

EXPOSURE DRAFT



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Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Ken Wyatt AM [DRAFT ONLY—NOT FOR SIGNATURE]
Minister for Indigenous Australians

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1 Name

This instrument is the *Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as the <i>Corporations (Aboriginal and Torres Strait Islander) Amendment Act 2021</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Corporations (Aboriginal and Torres Strait Islander) Regulations 2017

1 Sections 8 and 9

Repeal the sections, substitute:

8 Registration as a small, medium or large corporation

Small corporation revenue limit

- (1) For the purposes of subsection 37-10(1) of the Act, the prescribed amount is *[\$250,000 / \$500,000]*.

Medium corporation revenue limit

- (2) For the purposes of paragraph 37-10(2)(b) of the Act, the prescribed amount is \$3,000,000.

Note: A corporation is a large corporation for a financial year if it is not a small corporation or a medium corporation for the financial year (see subsection 37-10(3) of the Act).

2 After Part 3

Insert:

Part 3A—Members and observers

12A Inspection and copying of registers of members and former members

Fees

- (1) For the purposes of paragraph 180-25(1A)(b) of the Act, the prescribed amount for a fee to inspect a register is:
- (a) if the register is not kept on a computer—\$5; or
 - (b) if the register is kept on a computer—a reasonable amount that does not exceed the marginal cost to the corporation of allowing the inspection.
- (2) For the purposes of paragraph 180-25(5)(b) of the Act, the prescribed amount for a fee for a copy of a register (or part of a register) is \$250 plus, if information is provided about 5,000 or more members (including former members):
- (a) 5 cents for the 5,000th member and for each additional member up to and including the 19,999th member; and
 - (b) 1 cent for the 20,000th member and for each additional member.

Prohibited purposes

- (3) For the purposes of paragraphs 180-25(1B)(b) and (5A)(b) of the Act (relating to inspecting and accessing a copy of a register, respectively), the following purposes are prescribed:
- (a) soliciting a donation;

- (b) selling or advertising goods and services (including insurance or financial products);
- (c) conducting marketing activities;
- (d) a purpose that may put at risk the personal safety of a member or former member of the corporation;
- (e) a commercial purpose.

3 After section 16

Insert:

16A Value of financial benefit to related entity

For the purposes of section 287-3 of the Act (small amounts given to related entity), the prescribed amount is \$5,000.

4 Section 17

Before “For the purposes of”, insert “(1)”.

5 Paragraph 17(a)

Omit “gross operating income”, substitute “revenue”.

6 Paragraph 17(c)

Omit “subsection 9(2) (about counting employees)”, substitute “subsection (2)”.

7 After paragraph 17(c)

Insert:

- (ca) the number of individuals that are full-time employees of the corporation and the number that are part-time employees;
- (cb) the number of individual employees of the corporation that are Indigenous;
- (cc) the number of individual employees of the corporation that are paid and the number that are volunteers;

8 At the end of section 17

Add:

- ; (i) the key management personnel of the corporation;
 - (j) the name and key management personnel of:
 - (i) each related body corporate of the corporation; and
 - (ii) each entity that the corporation controls; and
 - (iii) each trust that is connected with the corporation.
- (2) For the purposes of paragraph (1)(c), the method for counting the number of employees of the corporation at the end of the financial year is:
- (a) count each full-time employee of the corporation; and
 - (b) for each part-time employee of the corporation, work out a fraction that represents the employee’s weekly hours of work divided by the weekly hours of work of a full-time employee; and
 - (c) count the fraction for each part-time employee of the corporation.

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9 Subparagraph 19(b)(ii)

Repeal the subparagraph, substitute:

- (ii) the consolidated revenue of the corporation, and the entities it controls (if any), is \$3,000,000 or more for the financial year.

10 At the end of section 20

Add:

; and (c) a remuneration report for a financial year.

[NOTE FOR CONSULTATION: This draft shows proposed amendments if a remuneration report is not required from small corporations (those that only need to prepare a general report). If all corporations are required to prepare a remuneration report as well as a general report, different amendments would be required.]

