



Australian Government
National Indigenous
Australians Agency



NIAA

Summary report

CATSI Amendment Bill exposure draft
consultation



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1. Executive Summary

1. The exposure draft of the CATSI Amendment Bill (the Bill) was published on the National Indigenous Australians Agency (NIAA) website on 8 July 2021 and was open for feedback through to 9 August 2021 to provide feedback on the draft legislation. Amendments in the Bill were informed by recommendations in the CATSI Act Review Final Report that was published on the NIAA website on 14 February 2021. The review made 72 recommendations and the Bill gives effect to 50 of those recommendations.
2. There was strong engagement on the exposure draft of the CATSI Amendment Bill through 27 written submissions. Fifteen virtual consultations sessions were also offered and 5 targeted virtual consultation sessions were also held.
3. These amendments will ensure the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) better supports Aboriginal and Torres Strait Islander corporations and meets the expectations of Aboriginal and Torres Strait Islander peoples. The CATSI Amendment Bill will also provide a graduated suite of the powers to the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) to enable proportionate responses to non-compliance.
4. Consultation on the Exposure Draft demonstrated strong support for amendments that introduced flexibility to corporations and reduced red tape. For example, provisions that allowed directors to change the date and time and place of a meeting after a notice of meeting has been sent, and to access a 30 day extension of time to hold a meeting. Around 90 per cent of submissions also indicated support for the changes enabling corporations to cancel a general meeting.
5. There was also strong support for the amendments that increased the privacy of member information, including the changes enabling members and former members to have their information redacted from registers, and the introduction of a proper purpose test for people wanting to inspect and/or make a copy of these registers. Most stakeholders also welcomed the amendments providing greater flexibility of corporate structures under the CATSI Act.
6. There was general support for increasing the transparency of executive remuneration but not if it set a higher bar than that of companies incorporated under other statutes or compromised the privacy of executives. Submissions highlighted the complexity of this issue which is weighted against the rights of members to access information regarding the operation of their corporation and the use of its funding (which for many CATSI corporations is public money granted to the corporation to provide services to the community and for Registered Native Title Bodies Corporate (RNTBCs), is native title funds similarly held for the benefit of the common law holders).
7. The proposal to introduce remuneration reports was amended during the second consultation phase to make remuneration reports available to members only and not to the public at large. A number of stakeholders remained concerned that this was still disproportionate or discriminatory or did not go far enough to protect executives' privacy. A small number of submissions highlighted the benefit of de-identified sectoral analysis that would be prepared by the Registrar with this reporting.
8. Feedback on infringement notices in particular embodies the key concerns expressed both in virtual consultation sessions and in submissions in regard to the Registrar's functions and powers. Much of the feedback acknowledged the utility and practicality of providing the Registrar with these extra powers—the concern was how the Registrar and the Office of the Registrar of Indigenous Corporations (ORIC) would apply the discretion with which those powers were to be used. A number of participants and submissions called for guidance on how these powers would be used, including the consideration that would be given before issuing an infringement notice.



9. An amendment requiring corporations to refer to replaceable rules in their rule books that have not been modified or replaced, also generated significant feedback. A number of submissions suggested that this amendment should have instead been taken forward as recommended in the CATSI Act Review Final Report, which was that the rules be replicated in their entirety in corporation rule books. Corporations are not prevented from taking this approach if they so choose, and this amendment is aimed at introducing a minimum governance standard that requires rule books to reflect the internal governance rules that apply to the corporation.
10. Several submissions queried the amendments that enable corporations to collect 'other contact details' from members, and were worried about having to keep contact details, such as mobile numbers, up-to-date in line with the existing requirement under the CATSI Act to maintain member registers. The Bill does not define 'other contact details' so each corporation and its members will be left to determine the contact details that will be requested for members. Nevertheless, if a member does not have the 'other contact details', e.g. does not have an email address or mobile phone number, they will not be able to provide one. There is a strict liability offence for failing to maintain a register of members and an example of where this may apply could be if the corporation has been provided with updated member details and has not amended its register accordingly. This is appropriate as this information is necessary to ensure members are kept informed of the corporation's business and can actively engage as members. Further, this information is used when determining whether to cancel a membership and so members may be liable for their membership being cancelled if they do not provide up-to-date contact details.
11. Concern was also raised in relation to the introduction of a 6 month timeframe for assessing membership applications and while it was acknowledged that this was achievable for most CATSI corporations, there were some corporations for which this would present a challenge. To this end, it should be noted that the Registrar will have the power to remove or extend this timeframe for a corporation or class of corporations, upon request or of his or her own volition.
12. During consultation on the exposure draft, some submissions commented on those recommendations in the CATSI Act Review Final Report that are not being taken forward. The National Native Title Council (NNTC), Central Land Council (CLC), First Nations Legal and Research Services, South Australian Native Title Services (SANTS), Office of the Victorian Aboriginal Heritage Council, Yamatji Marlpa Aboriginal Corporation (YMAC) and another 3 submissions, expressed disappointment that recommendation 62 of the CATSI Act Review Final Report was not being taken forward.
13. Recommendation 62 provides for the creation of a separate division in the CATSI Act for specific provisions relating to RNTBCs. This recommendation was given consideration, however, there are currently few provisions relating to RNTBCs that stand alone without requiring consideration of other sections of the CATSI Act. The CATSI Act Review Final Report included a number of recommendations requiring further work which are identified in the *Guide to the exposure draft for the CATSI Amendment Bill* (the Guide), available on the NIAA website. As indicated in the Guide, implementation of these recommendations may result in further legislative change, and in that case, this recommendation will be given further consideration.
14. Some submissions also commented on the conduct of the CATSI Act Review, including those made by the National Aboriginal Community Controlled Health Organisation (NACCHO) and Office of the Victorian Aboriginal Heritage Council.
15. In relation to the conduct of the review, 22 weeks of public consultation were undertaken over the three phases of the CATSI Act Review, and stakeholders were provided with the opportunity to shape the review, comment on proposed changes to the CATSI Act and finally, comment on the exposure draft of the CATSI Amendment Bill.
16. Phase 1 sought feedback in relation to those aspects of the CATSI Act that should be considered as part of the review. The NIAA received 60 responses to a first phase online survey and a further 8 submissions were received via email.
17. Phase 2 sought feedback on a range of proposals outlined in a draft report that was published on the NIAA's website. During this second phase of consultation, the NIAA:



