OFFICIAL

CATSI Act Review

# Part 14—Improving consistency with Corporations Act

## Item 216—Protection for whistleblowers

Item 216 in the CATSI Amendment Bill is based on recommendation 49 in the CATSI Act Review final report:

*It is recommended the CATSI Act be amended to incorporate the 2019 whistleblower provisions that were incorporated into the Corporations Act.*

This item is being taken forward in a different way from the recommendation but based on the same principle. Instead of incorporating Part 9.4AAA of the *Corporations Act* *2001* (Corporations Act), the CATSI Act will refer to that part which will enable the CATSI Act to remain up-to-date with any changes.

Item 216 repeals the existing Part 10-5 that outlines provisions for the protection of whistleblowers and refers to Part 9.4AAA from *the Corporations Act 2001* with appropriate changes to reflect the context of Aboriginal and Torres Strait Islander corporations.

Proposed subsection 466-1(1) substitutes references in the Corporations Act with relevant references for CATSI corporations. Proposed subsection 466-1(2) indicates the provisions in the Corporations Act apply only to the extent capable and with any modifications that are outlined in the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017. Proposed subsection 466-1(3) indicates that regulations made for the purposes of this provision should not increase any penalties and should not expand the scope of an offence, as outlined in the Corporations Act. Subsection 466-1(4) includes definitions for ‘Corporations Act whistleblower protection provisions’ and ‘regulated entity’.

## Items 217 and 218—False and/or misleading information

Items 217 and 218 are based on recommendation 48 in the CATSI Act Review final report:

*It is recommended the CATSI Act be amended to:*

* *include an explanation of what reasonable steps means in the context of providing false and/or misleading information in relation to a corporation’s affairs; and*
* *align the penalties for providing false or misleading information in relation to a corporation’s affairs to the lower penalty of 100 penalty units or imprisonment for two years or both, aligning the penalties for the similar offences of providing false and/or misleading information, and providing an explanation of what ‘reasonable steps’ are in this context.*

This item is being taken forward as recommended. Item 217 replaces 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.

The existing penalty is 200 penalty units or imprisonment for 5 years, or both. This change revises the penalty to 100 penalty units or imprisonment for 2 years, or both, which is consistent with the penalty for a similar offence under section 561-5(2) of the CATSI Act. This change aligns the penalties for the two similar offences.

Item 218 provides 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. The addition of these subsections assists officers and employees of Aboriginal and Torres Strait Islander corporations with understanding their responsibilities to ensure that information is accurate and the steps that are expected from them to do so.

## Items 219, 220, and 221—Qualified privilege for auditors

Items 219, 220 and 221 are based on recommendation 53 in the CATSI Act Review final report:

*It is recommended the CATSI Act be amended to provide auditors with qualified privilege consistent with the Corporations Act.*

This recommendation is being taken forward as suggested. Item 219 removes the words “Registrar, Minister etc” from the heading of Part 15-3 of the CATSI Act to reflect the broader scope of Part 15-3 relating to the qualified privilege of auditors proposed in the following items.

Item 220 inserts Division 610 dealing with qualified privilege for auditors. Proposed section 610-1 provides for auditors and other persons to enjoy qualified privilege in certain circumstances. It is based on section 1289 of the Corporations Act.

Item 221 adds proposed section 694-67 which sets out the meaning of qualified privilege for the purposes of the Act. It is based on section 89 of the Corporations Act.

## Item 222—Definitions

Item 222 inserts a signpost definition of ‘Corporations Act whistleblower protection provisions’, ‘qualified privilege’ and ‘regulated entity’ by referring the reader to sections 466-1, 694-67 and 466-1, respectively.