11 At the end of subsection 21(1)

Add:

; and (d) for each director of the corporation:

- (i) the fees paid to the director during the financial year; and
- (ii) the number of directors' meetings attended by the director during the financial year.

12 After section 22

Insert:

22A Remuneration reports

For the purposes of subsection 333-10(1) of the Act, a remuneration report for a financial year prepared by an Aboriginal and Torres Strait Islander corporation must contain the names, positions and total remuneration during the financial year for each of the key management personnel of:

- (a) the corporation; and
- (b) each related body corporate of the corporation; and
- (c) each entity that the corporation controls; and
- (d) each trust that is connected with the corporation.

13 Section 23

Repeal the section, substitute:

23 Financial reports to be prepared in compliance with accounting standards for reporting entities

For the purposes of subsection 333-15(1) of the Act, a financial report of an Aboriginal and Torres Strait Islander corporation must be prepared in compliance with the accounting standards as they apply to a reporting entity:

- (a) to the extent that the accounting standards are capable of applying to an Aboriginal and Torres Strait Islander corporation; and
- (b) whether or not the corporation is a reporting entity as defined in the standards.

Note: For the definition of *accounting standard*, see section 700-1 of the Act.

14 Subsection 24(2)

Omit “and must obtain an auditor’s report”.

15 At the end of subsection 24(2)

Add:

Note: The corporation must obtain an auditor’s report in relation to the financial report (see section 333-20 of the Act).

16 Subparagraph 25(a)(ii)

Repeal the paragraph, substitute:

- (ii) the consolidated revenue of the corporation and the entities it controls (if any) is more than *[\$250,000/\$500,000]* but less than \$3,000,000 for the financial year; or

17 Subparagraph 25(b)(ii)

Repeal the paragraph, substitute:

- (ii) the consolidated revenue of the corporation and the entities it controls (if any) is less than \$3,000,000 for the financial year.

18 Section 26

Repeal the section, substitute:

26 Requirement to prepare reports

For the purposes of subsection 333-5(1) of the Act, an Aboriginal and Torres Strait Islander corporation must prepare:

- (a) a financial report for a financial year; and
- (b) a remuneration report for a financial year.

[NOTE FOR CONSULTATION: This draft shows proposed amendments if a remuneration report is not required from small corporations (those that only need to prepare a general report). If all corporations are required to prepare a remuneration report as well as a general report, different amendments would be required.]

19 Paragraph 27(2)(b)

Omit “gross operating income”, substitute “revenue”.

20 After section 27

Insert:

27A Remuneration reports

For the purposes of subsection 333-10(1) of the Act, a remuneration report for a financial year prepared by an Aboriginal and Torres Strait Islander corporation must contain the information required by section 22A of this instrument.

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Schedule 1 Amendments

21 Subsection 28(3)

Omit “and must obtain an auditor’s report”, substitute “or reviewed”.

22 At the end of subsection 28(3)

Add:

Note: The corporation must obtain an auditor’s report in relation to the financial report (see section 333-20 of the Act).

23 Subsection 28(5)

After “The audit”, insert “or review”.

24 At the end of section 33

Add:

- (3) The directors of an Aboriginal and Torres Strait Islander corporation may appoint an auditor following the resignation of the previous auditor.

25 Division 5 of Part 6

Repeal the Division, substitute:

Division 5—Laying reports before AGM

42 Reports that must be laid before AGM

For the purposes of subsection 349-1(1) of the Act, the following reports in respect of the financial year are prescribed:

- (a) the general report;
- (b) if the corporation is required to prepare a financial report—the financial report;
- (c) *[if the corporation is required to prepare a remuneration report]*—the remuneration report;
- (d) if the corporation is required to prepare a director’s report—the director’s report;
- (e) if the corporation is required to obtain an auditor’s report—the auditor’s report.

26 Section 43

Omit “section 418-10”, substitute “paragraph 418-10(f)”.

27 Paragraph 44(1)(b)

Repeal the paragraph, substitute:

- (b) all information in that register is prescribed other than the content of exempt documents in the register.