- a. conducted 41 virtual consultation sessions, attended by 165 participants¹ from across Australia;
 - b. received 141 chapter surveys responses;
 - c. received 41 written submissions of which 4 were received after the closing date;
 - d. received 3 feedback responses submitted through the web-based feedback form; and
 - e. received 8 feedback responses via email.
18. Further, during phase 2 of the consultation, the NIAA held 15 individual consultation sessions, for industry stakeholders, traditional owners and other interested stakeholders. This included consultation with directors, members and CEOs of CATSI corporations (including Registered Native Title Bodies Corporate (RNTBCs)), academics, peak Indigenous and professional bodies, lawyers, accountants, industry and businesses.
19. Phase 3 included public consultation on the exposure draft of the CATSI Amendment Bill.
20. The comprehensive review process included the convening of a Stakeholder Reference Group comprising key stakeholders from the native title sector, relevant professional bodies, government bodies and a CATSI corporation. A Steering Committee comprised of senior officials from the NIAA, ORIC and other Commonwealth regulatory bodies.
21. Feedback provided in each phase of the review was reflected in subsequent phases of the review. For example, following consultation on the exposure draft, changes have been made to the draft legislation including: requiring corporations to provide both the redacted and un-redacted versions of their register of members to the Registrar on an annual basis; and the clarification of 'dishonesty offences' based on changes made to the *Corporations Act 2001* (Corporations Act) in 2019. There were a number of suggestions made in response to the exposure draft that while meritorious, require broader consultation before being taken forward as changes to the legislation. These include allowing directors' meetings to be held virtually without consent from all directors, and requiring the Registrar to notify the corporation and community of any decisions, prior to publishing a public notice.

¹ Over 470 individuals registered for virtual sessions, with approximately 35 per cent of registered participants attending sessions.



2. Introduction

Background

20. The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) came into effect on 1 July 2007 to provide Indigenous corporations with a fit-for-purpose regulatory framework to make it easier for Aboriginal and Torres Strait Islander persons to form and manage corporations. The CATSI Act mirrors many requirements of the Corporations Act, while providing the flexibility and support needed to meet the unique cultural contexts of Aboriginal and Torres Strait Islander people. The CATSI Act also provides for the Registrar and ORIC. The CATSI Act is a special measure for the purposes of the *Racial Discrimination Act 1975*.
21. 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, building on previous reviews and considering a wide range of issues including:
- whether the CATSI Act is meeting its objects and continues to be desirable as a special measure for the advancement and protection of Indigenous people as set out in the Act's preamble;
 - whether the functions and powers of the Registrar of Indigenous Corporations are appropriate, effective and adequate; and
 - possible amendments to the CATSI Act to better support the regulation of CATSI corporations.
22. Prior to the consultation undertaken on the exposure draft, the CATSI Act Review included 2 further phases of consultation. Phase 1 sought feedback in relation to those aspects of the CATSI Act that should be considered as part of the review. The NIAA received 60 responses to a first phase online survey and a further 8 submissions were received via email in relation to the aspects of the CATSI Act that should be considered as part of the review.
23. Phase 2 sought feedback on a range of proposals outlined in a draft report that was published on the NIAA's website. During this second phase of consultation, the NIAA:
- a. conducted 41 virtual consultation sessions, attended by 165 participants² from across Australia;
 - b. held 15 individual consultation sessions, for industry stakeholders, traditional owners and other interested stakeholders;
 - c. received 141 chapter surveys responses;
 - d. received 41 written submissions of which 4 were received after the closing date;
 - e. received 3 feedback responses submitted through the web-based feedback form; and
 - f. received 8 feedback responses via email.
24. A broad range of stakeholders were engaged during this second phase of consultation including directors, members and CEOs of CATSI corporations (including Registered Native Title Bodies Corporate (RNTBCs)), academics, peak Indigenous and professional bodies, lawyers, accountants, industry and businesses.
25. In February 2021, the NIAA published the CATSI Act Review Final Report on the NIAA website. The Final Report included 72 recommendations outlining changes to the CATSI Act, suggesting further consideration of some aspects of the CATSI Act and identifying additional support that could be provided to corporations incorporated under the Act.

² Over 470 individuals registered for virtual sessions, with approximately 35 per cent of registered participants attending sessions.



Exposure Draft of the CATSI Act Amendment Bill

26. On 8 July 2021, the NIAA published an exposure draft of the Bill on its website as well as a guide that mapped the recommendations from the final report to the Bill and 20 fact sheets—one for each part of the Bill. The Bill gives effect to 50 of the 72 recommendations outlined in the CATSI Act Review Final Report.
27. 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.
28. Consultation was open until 9.00am Monday, 9 August 2021. Stakeholders could provide feedback via written submission or in a virtual consultation session.³
29. Stakeholder engagement on the exposure draft consultation period resulted in:
 - 27 written submissions⁴;
 - 7 virtual consultation sessions, attended by 10 participants;⁵
 - 5 targeted virtual consultation sessions, including with Office of the Registrar of Indigenous Corporations staff and the Queensland Government.
30. In accordance with individual privacy permissions, comments from participants in the virtual consultation sessions or that were included in written submissions are outlined below according to the relevant Part of the Bill.
31. The NIAA would like to thank all those who participated in the consultation. The constructive and considered feedback is appreciated as are the efforts of those who prepared and provided comments.

