



Australian Government
National Indigenous
Australians Agency



NIAA

Amendments to the CATSI Regulations

Fact sheet



Amendments to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017

We are seeking feedback on the exposure draft of proposed amendments to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 (CATSI Regulations). This fact sheet explains the changes in the exposure draft of the amendments.

The amendments are based on recommendations in the [final report](#) for the review of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) that was undertaken by the National Indigenous Australians Agency (NIAA) in 2019-20. The amendments complement the Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021 (CATSI Amendment Bill 2021) which gives effect to 50 of the 72 recommendations in the final report, and is currently being considered by Parliament.

The 2019-2020 Comprehensive Review of the CATSI Act

In December 2019 the Minister for Indigenous Australians, the Hon Ken Wyatt AM MP, announced a comprehensive review of the CATSI Act to be led by the NIAA (CATSI Act Review).

This CATSI Act Review built on the findings of the Technical Review of the CATSI Act that was conducted in 2017. The CATSI Act Review had an expanded scope to include an assessment of the effectiveness of the CATSI Act as a special measure under the *Racial Discrimination Act 1975*, including whether it can better support economic and community development opportunities for Aboriginal and Torres Strait Islander peoples.

Two consultation phases were undertaken during the review including a first phase where feedback was sought in relation to the aspects of the CATSI Act that should be considered as part of the review. A [summary report](#) outlining the feedback received during this phase is available on the NIAA's website.

The second phase of consultation sought feedback in relation to a [draft report](#) which included suggested changes to the CATSI Act. Feedback on the draft report was collected through virtual consultation sessions, email, a web based form and written submissions. The [written submissions](#), where permission was provided to publish them, are also available on the NIAA's website, along with the [CATSI Act Review Final Report](#).

CATSI Amendment Bill 2021

A third phase of consultation was undertaken in relation to an exposure draft of the CATSI Amendment Bill 2021. The NIAA sought feedback about those parts of the Bill that stakeholders supported, as well as those parts that raised concern in relation to practical barriers to the implementation of changes. The NIAA also sought comment regarding the overall clarity, readability and complexity of the draft legislation. Feedback during the third phase of consultation was collected through virtual consultation sessions and [written submissions](#), which are available on the NIAA's website where permission was provided to publish them. A [summary report](#) is also available on the NIAA's website that outlines the feedback received during the third phase of consultation.

The CATSI Amendment Bill 2021 was introduced into the House of Representatives on 25 August 2021. It passed through the House of Representatives on 2 September 2021 and was introduced into the Senate on the same day. The Bill was referred for inquiry to the Senate Finance and Public Administration Legislation Committee which reported on 14 October 2021 and

recommended that the Bill be passed. Labor and Australian Greens Senators made additional comments in the report, including making 2 and 9 recommendations, respectively.

Item 1: Size classification thresholds

Item 1 of the exposure draft outlines the size classification thresholds for the new size classification framework in the CATSI Amendment Bill 2021. The new framework is based on a single criterion of consolidated revenue and replaces the existing framework that uses a complex tripartite criteria framework.

The new framework is based on that of the Australian Charities and Not-for-profits Commission (ACNC). The current ACNC size classification thresholds are based on revenue and will be changing from 1 July 2022. Table 1 below outlines the current and new thresholds for the ACNC.

Size	Current ACNC threshold	New ACNC threshold
Small	<\$250,000	<\$500,000
Medium	\$250,000 - \$1 million	\$500,000 - \$2.99 million
Large	>\$1 million	>=\$3 million

In the exposure draft, 2 possible size thresholds for small corporations have been included: \$250,000 or \$500,000. We are seeking feedback from stakeholders as to which threshold they believe is more appropriate.

For medium corporations, the new ACNC maximum threshold of \$3 million has been adopted, which means that a large corporation will be a corporation with consolidated revenue of \$3 million or more in the relevant financial year.

Item 2: Inspection and copying of registers of members and former members

The CATSI Amendment Bill 2021 introduces 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. These changes require that a person state each purpose for which they are seeking to inspect, or are seeking to access a copy of, either the register of members or register of former members. If the purposes stated by a person are prescribed in the CATSI Regulations, the corporation is prohibited from allowing the person to inspect, or providing the person with a copy of, either the register of members or register of former members.

Item 2 amends the CATSI Regulations to prescribe the prohibited purposes for inspecting or making copies of a register of members or register of former members, which are:

- soliciting a donation
- selling or advertising goods and services (including insurance or financial products)
- conducting marketing activities
- a purpose that may put at risk the personal safety of a member or former member of the corporation
- gathering information for a commercial purpose.