28 After section 47

Insert:

47A Modification of Corporations Act whistleblower protection provisions

For the purposes of paragraph 466-1(2)(b) of the Act, the Corporations Act whistleblower protection provisions are modified as set out in the table in clause 1A of Schedule 4 to this instrument.

29 After Part 9

Insert:

Part 9A—Offences

53A Infringement notices—prescribed offences and prescribed penalties

For the purposes of section 571-5 of the Act, an offence against a provision mentioned in column 1 of an item in the following table is a prescribed offence. For the purposes of paragraph 571-10(2)(a) of the Act, the penalty mentioned in column 2 of the item is the penalty prescribed for the prescribed offence.

Prescribed offences and prescribed penalties		
	Column 1	Column 2
Item	Prescribed offence provision	Prescribed penalty
1	Subsection 180-37(3)	2.5 penalty units
2	Subsection 330-10(1)	2.5 penalty units
3	Subsection 348-1(1)	2.5 penalty units

30 Paragraphs 54(1)(a) and (b)

After “Department of State”, insert “, or Executive Agency (within the meaning of the *Public Service Act 1999*)”.

31 At the end of subsection 54(1)

Add:

; (d) the Australian Crime Commission.

32 Subsection 54(2)

Repeal the subsection, substitute:

(2) For the purposes of paragraph 604-25(4)(g) of the Act, the following entities are prescribed:

- (a) the Australian Federal Police;
- (b) the Federal Court of Australia.

Note: For the purposes of the *Public Governance, Performance and Accountability Act 2013*, the entity called the Federal Court of Australia includes officers and staff of the National Native Title Tribunal (see section 18ZB of the *Federal Court of Australia Act 1976*).

33 Paragraph 54(4)(d)

Repeal the paragraph, substitute:

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Schedule 1 Amendments

- (d) each Department of State of Western Australia that is responsible for the administration of either of the following Acts of that State:
- (i) the *Aboriginal Affairs Planning Authority Act 1972*;
 - (ii) the *Heritage Act 2018*.

34 After subsection 54(4)

Insert:

- (4A) For the purposes of paragraph 604-25(4)(i) of the Act, the Attorney-General's Department of each State or Territory (or the Department that has policy responsibility for the administration of justice, however named) is prescribed.

35 At the end of subsection 54(5)

Add:

- ; (d) an authority of a State or Territory that has functions and powers similar to those of the Australian Crime Commission;
- (e) an authority of a State or Territory that investigates corruption in the public sector.

36 Paragraphs 54(8)(a) and (b)

After "Land", insert "and Sea".

37 At the end of section 54

Add:

- (9) For the purposes of paragraph 604-25(4)(l) of the Act:
- (a) each representative body within the meaning of the *Native Title Act 1993* is prescribed; and
 - (b) the purpose of performing the functions of a representative body under that Act is prescribed.

38 Clause 1 of Schedule 2 (after table item 43)

Insert:

43A	144-12	Application by corporation to extend period for directors of corporation to decide membership application or applications, or exempt corporation from requirement for directors to decide membership application or applications within a period
43B	144-12	Determination by Registrar of application by corporation to extend period for directors of corporation to decide membership application or applications, or exempt corporation from requirement for directors to decide membership application or applications within a period
43C	144-12	Notice by Registrar of refusal to make determination
43D	144-12	Instrument by Registrar revoking, varying or suspending determination

39 Clause 1 of Schedule 2 (after table item 47)

Insert:

47A	180-37(1)(a)	Copy of the register of members of corporation as at the end of a
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Amendments Schedule 1

		financial year, if the corporation is not required to have a redacted copy of the register
47B	180-37(1)(b)	Redacted copy of the register of members of corporation as at the end of a financial year, if the corporation is required to have a redacted copy

40 Clause 1 of Schedule 2 (after table item 61)

Insert:

61A	201-175	Record stating that corporation has passed a special resolution not to hold next AGM, or next 2 AGMs, and to appoint directors until an AGM is held
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61B	201-185	Record stating that corporation has given notice of a material change in relation to the affairs of the corporation
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41 Clause 1 of Schedule 2 (table item 87, column headed “Information or document”)

Omit “or contact person”, substitute “, contact person or person performing chief executive officer function or chief financial officer function”.