³ Where either of these channels were not accessible, stakeholders were encouraged to contact the NIAA directly to arrange to provide feedback in another way.

⁴ Where permission was received, these submissions are identified in this report and published on the NIAA website. A list of submissions is at Attachment A.

⁵ Fifteen public virtual consultation sessions were scheduled, however, 8 of these sessions were cancelled as the registered participants did not attend. In total 40 participants registered for the public virtual consultation sessions.



3. Part 1—Review of operation of Act

32. Part 1 of the CATSI Act Amendment Bill inserts Division 643—Review of operation of Act. Under this Division, the CATSI Act must now be reviewed every 7 years with specific consideration of the effectiveness of the Act as a special measure under the *Racial Discrimination Act 1975*. Each review must be completed within 18 months and the Minister must table a report of that review in the Australian Parliament within 25 sitting days of the completion of the report.
33. SEARMS Community Housing Aboriginal Corporation agreed with this provision in its submissions stating, *‘Yes there should be a review of the CATSI Act every 7 years.’* Similarly, one submission noted, *‘[name redacted] echoes that submission of the NNTC in relation to the importance of implementing the recommendation that the CATSI Act be reviewed regularly to assess if it is still appropriate to retain as a special measure and supports the proposed amendment that requires a review of the CATSI Act every seven years.’*
34. In its submission Arnold Bloch Leibler (ABL) also agreed with the introduction of a review provision and commented, *‘We welcome the mandated review of the operation of the Act, in particular the requirement that the review must consider the effectiveness of the Act as a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders.’* ABL indicated in its submission that while it expected that *‘many of the amendments proposed by the CATSI Amendment Bill will provide for greater flexibility, enhanced privacy and reduced compliance burdens, some will achieve the opposite (for example mandatory tabling o[f] reports and adoption of the whistleblower regime).’* As a consequence, ABL put forward that each review will provide *‘an opportunity to consider other mechanisms for ensuring greater ease of use, flexibility and most importantly self-determination.’*
35. NACCHO agreed with including a review provision but did not support the requirement for the review to be completed within 18 months which it considered to be too long. NACCHO suggested that the review timeframe should be 6 months, with the option to extend by 3 months if necessary. NACCHO went on to suggest that if the 18 month timeframe cannot be reduced, then the interval between reviews should be lengthened.
36. Feedback during the second phase of consultation of the CATSI Act Review was that 10 years would be too long between reviews, while 5 years would be too short; hence the timeframe of 7 years. Further, as part of this comprehensive review of the CATSI Act, 22 weeks—almost 6 months—of consultation has been undertaken. Nevertheless, some stakeholders have commented that this level consultation is insufficient. It would not be feasible to complete a review of the Act that considered whether it is meeting its objects as a special measure under the *Racial Discrimination Act 1975* and provide sufficient opportunity for consultation in 6 months.
37. The Aboriginal Health and Medical Research Council (AH&MRC) submission illustrated the expectation of adequate consultation when such a review is undertaken stating that, *‘The AH&MRC and its members agree with the Exposure draft Amendment Bill that the CATSI Act should be renewed every seven years and that reviews should be completed within 12 months. The AH&MRC and its members consider that it is pertinent that reviews must strongly consider the views of corporations registered under the CATSI Act.’*
38. While the AH&MRC submission supports a review time of 12 months, the provision is that the review be undertaken within 18 months and so there is the opportunity for a shorter review period if considered appropriate.



4. Part 2—Powers and functions of Registrar

Enforceable undertakings

39. Part 2 of the Bill deals with the powers and functions of the Registrar. It adds a section that allows the Registrar to be able to accept an enforceable undertaking, and for that undertaking to be modified if both parties agree. It also provides that where a party breaches an enforceable undertaking the Registrar may apply to the Court to have the undertaking enforced, or some other order issued. Further, it amends section 453-1 to provide that following an examination, an authorised officer can report to the Registrar where they believe there may be a suspected breach of an enforceable undertaking.
40. ABL was supportive of enabling the Registrar to accept enforceable undertakings as was Dr Marina Nehme (Dr Nehme) who noted, *'the introduction of enforceable undertaking is welcomed. This sanction will allow the Registrar to deal with certain alleged conduct in a restorative healing way that is not currently possible.'* However, Dr Nehme raised concern regarding the change to section 453-1(1) which allows an authorised officer to report to the Registrar a suspected breach of an enforceable undertaking. Dr Nehme suggested that *'the provision goes against the spirit of the sanction. The sanction, for it to be relied on, requires a degree of trust between the regulator and the promisor.'* Dr Nehme put forward that the terms of the undertaking should include monitoring provisions, including allowing the regulator to review the books of the corporation, which would go beyond the proposed changed to section 453-1(1) and may be more effective.
41. It is anticipated that an enforceable undertaking will include monitoring provisions as outlined by Dr Nehme and it is likely that in most circumstances, these will be solely relied on to confirm compliance. However, in the limited circumstances where a corporation may have entered into an enforceable undertaking and is also the subject of an examination or investigation, it would be prudent to enable the authorised officer to be able to report a suspected breach of an enforceable undertaking. Particularly as in those circumstances, the corporation may have demonstrated a history of non-compliance that has necessitated an enforceable undertaking as well as a targeted examination or investigation.
42. Another submission was not supportive of enabling the Registrar to accept enforceable undertakings noting, *'...[name redacted] does not support these recommendations to further criminalise the Act. [name redacted] believes this will be challenging for ORIC to implement, leading struggling organisations into further non-compliance. Ultimately, these penalties will not serve to support improvement in compliance within small - medium organisations.'*
43. NACCHO's comments in relation to enforceable undertakings reflected the sentiment of the submission quoted above saying, *'In relation to '439 25 Enforcement of undertakings' and '571 10 Matters to be included in an infringement notice', NACCHO agrees with a point made by Aboriginal Peak Organisations NT in its October 2020 submission (p. 2): ... that the CATSI Act be decriminalised. The current approach is too dependent on penalties and the draft discussion paper does not address the pervasiveness of the criminal provisions in the Act. There are 166 potential criminal offences that may arise from breaching the Act, which are trivial and administrative. Penalties could attract fines up to \$200,000, which is disproportionately burdensome to individuals, given they often function in unpaid roles. Of course, NACCHO and our colleagues would always support penalties in genuine cases of fraud. The issue here is with unintended transgressions in situations, often arising in relation to lack of information, expertise or training of well-intended and/or voluntary workers.'*
44. It is important to note that enforceable undertakings are voluntary. It is a commitment by a person to undertake an action, and a tool that allows the Registrar to deal with non-compliance without recourse to the courts. For example, if a



