the Registrar can have regard to Aboriginal and Torres Strait Islander tradition and circumstances, and to administer the laws of the Commonwealth with a minimum of procedural requirements to provide support for flexible administration of the Bill. Refer Chapter 16, Part 16-3 Registrar’s powers and functions.
28.	KLC	CATSI Bill has the potential to duplicate reporting-related activities prescribed by Part 11 of the <i>Native Title Act 1993</i> for Native Title Representative	NTRBs are an example of a type of corporation that the Registrar could exempt on a class basis from some of the reporting requirements under clause

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		Bodies (NTRBs).	<p>353-10. For example the order could permit all NTRBs to submit the same report to ORAC that they are required to submit under section 203DC of the <i>Native Title Act 1993</i>.</p> <p>The Registrar already accepts reports from NTRBs that are prepared under the <i>Native Title Act 1993</i> and the <i>Commonwealth Authorities and Companies Act 1997</i> for the purposes of the <i>Aboriginal Councils and Associations Act 1976</i> to reduce the administrative burden on NTRBs. ORAC anticipates that this practice will continue.</p>
29.	KLC	To what extent will the consolidated gross assets of Native Title Representative Bodies (NTRBs) and prescribed bodies corporate (PBCs) be taken into account in categorizing them as small, medium or large CATSI corporations for reporting requirements?	<p>Clause 37-10(4) of the CATSI Bill provides that native title rights and interests held by a PBC are to be disregarded in determining the value of the assets of a PBC. This provision will apply to PBCs but not NTRBs.</p> <p>The formula in clause 37-10 will be applied to take account of consolidated gross assets, as will be the case for all corporations. Clause 37-25 provides that the relevant accounting standards are to be applied in consolidating accounts for this purpose.</p> <p>The size of NTRBs and PBCs will not necessarily be determinative of the level of their reporting requirements. The Registrar may also exercise reporting exemption powers by class of</p>

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30.	KLC	The categorization criteria used to assess the size of Indigenous corporations, which may be reliant on grant funding, are substantially the same as the criteria used for assessing the size of proprietary companies, established for profit, under the <i>Corporations Act 2001</i> .	<p>corporation.</p> <p>The CATSI Bill is not restricted to Indigenous corporations reliant on grant funding. The Bill has to cater for the diversity of Indigenous corporations all over Australia - from those that exist only to hold or manage land with no income through to corporations providing municipal services and those running businesses, and which vary in size. In addition, the Bill has to accommodate corporations that are located in metropolitan, rural, remote and very remote areas. The Bill caters for this level of diversity by maximizing flexibility through exemptions and administrative discretion and therefore avoids a “one-size-fits-all” approach.</p> <p>The prescribed amounts of gross operating income and gross consolidated assets, and the number of employees in clause 37-10 of the CATSI Bill can be set by regulation at levels which take into account the requirements and risks of Indigenous corporations. This regulation making power allows for reporting thresholds to be changed over time to cater for changing circumstances of Indigenous corporations.</p>
31.	KLC	The directors’ duties under the CATSI Bill duplicate the directors’ duties set out under the <i>Native Title Act 1993</i> (which applies provisions in the <i>Commonwealth Authorities and Companies Act</i>	The provisions of the CAC Act already imposed by the <i>Native Title Act 1993</i> on NTRBs generally mirror those in the <i>Corporations Act 2001</i> and the CATSI Bill. Therefore ORAC understands that

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		<i>1997 (CAC Act)</i> .	provisions in the CATSI Bill related to directors' duties are consistent with those required by the Native Title Act. However, if a regulatory overlap is identified the Registrar will work closely with agencies administering the Native Title Act.
32.	KLC	In the native title context it is not appropriate to align directors' duties through CATSI with the <i>Corporations Act 2001</i> . The mandatory requirement of the <i>Native Title Act 1993</i> to establish Aboriginal Corporations to hold certain rights and interests (involuntary registration) and the associated imposition of directors' duties (including the duty not to trade whilst insolvent) may be punitive and discriminatory.	<p>The Bill ensures that directors, officers and employees of PBCs will not be placed in a position where they have conflicting duties under the Native Title Act and regulations, and under the Bill (see for example clause 265-20). The Bill achieves this by providing tailored provisions for PBCs and in addition, a power to make regulations to modify provisions of the Bill as they relate to PBCs to ensure that the Bill can maintain sufficient flexibility should the circumstances of PBCs change over time (see clause 633-5). A fact sheet on the ORAC website provides more information about provisions for PBCs - refer to www.orac.gov.au.</p> <p>Clause 531-5 of the CATSI Bill expressly provides that the duty of directors not to trade while insolvent prevails over other directors' duties that may arise under the Native Title legislation. This maintains a fundamental duty of corporations law.</p>
33.	KLC	Directors' duties under the CATSI Bill may give rise to obligations which are inconsistent with obligations imposed on Indigenous corporations	ORAC understands that provisions in the CATSI Bill related to directors' duties are consistent with those required by the <i>Commonwealth Authorities</i>

