

## **Summary of the Corporations (Aboriginal And Torres Strait Islander) Consequential, Transitional And Other Measures Bill 2006**

The Bill supports implementation of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 (CATSI Bill) and comprises of three parts: consequential amendments, transitional provisions and amendments to the *Native Title Act 1993* (Native Title Act).

The consequential amendments change references to the ACA Act and associated terms such as ‘Aboriginal Associations’ in other Commonwealth legislation so that terminology is consistent with the CATSI Bill.

The transitional provisions, discussed in more detail below, provide for the seamless recognition of corporations that are incorporated under the ACA Act to become corporations registered under the CATSI Bill on commencement. Where an existing application has been made under the ACA Act, these applications will be preserved under the CATSI Bill, removing the need for a new application to be made. The transitional arrangements are designed to minimise the administrative burden on corporations to the greatest extent possible while providing certainty of operation for corporations, their members and stakeholders.

The amendments to the Native Title Act correct a technical problem preventing replacement agent prescribed bodies corporate, which are a type of corporation that can be formed to hold or manage native title, being recognised as registered native title bodies corporate under the Native Title Act.

### **Transitional Arrangements: ACA Corporations to CATSI Corporations**

Corporations that exist under the ACA Act will transfer across to become a CATSI corporation on commencement of the CATSI Bill, without having to reapply for registration. They will have up to two years to become compliant with many of the provisions in the CATSI Bill, including the internal governance rule requirements and some reporting requirements. These corporations will be known as ‘Transitional corporations’ during the two year period for the purpose of the transitional provisions.

The two year transitional period gives a significant period of time for the holding of meetings to make necessary changes to a corporation’s existing rules.

The transitional provisions were drafted to minimise the administrative burden on corporations. This is achieved through the Transitions Bill saving many features of a corporation existing before the new legislation begins and through providing the two year transitional period.

### ***Registration under the CATSI Bill***

Indigenous corporations currently incorporated under the ACA Act will be automatically registered under the CATSI Bill. The CATSI Registrar will adjust the Public Register of Indigenous Corporations accordingly. Registration will not affect a corporation’s existing property, rights or obligations or legal proceedings and

therefore preserves the legal status, office bearers, assets and liabilities of corporations as existing prior to commencement of the CATSI legislation.

### ***Transitional period for corporations to switch over to the new CATSI Bill***

Corporations transitioning to the new legislation to have up to two years to comply with the new legislation. Provisions have been deliberately drafted to allow time to make required changes to internal governance rules. The transitional period for a particular corporation ends when it changes its constitution. The Registrar may extend the maximum two-year period a further six months to accommodate end of year reporting.

### ***Corporation features under CATSI***

Corporation features existing under ACA are saved as much as possible under CATSI. For example:

- *corporation name*: corporations can keep their current name and do not need to lodge any application to re-register their name. The Registrar may make minor changes to a corporation's name so that it complies with the CATSI Bill. This avoids the need for the corporation to have a general meeting and lodge a name change application.
- *certificate of registration*: the certificate of incorporation issued to a corporation under the ACA Act is taken to be its certificate of registration under the CATSI Bill. The Registrar may issue a new certificate of registration if necessary.
- *Indigenous corporation number (ICN)*: the Registrar will confirm or reissue each corporation with an ICN and publish the number on the Internet. Unless exempted by regulation or Registrar's determination, corporations must set out the ICN on their public documents and negotiable instruments such as cheques.
- *common seal*: the corporation may continue to use its current common seal and doesn't have to show its ICN on the common seal. When the corporation changes its name then the ICN must be shown on the seal. However, corporations are not required to have a common seal under the CATSI Bill.
- *size classification*: under the CATSI Bill corporations will be classified as small, medium or large for reporting purposes. This allows reporting to match a corporation's size and purpose, and avoids the one-size-fits-all approach of the ACA Act. All transitional corporations become medium corporations when the Bill commences but the Registrar may alter that size classification if a corporation is likely to be small or large for the first financial year.
- *contact person*: the public officer of a small or medium size transitional corporation becomes the contact person.
- *document access address*: the official address of the person who was the corporation's public officer becomes the document access address.

- *corporation secretary (for large corporations)*: large corporations must have a corporation secretary. The Registrar may appoint a director of the corporation or a person who has given their consent to become the corporation secretary.
- *registered office (for large corporations)*: large corporations must have a registered office. The Registrar may declare a registered office for a large transitional corporation to be its place of business. This takes the burden off the corporation to notify the Registrar of a registered address on commencement.

### ***Constitution and internal governance rules of the corporation***

- *corporation's constitution*: the rules of a transitional corporation before the Bill starts become the corporation's registered constitution.
- *modifications to the constitution*: to ensure that the constitution works under the CATSI Bill, the Transitionals Bill modifies the constitution as necessary. For example references to the governing committee are interpreted as references to the directors.
- *internal governance rules requirements*: to ensure that corporations get the benefit of transitional arrangements, some requirements of the CATSI Bill about internal governance rules do not apply until the transitional period ends or the corporation repeals its constitution.
- *changing of the constitution*: during the transitional period a corporation may follow its own procedures for amending its constitution.