Item 2 also prescribes a maximum amount that a corporation can charge a non-member to inspect and/or make copies of a register of members or register of former members.

For inspecting a register that is not kept on a computer, a corporation can charge a non-member a maximum fee of \$5, and for a register kept on a computer, a corporation can charge a non-member a reasonable amount that does not exceed the cost of allowing the inspection. To make a copy of the register of members or register of former members, a corporation can charge a non-member a maximum fee of \$250 and an additional amount for registers with 5,000 or more members or former members.

Item 3: Related party transaction threshold amount

The CATSI Amendment Bill 2021 streamlines related party transaction requirements, including removing the need for 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 prescribed in the CATSI Regulations.

Item 3 prescribes that threshold amount as \$5,000.

Items 4 to 8: Contents of general reports

Items 4 to 8 in the exposure draft makes a few changes relating to the contents of general reports, including:

- changing references to gross operating income to consolidated revenue to be consistent with the new size classification framework which is based on a single criterion of consolidated revenue (refer Item 1)
- requiring reporting on the:
 - number of employees who are full-time, part-time, Indigenous, paid and volunteers
 - key management personnel of the corporation, each related body corporate of the corporation, each entity that the corporation controls and each trust that is connected with the corporation
- moving existing sub-regulation 9(2) that explains how to calculate full-time equivalent employees to become sub-regulation 17(2) to assist corporations with reporting this figure in their general reports. Sub-regulation 9(2) is being moved as it was previously used to assist corporations to calculate full-time equivalent employees as part of the tripartite size classification framework. However, as noted elsewhere in this fact sheet, the existing size classification framework is being replaced with a single criterion size classification framework based on consolidated revenue.

Items 9, 16 and 17: Consolidated revenue threshold

Item 9 changes the measure for a large corporation from consolidated gross operating income with a threshold of \$5 million to consolidated revenue with a threshold of \$3 million. This change is to align with the new size classification framework.

Item 16 changes the measure for a medium corporation from gross operating income with thresholds between \$100,000 and \$5 million to consolidated revenue with thresholds between \$250,000 or \$500,000 and \$3 million. The NIAA is seeking feedback as to whether the threshold for small corporations should be \$250,000 or \$500,000 which is why 2 different values are included for the lower threshold. This change is to align with the new size classification framework.

Item 17 changes the measure for a medium corporation from gross operating income of between \$100,000 and \$5 million for the financial year to consolidated revenue of between either \$250,000 or \$500,000 and \$3 million for the financial year.



Items 10, 12, 18 and 20: Remuneration report

The CATSI Amendment Bill 2021 amends the CATSI Act to introduce the concept of a remuneration report. The exposure draft has been drafted to require corporations with consolidated revenue thresholds equivalent to a medium or large corporation for the financial year, to prepare remuneration reports. However, feedback is being sought as to whether all CATSI corporations should be required to prepare remuneration reports.

Item 12 outlines the contents to be included in the remuneration report, which is the names, positions and total remuneration during the financial year for each of the key management personnel of:

- the corporation
- each related body corporate of the corporation
- each entity that the corporation controls
- each trust that is connected with the corporation.

Item 11: Directors' sitting fees

Item 11 requires that financial reports include the fees that were paid to each director and the number of meetings attended by each director during the financial year.

Item 13: Preparation of financial reports

Item 13 of the exposure draft gives effect to recommendation 51 of the CATSI Act Review Final Report which is to amend Regulation 23 to make it clear that CATSI corporations must prepare financial reports in compliance with the Australian Accounting Standards as though they are a reporting entity for the purposes of the standards. This amendment is to clarify that CATSI corporations are required to prepare general purpose financial reports as opposed to special purpose financial reports.

Item 14, 15 and 22: Auditor's reports

The CATSI Act requires that CATSI corporations that are required to prepare financial reports must have those reports audited and obtain an auditor's report. Items 14, 15 and 22 amend Regulations 24 and 28 to make it clear that the requirement to obtain an auditor's report is within the CATSI Act and not the CATSI Regulations.

Item 19: Revenue

To align with the new size classification framework, item 19 changes the reference to gross operating income to revenue in Regulation 27.I



Items 21 and 23: Reviews of financial statements

Items 21 and 23 amend Regulation 28 to align with the change introduced in the CATSI Amendment Bill 2021 to enable medium corporations to choose to have their financial reports reviewed instead of audited.

Item 24: Appointment of an auditor

Item 24 implements recommendation 52 of the CATSI Act Review Final Report to amend Regulation 33 to outline how a replacement auditor should be appointed when the incumbent has resigned outside of an Annual General Meeting (AGM). The amendment provides that the directors will appoint the replacement auditor.