corporation has failed to prepare audited financial statements, the Registrar may accept an enforceable undertaking that the corporation: provide evidence that an auditor has been appointed; prepare and lodge audited reports within a specified timeframe; and have directors undertake financial competence training.

- 45. In cases involving repeated non-compliance resulting from the failings of particular individuals, an enforceable undertaking might include a requirement that particular individuals not be involved in the management of the corporation for a period of time. In this situation, it would still be the corporation entering into the enforceable undertaking and not the individual(s).
- 46. The introduction of enforceable undertakings increases the tools available to the Registrar to enable a graduated and proportionate response to non-compliance. Such an approach is not currently available to the Registrar whose key compliance tool is currently court action and which may be considered heavy handed in certain circumstances. For example, if it is a first instance of non-compliance, or if it is a less serious breach of the CATSI Act.

Production of books

- 47. To expand the Registrar’s powers to achieve greater consistency with those of the Australian Securities and Investment Commission (ASIC), the Bill introduces section 453-2 to empower the Registrar to specify a reasonable timeframe in which a corporation must produce its books, including to require the immediate production of books where it is reasonable in the circumstances. Dr Nehme indicated this was a welcome amendment in her submission.
- 48. In its submission, SEARMS Community Housing Aboriginal Corporation raised concern about these amendments stating, *‘May be in line with ASIC but seems to give a whole lot more power to the Registrar. It’s how that power is used that will be a concern.’*
- 49. In contrast, the Aboriginal Health Council of South Australia indicated support for these amendments saying, *‘There is general agreement that the implementation compliance powers modelling on ASIC’s powers should be introduced, however, it is imperative that sufficient time and educational resources are provided by ORIC in relation to the additional requirements.’*
- 50. AH&MRC was also supportive of this change but suggested a request for the immediate production of books needs to be weighed with the administrative burden and achievability of such a request, *‘Subsection 453-2(4) empowers the Registrar to require the production of books immediately if reasonable in all the circumstances. The circumstances under which this request is warranted but must be well defined to ensure that Corporations registered under the CATSI Act are not placed under the significant burden or expected to comply with legislation in ways that are not achievable.’*
- 51. The Bill also empowers the Registrar to require a person to state where a corporation’s books may be found, or who had last possession or control of the books, or to identify the property of a corporation and to explain how the corporation has kept account of that property.
- 52. One submission cited concerns regarding legal professional privilege regarding these amendments, *‘[name redacted] is concerned about the proposed abrogation of legal professional privilege under items 4-12 and 20 which would empower the Registrar to require by notice the following: The production of books; and The provision of information on the location of the books; and To identify the property held by the corporation and explain how corporation has kept account of the property Legal professional privilege and client confidentiality are important legal protections for corporations which increase the likelihood of corporations seeking advice and staying informed of their rights and obligations. The amendments should protection [sic] legal professional privilege.’*
- 53. Proposed amendments will not abrogate legal professional privilege. Communications between lawyers and their clients will continue to be subject to legal professional privilege in the usual way and legal professional privilege is not in any way eroded by the proposed amendments. High Court rulings have been very clear that a statute does not abrogate legal professional privilege in the absence of clear and unambiguous words to that effect (i.e. expressly) or by necessary implication.