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		under funding and service agreements, and may result in withdrawal of recognition as a Native Title Representative Body and loss of funding.	<i>and Companies Act 1997 and the Native Title Act 1993.</i>
34.	KLC	The minimum Indigenous membership criteria may be discriminatory.	The CATSI Bill provides a choice for corporations to admit non-Indigenous persons to the membership or the Board. It imposes a minimum Indigeneity requirement in clause 29-5 to ensure that corporations will always have a majority of Indigenous members and Board members. In addition, the Bill allows for a corporation's constitution to provide that the corporation must have a number or percentage of persons who are Aboriginal and Torres Strait Islander persons that is higher than the number or percentage required in the Indigeneity requirement in clause 29-5.
35.	KLC	Recourse to external administration under the CATSI Bill is unnecessary and unwarranted to protect funding bodies and creditors because they are protected by the terms and conditions of funding and grant agreements, rigorous reporting requirements, external audits and ultimately the Minister's withdrawal of recognition as a native title representative body.	The <i>Aboriginal Councils and Associations Act 1976 Act</i> has been interpreted as incorporating the external administration provisions of the <i>Corporations Act 2001</i> . The CATSI Bill simply clarifies that these provisions are available to corporations registered under the CATSI Bill and are consistent with the Corporations Act.
36.	KLC	Part 11 of the <i>Native Title Act 1993</i> offers a greater level of protection for members of representative bodies than might be available to them under proposed Chapter 4 of the CATSI Bill.	The CATSI Bill is not inconsistent with Part 11 of the Native Title Act and will support, rather than conflict with, relevant provisions of the Native Title Act. In addition the protections and benefits for members of CATSI corporations are not limited

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			to Chapter 4 of the CATSI Bill but are to be found in the entirety of the Bill, through administrative flexibility, the rights that it provides to members and modern compliance mechanisms.
37.	KLC	It may be appropriate to grant native title representative bodies certain exemptions under the proposed CATSI Bill given their obligations under the <i>Native Title Act 1993</i> and other conditions of grant.	The Registrar will work closely with relevant agencies administering the Native Title Act to reduce the impact of potential regulatory overlap and grant exemptions in appropriate cases.
38.	Queensland Government	Request to be consulted as legislation progresses.	All state and territory departments responsible for Indigenous affairs and the administration of Indigenous land legislation were consulted during the review process and were advised that the drafting of the Bill was progressing. ORAC will continue to advise all relevant state and territory agencies of the status of the Bill.
39.	Central Land Council (CLC)	The needs of Aboriginal people in central Australia will not be met by the main provisions of the Bill but rather by exemptions.	The Bill has to cater for the diversity of Indigenous corporations all over Australia - from those that exist only to hold or manage land with no income through to corporations providing municipal services and those running businesses. In addition, the Bill has to accommodate corporations that are located in metropolitan, rural, remote and very remote areas. The Bill caters for this level of diversity by maximising flexibility through exemptions and administrative discretion and therefore avoids a “one-size-fits-all” approach.
40.	CLC	Corporations require increased assistance not	The Bill is designed to reduce the administrative

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		increased regulation and complexity.	burden on most corporations through reduced reporting requirements for small and medium corporations. In addition the Bill provides a statutory basis for increased assistance by clarifying that the Registrar can provide public information and advice, conduct public education programs and research in relation to matters affecting Aboriginal and Torres Strait Islander corporations and assist with complaints. The aims of the Registrar expressly state that the Registrar can have regard to Aboriginal and Torres Strait Islander tradition and circumstances, and to administer the laws of the Commonwealth with a minimum of procedural requirements to provide support for flexible administration of the Bill. Refer Chapter 16, Part 16-3 Registrar's powers and functions.
41.	CLC	Prescribed Bodies Corporate (PBCs) under the <i>Native Title Act 1993</i> should be the subject of a separate review.	<p>On 7 September 2005 the Attorney-General announced reforms to the native title system, including a review of current structures and processes for PBCs. For more details refer to http://www.ag.gov.au/nativetitlesystemreform.</p> <p>The Bill provides tailored provisions for PBCs to the extent that this is required in relation to corporate governance requirements.</p>