42 Clause 1 of Schedule 2 (after table item 89)

Insert:

89A	304-5(3A)	Notice by corporation of personal details of person performing chief executive officer function or chief financial officer function
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43 Clause 1 of Schedule 2 (table items 90 and 91, column headed “Information or document”)

Omit “or contact person”, substitute “, contact person or person performing chief executive officer function or chief financial officer function”.

44 Clause 1 of Schedule 2 (table item 92)

Repeal the item, substitute:

92	307-1(1)	Request from Registrar as to whether person is still a director, secretary, contact person of a corporation, person performing a chief executive officer function or person performing a chief financial officer function and, if not, the date on which the person stopped holding that position
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45 Clause 1 of Schedule 2 (after table item 114)

Insert:

114A	348-10(1)	Record stating that corporation considers one or more of the grounds in subsection 348-10(2) of the Act applies to the corporation in relation to its AGM and reports for a financial year
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46 Clause 1 of Schedule 2 (after table item 152)

Insert:

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Schedule 1 Amendments

152A 439-20(6A) Notice by Registrar to corporation or directors that the Registrar is satisfied required action has been taken

47 Clause 1 of Schedule 2 (after table item 153)

Insert:

153A 453-2(1) Notice by Registrar to corporation or person connected with the corporation to produce books

153B 453-3(1) Notice by Register to corporation or person connected with corporation requiring statement where books may be found etc.

48 Clause 2 of Schedule 2 (after table item 2)

Insert:

2A 20(c) Remuneration report—large corporations etc.

49 Clause 2 of Schedule 2 (table item 4, column headed “Provision”)

Omit “26”, substitute “26(a)”.

50 Clause 2 of Schedule 2 (after table item 4)

Insert:

4A 26(b) Remuneration report—certain small and medium corporations

51 Clause 1 of Schedule 3 (after table item 9)

Insert:

9A 348-10 Written statement by corporation that it considers one or more of the grounds in subsection 348-10(2) of the Act applies to the corporation in relation to its AGM and reports for a financial year

52 At the end of Schedule 3

Add:

3 Documents mentioned in this instrument

A remuneration report is an exempt document.

53 Schedule 4 (note to Schedule heading)

After “See”, insert “section 47A,”.

54 Before clause 1 of Schedule 4

Insert:

1A Modification of Corporations Act whistleblower protection provisions

The following table sets out modifications of Corporations Act whistleblower protection provisions.

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Amendments Schedule 1

Corporations Act whistleblower protection provisions		
Item	Provision	Modification of provision
1	Section 9	Insert: <i>CATSI Act</i> means the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> .
2	Subparagraphs 1317AA(5)(c)(iii) to (viii)	Repeal the subparagraphs, substitute: (iii) the <i>CATSI Act</i> ; (iv) the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> ; (v) the <i>Australian Charities and Not-for-profits Commission Act 2012</i> ; (vi) the <i>Native Title Act 1993</i> ;
3	Subparagraph 1317AA(5)(c)(ix)	Omit “(viii)”, substitute “(vi)”.
4	Paragraph 1317AA(5)(e)	Omit “or the financial system”.
5	Paragraph 1317AAA(1)(f)	Repeal the paragraph.
6	Paragraphs 1317AAA(1)(g) and (h)	Omit “(f)”, substitute “(e)”.
7	After paragraph 1317AAC(1)(c)	Insert: (ca) a special administrator appointed under the <i>CATSI Act</i> ; (cb) an authorised officer appointed under the <i>CATSI Act</i> ;
8	After paragraph 1317AAE(2)(d)	Insert: (da) is made to a special administrator appointed under the <i>CATSI Act</i> ; or (db) is made to an authorised officer appointed under the <i>CATSI Act</i> ; or (dc) is made to the National Native Title Tribunal; or (dd) is made to a member of a State or Territory police force; or