Infringement notices

54. The Bill also amends the CATSI Act to reform the existing infringement notice regime under section 566-5 of the CATSI Act with the introduction of new Division 571. The Registrar currently has the power to issue an infringement notice, however, no offences are currently prescribed in the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 (CATSI Regulations), and so this power was not being used by the Registrar. Division 571 is more comprehensive than the existing section 566-5 and is based on the Corporations Act. It includes provisions for the withdrawal of an infringement notice, payment by instalments and extensions to the payment period.
55. ABL were not supportive of these provisions stating, *'We are extremely disappointed to see the introduction of new mechanisms to entrench the issuing of infringement notices. We do not believe there is compelling evidence that this 'stick approach' is needed or likely to be effective (items 21-23). We suspect it will have the opposite effect.'*
56. Aboriginal Health Council of South Australia suggested that fines should follow a warning and proposed, *'Furthermore, we encourage the Registrar to consider implementing a two-strike rule. In practical terms, Corporations should be provided with one written warning for each different offence prior to any fines being imposed.'*
57. It is intended that infringement notices will apply to the failure to lodge annual reports with the Registrar.⁶ ORIC currently issues reminders to corporations regarding their annual reporting obligations and has indicated that it does not expect to cease doing so in the future. In effect these reminders will act as a warning notice, as suggested by the Aboriginal Health Council of South Australia, prior to an infringement notice being issued.
58. Participants in the virtual consultation sessions as well as a number of written submissions raised questions as to what types of offences would be prescribed for the revised infringement notice provisions. Dr Nehme suggested infringement notices should be issued sparingly and stated, *'Infringement notices should not have more than a marginal use in ORIC's enforcement regime. The majority of Aboriginal and Torres Strait Islander Corporations (ATSIs corporations) are not-for-profit entities and are reliant on grants to function. Further, they are providing, in many instances, essential services to their community. Accordingly, their funds should not be funnelled to pay infringement notices.'*
59. Similarly, the CLC noted, *'The infringement notices arrangements established in the draft Bill appear to be modelled on those in the Corporations Act. An important difference between that Act and the CATSI Act is that the latter is a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders. It is important to note that, unlike other interventions such as special administration, infringement notices cannot operate to advance the interests of corporations or members. An infringement notice penalises directors, members and the corporation alike.'*
60. The CLC's submission also commented that the amendments provide substantial discretion to the Registrar which should be guided by considerations that at a minimum include:
- a. The gravity of the contravention of the Act;
 - b. The person or corporation's administrative and financial capacity to pay or challenge the infringement notice;
 - c. Health, educational, cultural, financial and geographical constraints which are relevant to the contravention of the Act;
 - d. The likely impact of the issuing of a notice on a person or corporation's solvency and a corporation's ability to continue to carry out its functions; and
 - e. Whether other interventions are more likely to promote the relevant corporation's compliance with the CATSI Act.
61. Further suggestions put forward by the CLC were that: the Registrar should be required to publish a policy statement about issuing fines; the penalty amounts (to be prescribed in the CATSI Regulations) should be maximum penalties; and

⁶ These offences will be prescribed in the CATSI Regulations and there will be the opportunity for stakeholders to provide feedback on those changes later this year.



- the amendments should include the power for the Registrar to reduce the penalty amount after an infringement notice has been issued.
62. ORIC has indicated its intention to release a policy statement in relation to the use of infringement notices. As noted in the CLC's submission, these amendments provide complete discretion to the Registrar in relation to issuing an infringement notice, including whether an infringement notice is issued at all, with subsection 571-5(1) of the CATSI Amendment Bill stating that, '*...the Registrar may give the person an infringement notice for the alleged offence.*' Further, these amendments are based on the Corporations Act which does not include the level of detail proposed by the CLC, and that may be more appropriately included in policy material, which explains how the Registrar intends to use this power as an independent statutory officer.
 63. Section 571-30 of the amendments also provide broad powers to the Registrar to withdraw an infringement notice, including in response to written representations and on his or her own initiative. Subsection 571-30(4) states that when considering the withdrawal of an infringement notice, the Registrar may have regard to, among other considerations such as circumstances of the alleged offence, any other matter the Registrar considers relevant.
 64. Given the discretion provided to the Registrar regarding infringement notices and ORIC's intention to release a policy statement, no changes are proposed to these provisions.
 65. In its submission, Chalk and Behrendt was supportive of the revised infringement notice provisions but questioned how these provisions may be used, '*This is one of the proposals the impact of which on corporations will depend significantly on the detail in the CATSI Regulations, a draft of which is not published alongside the Draft Bill. While we support the inclusion of a more detailed framework governing the Registrar's power to issue infringement notices if that power were to be used, including for example, the ability of the Registrar to extend the period for payment (which is not available in existing section 566-5), we would be concerned if the proposed amendments were in practical terms to lead to greater 'criminalisation' of non-compliance. Many CATSI corporations have very limited resources to meet the complex administrative requirements of the CATSI Act, often relying on unpaid directors to do this work, many of whom live in remote areas and may not have access to technology. It is inappropriate in these circumstances that minor non-compliance could result in the issuance of penalties, rather than addressed through ways that support and improve the capacity of the corporation to meet their compliance obligations. While the CATSI Act also includes quite serious offences, such as those relating to breaches of directors' duties (e.g. s 265-25), those offences are more appropriately dealt with by a court given the high penalties and the implications for the individuals involved. We agree with the submission made by the Central Land Council to the Comprehensive Review of the CATSI Act 2019-202 that it is critically important that the implementation of the CATSI Act does not result in potentially harmful criminal outcomes for Indigenous people, particularly where other regulatory measures would suffice. The prescribed offences which can trigger the power to issue infringement notices need to be carefully considered so that the proposed amendments do not lead to greater 'criminalisation' of minor non-compliance.*'
 66. The prescribed offences for infringement notices will be set out in the CATSI Regulations along with the penalty amounts. As noted earlier in this chapter, it intended that the offences will be the failure to lodge annual reports with the Registrar. The NIAA intends to consult on these changes to the CATSI Regulations later this year, which will provide the opportunity for stakeholders to comment on the appropriateness of the offences and penalty amounts.
 67. During one virtual session there was concern expressed about corporations that had very limited resources being penalised for trivial offences, some of which may be difficult to avoid. The example provided was the requirement to have the Indigenous Corporation Number displayed at the registered office, when some corporations used solicitors or accountants as their registered office.