Item 25: Reports to be laid before an AGM

The CATSI Amendment Bill 2021 requires that CATSI corporations lay any reports for the financial year prescribed in the CATSI Regulations before their AGM. Item 25 introduces Regulation 42 which identifies those reports that must be laid before an AGM which are:

- the general report
- financial report, if a corporation is required to prepare one
- remuneration report, if a corporation is required to prepare one
- directors' report, if a corporation is required to prepare one
- auditor's report, if a corporation is required to obtain one.

Item 26: Information or documents on Schedule 2 of the CATSI Regulations

The CATSI Amendment Bill 2021 amends section 418-10 to specify information specific to each CATSI corporation that must be kept on the Register of Aboriginal and Torres Strait Islander Corporations. Previously, section 418-10 only indicated that the CATSI Regulations may prescribe information or documents to be kept on the Register. This provision is retained but as a new paragraph 418-10(f). Consequently, item 26 amends the reference to section 418-10 in Regulation 43 to change it to paragraph 418-10(f).

Item 27: Inspection of records

Section 421-1 of the CATSI Act enables a person to inspect a prescribed register kept by the Registrar for prescribed information. Regulation 44 prescribes that the Register of Aboriginal and Torres Strait Islander Corporations is prescribed. Item 27 makes it clear that that exempt documents, that is those that are listed on Schedule 3, that are also on the Register of Aboriginal and Torres Strait Islander Corporations, are not able to be inspected.



Item 28: Whistleblower protection provisions

The CATSI Amendment Bill 2021 applies the whistleblower protection provisions set out in the *Corporations Act 2001* (Corporations Act) with some modifications for the CATSI Act. Paragraph 466-1(2)(b) of the CATSI Amendment Bill 2021 indicates that modifications to the Corporations Act provisions may be set out in the CATSI Regulations.

Item 28 of the exposure draft indicates that modifications to the Corporations Act whistleblower provisions are set out in Schedule 4 of the CATSI Regulations.

Item 29: Infringement notices

The CATSI Amendment Bill 2021 replaces the existing penalty notice provisions in the CATSI Act with more comprehensive infringement notice provisions based on those set out in the Corporations Act.

Item 29 introduces offences for the purpose of issuing infringement notices which relate to the:

- new provision set out in section 180-37 of the CATSI Amendment Bill 2021 that requires CATSI corporations to provide the Registrar with a copy of their redacted and unredacted registers of members at the end of each financial year
- existing requirement set out in section 330-10 that CATSI corporations must lodge a general report with the Registrar each year
- existing requirement that CATSI corporations that are required to prepare reports under Part 7-3 of the CATSI Act must lodge those reports with the Registrar each year.

Items 30 to 37: Protected information

Under the CATSI Act, the Registrar is able to disclose protected information in various circumstances.¹ Currently, the CATSI Act describes the situations where disclosure is authorised as broad principles (subsection 604-25(1)), as well as providing a list of circumstances in which a disclosure is deemed to be authorised.

Items 30 to 37 give effect to recommendation 41 of the CATSI Act Review Final Report to amend the CATSI Regulations to specify who can receive protected information; specifically:

- item 30 amends sub-regulation (1) to include reference to 'Executive Agency' to acknowledge the status of the National Indigenous Australians Agency as the agency responsible for general policy and program administration relating to Aboriginal and Torres Strait Islander affairs and peoples
- item 31 adds the Australian Crime Commission to the list of prescribed agencies set out in the CATSI Regulations to which a disclosure of protected information is taken to be authorised
- item 32 adds the Federal Court of Australia to the list of non-corporate entities prescribed in the CATSI Regulations to which a disclosure of protected information is taken to be authorised with a note included to acknowledge the Federal Court of Australia includes the National Native Title Tribunal

¹ Protected information includes information given to the Registrar or another person in confidence, in connection with the Registrar conducting his or her role.

- item 33 adds to the list of state and territory departments prescribed in the CATSI Regulations to which a disclosure of protected information is taken to be authorised, the relevant department(s) of Western Australia that administer the *Aboriginal Affairs Planning Authority Act 1972* and the *Heritage Act 2018*
- item 34 adds to the list of state and territory departments prescribed in the CATSI Regulations to which a disclosure of protected information is taken to be authorised, the Attorney-General's Department in each state and territory
- item 35 adds to the list of prescribed bodies established for a public purpose according to state or territory legislation to perform functions conferred by the state or territory legislation, a state or territory authority with similar powers to that of the Australian Crime Commission and a state or territory authority that investigates corruption
- item 36 corrects the title used to refer to the Indigenous Land and Sea Corporation in Regulation 54
- item 37 adds to the list of prescribed persons or bodies or body for the prescribed purposes of the body or person set out in the CATSI Regulations to which a disclosure of protected information is taken to be authorised, representative bodies as defined by the *Native Title Act 1993* and disclosures made during the course of performing the function of a representative body under the *Native Title Act 1993*.