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42.	CLC	The complex nature of Prescribed Bodies Corporate (PBCs) justifies a separate Division in the Bill rather than as proposed, a situation where they are in no way distinguished from other bodies incorporated under the legislation.	The Bill ensures that directors, officers and employees of PBCs will not be placed in a position where they have conflicting duties under the <i>Native Title Act 1993</i> and regulations, and under the Bill (see for example clause 265-20). The Bill achieves this by providing tailored provisions for PBCs and in addition, a power to make regulations to modify provisions of the Bill as they relate to PBCs to ensure that the Bill can maintain sufficient flexibility should the circumstances of PBCs change over time (see clause 633-5). While these tailored provisions could have been grouped in one division, this does not seem necessary since there are not many tailored provisions and the tailored provisions need to be read in conjunction with other related provisions. A fact sheet on the ORAC website provides more information about provisions for PBCs- refer to www.orac.gov.au .
43.	Australian Institute of Aboriginal Torres Strait Islander Studies (AIATSIS)	Lack of guidance on transitional arrangements.	Transitional arrangements are currently being finalised in a second Bill. This second Bill will provide the machinery for the CATSI Bill to operate and, most importantly, the arrangements for the existing corporations to transfer to the new legislation. At this stage the second Bill is set down for introduction this year; however this will depend on progress with drafting over the next month or so. Transitional arrangements aim to achieve as smooth a transfer for existing corporations as

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			<p>possible, noting that the CATSI Bill is inevitably bringing significant changes given the <i>Aboriginal Councils and Associations Act 1976</i> is 30 years old and very out of date.</p> <p>To support implementation ORAC will continue to target corporations transferring to the CATSI Bill for relevant education, support and capacity building. As part of this service, tools will be developed to provide useful pathways for existing corporations to migrate their constitutions into the new internal governance framework over time. The migration of existing constitutions will be assisted by the fact that most existing corporations have used one of the model constitutions provided by ORAC in the past. ORAC is setting up a transitional model constitution that will assist corporations that incorporate during 2005-06 to more easily migrate their constitutions into the new act.</p>
44.	AIATSIS	Burden of organisational reform e.g. constitutional changes and changes to the maximum number of board members in time of immense change in Indigenous affairs.	Transitional arrangements, exemptions and administrative practices will reduce the need for immediate constitutional change. Also the Bill's flexibility, such as the capacity to customise reporting requirements, has the potential to relieve burdens. Creating space for large boards of existing corporations will be specifically addressed in transitional arrangements. Large boards existing

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			under the <i>Aboriginal Councils and Associations Act 1976</i> are partly a result of the inflexibility of that Act for developing representative structures. Under the CATSI Bill representative structures can be implemented using a number of approaches other than large boards including, classes of members with differential voting rights, corporate membership, committees and alternate directors.
45.	AIATSIS	Support required for Indigenous corporations, including those providing essential services in remote communities, and reducing compliance costs.	The Bill is designed to reduce the administrative burden on most corporations through reduced reporting requirements for small and medium corporations. In addition the Bill provides a statutory basis for increased assistance by clarifying that the Registrar can provide public information and advice, conduct public education programs and research in relation to matters affecting Aboriginal and Torres Strait Islander corporations and assist with complaints. The aims of the Registrar expressly state that the Registrar can have regard to Aboriginal and Torres Strait Islander tradition and circumstances, and to administer the laws of the Commonwealth with a minimum of procedural requirements to provide support for flexible administration of the Bill. Refer Chapter 16, Part 16-3 Registrar's powers and functions.
46.	AIATSIS	Native Title Representative Bodies (NTRBs) have specific roles and functions that may lead to	ORAC understands that provisions in the CATSI Bill related to directors duties are consistent with

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		conflicts with directors' duties and therefore may require specific tailoring provisions like those provided for Prescribed Bodies Corporate (PBCs).	those required by the <i>Commonwealth Authorities and Companies Act 1997</i> and the <i>Native Title Act 1993</i> and therefore directors of NTRBs should not face conflicts similar to those that might be faced by directors of PBCs.
47.	AIATSIS	The Bill should provide for regulations to modify any of the provisions as they apply to Native Title Representative Bodies (NTRBs) as provided for in relation to Prescribed Bodies Corporate (PBCs).	It is unclear why this would be necessary in relation to NTRBs. One reason this flexibility is proposed in relation to PBCs is the potential complexity an external administrator could experience in relation to carrying out statutory functions imposed on PBCs by the <i>Native Title Act 1993</i> and regulations. The functions imposed on NTRBs should not give rise to similar complexities.
48.	AIATSIS	Native Title Representative Bodies (NTRBs) should not be able to be wound up by Court order, similar provision to prevent winding up of a Prescribed Body Corporate (PBC) is required for NTRBs.	It is unclear why this would be necessary in relation to NTRBs. In relation to PBCs, deregistration is problematic because PBCs hold or manage native title. For NTRBs, there is an existing process in the <i>Native Title Act 1993</i> for withdrawing their recognition and for recognising a new NTRB (sections 203A-203AD and 203AH). There is also a process for funding bodies to carry out NTRB functions in a period when there is no NTRB for an area (section 203FE).
49.	AIATSIS	May be necessary for Native Title Representative Bodies (NTRBs) to be recognised as a particular class of corporation to allow for the Registrar to make a determination in respect to reporting requirements.	Yes, NTRBs are an example of a type of corporation that the Registrar could exempt on a class basis from some of the reporting requirements under clause 353-10. For example an exemption order could permit all NTRBs to submit the same