### ***Members of the corporation***

- *corporation members*: the existing membership of the corporation is preserved.
- *liability of members for debts and liabilities of the corporation*: this is left unchanged.
- *register of members and former members*: the register of members kept under the ACA Act becomes the register of members of the corporation under the CATSI Bill.

### ***Directors of the corporation***

- *directors*: the members of the governing committee become the directors of the corporation.
- *period of appointment*: directors may serve the remainder of their current elected term.
- *maximum number of directors*: during the transitional period the new maximum number of 12 directors does not apply.
- *non-Indigenous directors (e.g. spouses) or directors who are also employees of the corporation*: these directors may serve out their current elected term before new

requirements about these types of directors apply.

### ***First annual general meeting after the Bill starts***

Corporations can choose to hold their first annual general meeting after the CATSI Bill begins in accordance with either their constitution or, if the directors agree in a resolution, the CATSI Bill.

### ***Some meeting provisions do not apply during transitional period***

New requirements under the CATSI Bill for certain processes will not apply during the transitional period. Current constitutions contain provisions dealing with how members can ask directors to call a general meeting, the process by which meetings must be called, the notice that must be given, the process governing members' resolutions, their notice and circulation, and quorum of directors' meetings. This ensures there is no conflict between corporations' constitutions and the CATSI Bill.

### ***Record keeping***

The new record keeping provisions apply from when the CATSI Bill begins. They apply to records made after commencement and to those made under the ACA Act.

### ***Annual financial reporting***

- *financial reporting for 2006–07*: annual reporting for the 2006–07 financial year will follow the familiar requirements of the ACA Act. A corporation's report and examiner's (or auditor's) report will be required to be lodged with the Registrar before the end of 2007.
- *financial reporting for 2007–08*: to assist corporations in moving from financial reporting requirements under the ACA Act to those under the CATSI Bill, corporations have a choice for the 2007–08 financial year. They may elect in writing to follow the familiar annual reporting requirements of the ACA Act, or they may report under the requirements of the CATSI Bill.
- *financial reporting for 2008–09*: all corporations will report for the 2008–09 financial year under the financial reporting requirements of the CATSI Bill.

### ***Pending applications and other matters under the ACA Act***

A number of applications and other processes under the ACA Act may be pending when the CATSI Bill commences. For example, an association may have applied for incorporation or an ACA Act corporation may have applied to change its name or there may have been a request to hold a meeting. The general approach is to treat these pending applications as having been made under the CATSI Bill and to continue these processes under the CATSI Bill. This will reduce the administrative burden on corporations in these situations, though in some cases the Registrar may need to seek additional information or material from the corporation.

### ***Administrations***

Existing administrations of corporations under the ACA Act will be preserved and treated as special administrations under the CATSI Bill. Other matters relating to

administrations are also preserved, including ACA Act show cause notices, administrators' remuneration and statutory indemnities, and elections conducted by the ACA Registrar.

***CATSI Registrar***

The person appointed as the ACA Act Registrar will be appointed as the CATSI Registrar, and will be responsible for any residual enforcement of the ACA Act. The CATSI Registrar may use any information, documents or records obtained by the former ACA Act Registrar.

***Registrar's power to exempt corporations***

The Registrar may exempt a transitional corporation or its directors from compliance with the CATSI Bill or the transitional provisions if the provision is inappropriate or would cause an excessive administrative burden on the corporation. An exemption may relate to a class of corporations. This exemption power allows the Registrar to take into account the diversity and special circumstances of one or more transitional corporations.

## **Timeline for corporations transitioning to the CATSI Bill**

23 June 2005	The Corporations (Aboriginal and Torres Strait Islander) Bill 2005 introduced into the Australian Parliament.
14 Sept 2006	Supporting Bills introduced into the Australian Parliament: <ul style="list-style-type: none"><li>• the Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006, which will help corporations have time to transfer to the new law</li><li>• the Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006, which amends the Corporations Act, removing any contradictions or gaps between the two pieces of legislation.</li></ul>
by end 2006	Package of three Bills to be considered by parliament.
by end 2006	Model constitution, which is consistent with the ACA Act and important parts of the CATSI Bill, to be available on the ORAC website and on CD ROM. ORAC can provide assistance for corporations to redesign their constitution.
1 July 2007	CATSI Bill commences, subject to being passed by parliament.
1 July 2007	Model CATSI constitution available on the ORAC website and on CD ROM. ORAC can provide assistance for corporations to redesign their rules.
2006–07 financial year	Corporations report under the ACA Act for the 2006–07 financial year. Reports required to be provided to the Registrar’s office before the end of 2007 as usual.
2007–08 financial year	Corporations can choose to report either under the CATSI Bill or the ACA Act for the 2007–08 financial year.
After 1 July 2007	If a corporation changes its constitution after 1 July 2007, the transitional period ends. From this end date, the corporation must comply with the CATSI Bill. Changing the constitution offers a key opportunity for the corporation to make the necessary changes to their internal governance rules to comply with the new laws.
When a corporation changes its constitution	A corporation must report under the CATSI Bill.
1 July 2009	Transitional period ends. All corporations must have made the transition to the CATSI Bill, with a new constitution. Note that the Registrar can grant a corporation a further period of up to six months to become compliant with the new laws if there are special circumstances.