Items 38 to 50: Schedule 2

Schedule 2 of the CATSI Regulations sets out the information or documents in the CATSI Act that are to be included in the Register of Aboriginal and Torres Strait Islander Corporations. Items 38 to 50 either amend existing entries on Schedule 2 or add additional entries.

The CATSI Amendment Bill 2021 introduces a requirement that directors make a determination regarding membership applications within 6 months which is complemented by powers for the Registrar to extend or remove this timeframe. Items 38 and 39 add to Schedule 2:

- an application from a corporation seeking an extension to, or exemption from, the 6 month timeframe
- a determination made by the Registrar to extend or remove the timeframe
- a notice that the Registrar has refused to make a determination in relation to an application for extension or removal of the timeframe
- an instrument made by the Registrar revoking, varying or suspending a determination made by the Registrar to extend or remove the timeframe
- a register of members if the corporation is not required to maintain a redacted version of its register of members
- a redacted copy of a corporation's register of members if it is required to maintain one.²

The CATSI Amendment Bill 2021 includes amendments to enable small corporations that are not registered entities with the ACNC and that had less than \$1000 in consolidated revenue in the previous financial year, to be able to pass a special resolution not to hold the next one or 2 AGMs. Once the resolution is in place, the corporation is obliged to advise the Registrar if there are any material changes in its circumstances. Item 40 adds to Schedule 2 a record of when a small corporation that meets the required criteria has made a special resolution to not hold an AGM for the next one to 2 years as well as a record of a corporation lodging a notice with the Registrar regarding a material change in its circumstances.

The CATSI Amendment Bill 2021 amends the CATSI Act to explicitly provide a meaning for the Chief Financial Officer (CFO) function in addition to the existing meaning for the Chief Executive Officer (CEO) function. The Bill also make changes to

² The CATSI Amendment Bill 2021 includes a new provision that requires CATSI corporations to provide the Registrar with a copy of their redacted and unredacted registers of members at the end of each financial year.



various provisions throughout the Act to include the concept of a CFO and CEO, and requires a corporation to 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. Items 41 to 44 amend existing entries on Schedule 2 to refer to CEO and CFO as well as add 2 notices to Schedule 2 regarding the people performing the CEO or CFO functions.

Amendments in the CATSI Amendment Bill 2021 will 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). Corporations cannot use this extension more than three years in a row. Item 45 adds to Schedule 2 a record stating the corporation considers that one or more of the grounds for accessing an automatic extension for holding an AGM and lodging reports applies.

The CATSI Amendment Bill 2021 introduces a requirement for the Registrar to issue a notice that he or she is satisfied that the action(s) outlined in a compliance notice has been adequately addressed by a corporation. Item 46 includes the notice that the Registrar is satisfied with the action taken by the corporation to Schedule 2.

The CATSI Amendment Bill 2021 replaces the Registrar's existing power to require the production of books with broader powers based on the Australian Securities and Investments Commission's powers to require the production of books. The revised provisions include 2 new notices regarding the production of books which are added to Schedule 2 by way of item 47.

Items 48 and 50 add the remuneration reports to Schedule 2.

Item 49 corrects the reference to financial reports for certain small and medium corporations based on the amendments set out in this schedule that introduce the remuneration report.

Items 51 and 52: Schedule 3

Section 421-1 of CATSI Act allows a person to inspect any document lodged with the Registrar except an exempt document. Exempt documents are set out in subsection 421-1(4) as well as in Schedule 3 of the CATSI Regulations.

Item 51 adds to Schedule 3 a written statement by a corporation indicating the existence of one of more of the circumstances that must be in place for a corporation to access the new provision providing an automatic 30-day extension for holding an AGM and lodging reports with the Registrar.

Item 52 adds the remuneration report to Schedule 3.

Items 53 and 54: Schedule 4

Schedule 4 outlines the modifications to Corporations Act provisions for the purpose of applying them to the CATSI Act.

Item 53 refers to Regulation 47A which refers to the modification of whistleblower provisions set out in the Corporations Act for application to the CATSI Act. The amendment indicates that the modifications are set out in Schedule 4.

Item 54 includes the modifications to the whistleblower provisions to support their application under the CATSI Act.