5. Part 3–Membership applications, member contact details and electronic communication

Collecting and using contact details

68. ABL, Dr Nehme and another submission all expressed support for these amendments, as did the Aboriginal Health Council of South Australia which also suggested the collection of contact details should be limited to 2 alternative contacts, *'The South Australian sector supports the mandated use of using alternative contact details for Members. However, to ensure it's time and cost effective, we suggest that only two alternate contacts should be received for example; a primary address and an email address.'*
69. The CLC's submission raises concern regarding the amendments that add 'contact details' to the:
- personal information to be provided to the Registrar for a director, alternate director, secretary or contact person of a corporation (item 76 of the exposure draft); and
 - written records a corporation is required to maintain in relation to the current officers and secretary or contact person of a corporation (item 78 of the exposure draft).
70. Specifically, the CLC raises concern that these changes criminalise a failure to keep mobile phone information up-to-date which is *'not a fair expectation to impose on remote Aboriginal Australians'* as *'there is a high rate of turnover of mobile phones, which are often shared between family members. A single user can accrue up to 25 mobile numbers.'*
71. This was also noted in the NNTC's submission; nevertheless, NNTC indicated support for the amendments while noting that this information should be confidential which will be enabled by the introduction of new section 180-26 that allows members and former members to have their personal information redacted from registers, *'The NNTC supports recording other contact details where these are available to facilitate communication with members. Nonetheless, the NNTC believes that personal information that is contained in the register of members must remain confidential and supports the new s180-26 that enables members to request the redaction of information from the register of members. The NNTC notes that keeping these details up to date may be unduly onerous for a corporation where members and directors regularly move between communities or addresses or live in circumstances where there is a high turnover of mobile phones and phone numbers.'*
72. In the same vein, another submission was supportive of corporations being able to collect other contact information but considered that they should only have to take 'reasonable steps' to do so and expressed concern regarding the requirement to keep contact details up-to-date, *'[name redacted] supports enabling a corporation to collect contact details other than addresses of members, directors, contact persons, and secretaries. In our view, the Amendment Bill should provide, however, that the corporation take reasonable steps to obtain other contact details. This will acknowledge that it may not always be possible for a corporation to obtain those contact details. [name redacted] is concerned about the requirement on corporations to keep member details up to date as this is unduly onerous, particularly for RNTBCs who receive limited funding and whose members move frequently and have fluctuating access to internet or mobile phones.'*

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73. Another submission suggested that the collection of other contact details, such as email addresses and phone numbers, by corporations is an *'internal matter to be addressed by individual corporations and would impose unnecessary burden on corporations, particularly small and medium sized corporations.'*
74. This sentiment was echoed by Tangentyere Council Aboriginal Corporation which raised concern about having to keep members' details up-to-date, *'Recording and maintaining up-to-date email addresses and phone numbers for each of our 600+ members would create a significant administrative burden on TCAC and will require a sizeable diversion of our resources. Further, we consider that the exercise of recording and attempting to maintain phone numbers and email addresses may prove futile as most of our members do not have email addresses and their contact details change frequently. We consider that allowing for both paper and electronic methods of contact is fair, but it should be at the discretion of corporation which method is employed given their knowledge of their member base.'*
75. The Bill does not define 'other contact details' so each corporation and its members will be left to determine the contact methods that will be requested of members. Nevertheless, if a member does not have the 'other contact details', e.g. does not have an email address or mobile phone number, they will not be able to provide one. There is an existing requirement for corporations under the CATSI Act to maintain their registers and an example of where the failure to do so may be a strict liability offence could be if the corporation has been provided with updated member details and has not amended its register accordingly. This is appropriate as this information is necessary to ensure members are kept informed of the corporation's business and can actively engage as members. Further, this information is used when determining whether to cancel a membership and so members may be liable for their membership being cancelled if they do not provide up-to-date contact details.
76. The Victorian Aboriginal Heritage Council suggested the collection of member information, among other amendments, is offensive as it is a divergence from the requirements under the Corporations Act, *'The exposure draft appears to create or exacerbate of number of such divergences from the arrangements under the CA [Corporations Act]. In this respect creating obligations on: the collection of member information... would not appear to be reflected in the CA and are therefore offensive.'*
77. In contrast, the Australian Institute of Company Directors (AICD) indicated support for these amendments and suggested that corporations should pass resolutions as how communication will be managed with members, *'The AICD supports amendments in the Exposure Draft that empower CATSI corporations to obtain alternative contact details for members and determine how members should be contacted, including via social media and community noticeboards. However, we suggest that contacting members using alternative contact details should require resolution at a general meeting to ensure that members can still opt-in to receive a written notice, for example.'*
78. NACCHO was also supportive of these amendments in its submission noting the flexibility it will provide to corporations, *'recommendations 11-12 (i.e. modernising provisions re: contact details, etc.) also concern flexibility and helping our members overcome unforeseen obstacles in governance due to the pandemic and/or archaic governance requirements. As such, these changes as reflected in the exposure draft of the Bill are supported.'*
79. In relation to the use of these details to contact members, one submission noted its support for enabling corporations to use a broader range of contact details *'to best suit'* members specifically noting how valuable this change will be for CATSI corporations with membership based that are dispersed in age as well as geographically.
80. There was also general agreement that the Registrar should be able to communicate electronically in addition to by post and in person. The same submission quoted above offered, *'We agree with the NNTC's submission which supports the Registrar being able to publish notices on electronic communications platforms including the ORIC website, rather than in the Government Gazette. It also supports the Registrar being able to use electronic means such as email when required to notify people or corporations directly. We would expect that these measures would assist corporations and their members by making the Registrar's communications and notifications more readily accessible.'*
81. On the other hand, a further submission proposed that this should only be where the recipient has consented to be contacted in this way, *'[name redacted] submits that the CATSI Act should be amended to enable the Registrar to contact people and corporations using electronic channels only where the relevant people or corporations have consented to be*

contacted as such.’ The administrative difficulty with implementing such an approach however would render it impractical.