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			report to ORAC that they are required to submit under section 203DC of the <i>Native Title Act 1993</i> .
50.	AIATSIS	Rolling audits conducted by the Registrar should be coordinated with audits undertaken by other agencies.	The Registrar currently has the power to conduct an examination of a corporation and this power is maintained in the Bill. The power can be used to conduct healthy organisation checks and provides an opportunity for the Registrar to work with corporations and funding bodies to develop preventative and early intervention strategies to avoid corporate failure. A new provision in the Bill also allows the Registrar to convene a meeting of parties to address systemic issues that are broader than those facing individual corporations. The Registrar works closely with funding bodies and other regulators to coordinate this program with other agencies.
51.	AIATSIS	Failure to revise and reinvigorate the Councils provisions (Part III of the <i>Aboriginal Councils and Associations Act 1976</i>) is a lost opportunity to underpin a style of governance for Indigenous communities based on a more public institutional model.	The Review recommended that the Councils provisions be repealed on the basis that this provision has never been used and that legislative developments at a Commonwealth, state and territory level have superseded the need for the Councils provisions. For example several states have legislation in place providing for the delivery of local government type services by Aboriginal and Torres Strait Islander communities. In addition the review found that there was strong support for this part to be repealed.
52.	Australian Securities &	No specific issues were raised.	

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Item	Submission	Issue	Response
	Investments Commission		
53.	Goldfields Land and Sea Council Aboriginal Corporation (GLSCAC)	The attempt to replicate the <i>Corporations Act 2001</i> regime for Aboriginal communities is not appropriate. The Corporations Act regulates profit-making corporations in the commercial market place. Aboriginal corporations, on the other hand, are bodies created usually at the behest of government to receive funding to provide services to Aboriginal peoples. Members are volunteers often with little or no formal education.	<p>The CATSI Bill is not restricted to Indigenous corporations reliant on grant funding. The Bill has to cater for the diversity of Indigenous corporations all over Australia - from those that exist only to hold or manage land with no income through to corporations providing municipal services and those running businesses, and which vary in size. In addition, the Bill has to accommodate corporations that are located in metropolitan, rural, remote and very remote areas. The Bill caters for this level of diversity by maximising flexibility through exemptions and administrative discretion and therefore avoids a “one-size-fits-all” approach.</p> <p>In addition the Bill provides a statutory basis for increased assistance by clarifying that the Registrar can provide public information and advice, conduct public education programs and research in relation to matters affecting Aboriginal and Torres Strait Islander corporations and assist with complaints. The aims of the Registrar expressly state that the Registrar can have regard to Aboriginal and Torres Strait Islander tradition and circumstances, and to administer the laws of the Commonwealth with a minimum of procedural requirements to provide support for flexible administration of the Bill. Refer Chapter 16, Part 16-3 Registrar’s powers and</p>

Attachment F: Response to Submissions

Item	Submission	Issue	Response
54.	GLSCAC	This extremely complex Bill, incorporating over 100 strict liability penalties and discretionary-wide ranging and compulsive bureaucratic investigative powers is punitive and oppressive. The Commonwealth can protect its funding through funding agreements.	<p>functions.</p> <p>Many of the strict liability offences are based on equivalent offences in the <i>Corporations Act 2001</i> which are also strict liability. Consistent with the objective of the reforms to align the Bill to modern corporations law, strict liability has been retained for these provisions to ensure that these offences in the Bill remain closely aligned with their counterpart offences in the Corporations Act. Consistency is also important to ensure that persons who may be subject to the regulatory requirements of both the Bill and the Corporations Act, for example auditors, are not subject to a criminal sanction under the Bill which is lesser or greater than if the same conduct had been committed with regard to the Corporations Act. Inconsistent penalty provisions would also be problematic when dealing with corporate groups comprising corporations registered under both the Bill and the Corporations Act.</p>