82. Participants in consultation sessions welcomed the approach but most were clear that this should be in addition to, and not instead of, contact by standard means such as by post.

Timeframe for deciding membership applications

83. The Bill introduces a requirement for directors to make a decision on a membership application within 6 months of the application being made. AICD supported this change explaining, *‘Decisions regarding membership applications should be subject to due process, and, therefore the AICD supports the inclusion in Item 56 of the Exposure Draft of a six-month timeframe within which corporations need to consider membership applications, as well as the process for allowing the extension or exemption from the period for deciding an application (Item 58 of the Exposure Draft).’* SEARMS Community Housing Aboriginal Corporation, Dr Nehme, Chartered Accountants Australia and New Zealand and another submission all agreed with this requirement.
84. The NNTC, CLC, SANTS and 2 other submissions raised concern about the 6 month timeframe for considering membership applications as did some participants in virtual consultation sessions.
85. The NNTC’s submission noted that, *‘While this may be a reasonable expectation for some corporations, it may be an unreasonable requirement for corporations that have no resources and are not being actively managed or able to hold regular meetings of directors. Furthermore, where the eligibility of an application depends on consideration of information that is held by an external organisation or receipt of expert advice there may be delays that are beyond the control of the directors.’* The NNTC’s submission suggests that in these types of circumstances it would be appropriate for the Registrar to exempt a corporation or class of corporations from the requirement, or extend the timeframe.
86. Introducing the power for the Registrar to exempt a corporation or class of corporations from this requirement, or to extend the 6 month timeframe, recognises the feedback received during the second phase of consultation of the CATSI Act Review. Similar to the NNTC submission, stakeholders indicated that while this requirement will be easily met by most CATSI corporations, there will be a number of corporations with necessarily complex and/or lengthy application assessment processes for which this requirement will be challenging.
87. It is for this reason that the amendment introducing the Registrar’s power to make a determination to extend or remove the application assessment period states that the Registrar must have regard to whether an assessment process is inherently complex or lengthy. As there are likely to be other circumstances that may prevent membership applications from being considered within a 6 month period, the amendment also states the Registrar may have regard to any other circumstances the Registrar considers relevant.
88. Another important point to note in relation to the Registrar’s power is that he or she can make a determination regarding an extension or exemption on receipt of an application or on the Registrar’s own initiative. Consequently, if the Registrar considers that there is a class of corporations that may require this timeframe to be extended or removed, the Registrar can initiate that action of their own volition.
89. The CLC’s submission notes that this timeframe *‘will not be practical for many corporations that are not being actively managed. This will include a large number of land-holding corporations and RNTBCs in Central Australia. Many such corporations only have a board meeting in conjunction with their annual general meetings. This means that there are often periods longer than 6 months when the directors do not meet at all. They will therefore also not be in a position to seek an extension/exemption under draft Bill clause 58 either.’*
90. The CLC suggested that the amendment should be changed to require corporations to consider membership applications by the later of: 6 months from the day the application is made; or the final day of the first directors’ meeting held after the day the application is made. Another submission made a similar suggestion to that of the CLC proposing that the timeframe for assessing membership applications should be left to corporations to decide, or align with directors’



meetings, *'The timeframe for assessing memberships should be determined by the corporation. But if a timeframe was set, it should be linked to two cycles of the minimum number of directors' meetings. For example, if there is a requirement in the rule book for the directors to meet at least every three months (which is the case for [name redacted]), six months is likely reasonable.'*

91. Similar proposals were discussed during the second phase of consultation but aligning the application consideration requirement with directors' meetings will have its own challenges. One key challenge is if the applications cannot be decided at the directors' meeting, either because the applicant has not provided sufficient information or the directors seek to make their own enquiries, such as in relation to family connections. In those circumstances, the applicant may have already waited 12 months to have their application considered only to have it delayed longer. Further, for the circumstances set out in the CLC's submission where the directors may only meet once a year, there is a question about what the obligation would be on the directors in those circumstances if they are unable to make a determination at their annual directors' meeting.
92. Other amendments in this Bill will make it easier and less costly for corporations to hold meetings, including enabling corporations to hold meetings via technology and to vote using another means when a show of hands is not possible. Feedback during the second phase of consultation for the CATSI Act Review was very positive from stakeholders who advised that meetings held virtually enabled corporations to meet more frequently and also led to increased attendance by invitees. As such, it would be expected that these changes would enable directors to meet more regularly.

Cancelling memberships

93. Cancelling memberships has been a source of contention for many corporations. Amendments in the Bill will make it easier for corporations to manage their membership base by amending the CATSI Act to allow corporations to determine the conditions for cancelling membership based on being uncontactable, through a replaceable rule. That way corporations can make a rule that best suits their circumstances and conditions.
94. SEARMS Community Housing Aboriginal Corporation, Dr Nehme, Chartered Accountants Australia and New Zealand and another submission supported these changes. A further submission put forward what it considered it be appropriate cancellation provisions, which can be adopted by corporations that are not RNTBCs, as this provision will now be a replaceable rule, *'For corporations such as [name redacted] that have members who live in remote locations, contact can be difficult – members in these areas may have limited phone and internet access and may not have fixed addresses. We consider that 18 or 24 months is an appropriate amount of time and a minimum of three attempts to contact them should be made.'*
95. NACCHO approved of the self-determinative element of the provision. *'We also support the notion that organisations should be able to determine the nature of the contact with their members that is acceptable, in consultation with their members. This is a matter of self-determination. For example, this process should be made at a general meeting by way of resolution and revised annually to ensure members remain satisfied with the method and frequency of contact.'*
96. The Aboriginal Health Council of South Australia noted that *'the South Australian sector welcomes the proposed change to ...make the non-contactability period a replaceable rule.'*
97. Participants in consultations also welcomed this change, with one participant noting it will help to get an engaged membership, and in particular quorums at meetings.
98. This amendment demonstrates the process the review has taken to reflect stakeholder feedback through the various phases of consultation to provide solutions that maintain self-determination, while providing effective tools for corporations in managing their members.



Proper purpose test

99. A proper purpose test is introduced 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 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. Members will be able to access both the register of members and register of former members without a proper purpose test.
100. SEARMS Community Housing Aboriginal Corporation, ABL, Dr Nehme, Chartered Accountants Australia and New Zealand and another submission all agreed with the amendment.
101. Aboriginal Health Council of South Australia provided qualified support suggesting 2 prescribed purposes that should be included in the CATSI Regulations, *'The South Australian sector accepts the implementation of a proper purpose test in the event that a non-member seeks to either 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, but holds concerns that this could be used by Boards to deny access to members who refuse to explain their reasons for access (which may occur due to cultural power imbalances between members and Boards). Accordingly, it is suggested that access for a commercial purpose, or to menace or harass members be the only forms of access prohibited.'*
102. As noted above however, members will not be subject to the proper purpose test so boards will not be able to use this to deny members access.
103. As noted elsewhere in this report, the changes to the CATSI Regulations, including the addition of prescribed purposes related to the proper purpose test, will be consulted on later this year.

Redacting information from registers

104. One of the most popular amendments was that requiring directors to redact the personal information of members from the register of members upon request. In the Bill, this is also extended to former members seeking their information be redacted from the register of former members. In fact, all of the submissions that commented on this item indicated their agreement, including SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand, NNTC, SANTS, Aboriginal Health Council of South Australia and another submission.
105. Amendments increasing the privacy of member information were well received, including from ABL which stated in its submission, *'We also welcome the increased privacy that is afforded by requiring inspections of the register by non-members to require a proper purpose and enabling redaction of information.'*
106. This recommendation is a modification of a recommendation from the 2018 Bill which allowed directors to redact personal details when there was a safety risk to the person in question. The new provision does not require a threshold question to be met, and allows redaction on request.
107. This change of approach was welcomed by stakeholders, including from NACCHO, *'NACCHO strongly supports recommendation 13 in which changes have been drafted allowing personal information of members to be able to be redacted, if requested. This provides a safety net for members who may be experiencing domestic violence or other exceptional circumstances. NIAA should be congratulated for listening to the sector's concerns about this issue and drafting the legislation to accommodate the change.'*

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108. As NACCHO noted, although there is no longer a requirement to justify the redaction on safety or other grounds, the provision will still provide significant protections for members from more than just physical danger. The AICD expressed support for this measure, stating, *‘The AICD has long been concerned with the confidentiality and security of information held on existing business registries. In today’s digital world, personal identity information is a key exploitation target of cyber and identity criminals. Expert advice commissioned by the AICD confirms that the public availability of personal information (such as residential address and date of birth) exposes directors and officers to undue privacy, cyber-security and personal safety risks, including identity fraud.’*
109. Although welcomed, one submission indicated that the provision did not go far enough. The submission stated that, *‘This is a matter of personal safety (domestic and lateral violence) therefore privacy issues should be mandated for all corporations, not left to individual choice.’* This measure was the subject of much deliberation, as there may be compelling reasons for being able to access the personal information of members, especially for other members, and so it was agreed that it should be individual choice and not mandated by the legislation.
110. A number of other provisions work to support this amendment including that where a register is to be inspected, or provided at the AGM for updating, it must be the redacted register, and the introduction of a ‘proper purpose’ test to inspect or make copies of the registers.
111. During consultation on the exposure draft it was raised that, rather than corporations only providing the Registrar with the redacted version of their registers of members, the Registrar would also need access to the unredacted versions of the register to enable the investigation of complaints and other functions. The Bill has been amended on this basis to require corporations to provide on an annual basis, copies of their redacted and unredacted registers of members.
112. Stakeholders’ views were also canvassed on the process for how a person would go about seeking access to an unredacted register. Two alternative sections were included in the draft Bill and stakeholders were asked to indicate their preference. One section provided that directors would decide if a person could access an unredacted version of the register, and the second section has the Registrar making such a determination. Dr Nehme preferred the decision to be made by directors, *‘It is a welcomed move that redacted registers are currently being introduced by the exposure draft. However, decisions to provide access to full register while a redacted copy exists should be left in the hand of the directors of the ATSI corporation and not the Registrar.’*
113. During virtual consultation sessions, there tended to be the alternative view with participants indicating that the decision was best left to the arms-length objectivity of the Registrar. One participant at a virtual consultation noted that with individual corporations’ boards making the decision there may be inconsistency. On balance, it was decided that the option of the Registrar was the most appropriate and likely to yield the most consistent process which is the section included in the final bill.



6. Part 4–Subsidiaries and joint ventures

Subsidiaries and joint ventures

114. Part 4 makes amendments to the CATSI Act to make it easier to establish subsidiaries under the CATSI Act. It will also facilitate the establishment of other business structures such as joint ventures because it changes the existing directorship and membership provisions to enable corporations with only body corporate members.
115. The benefits to be derived from these amendments was certainly recognised by NACCHO which stated, *‘Recommendation 18 (i.e. making it easier for corporations to establish subsidiaries and joint ventures) provides the necessary flexibility for many of our members to grow themselves and to adjust to changing circumstances and to take advantage of regional opportunities where joint ventures may be necessary.’*
116. AICD were also very supportive noting that, *‘The AICD supports Items 86-92 and 96 of the Exposure Draft that allow CATSI corporations to establish wholly owned subsidiaries and joint ventures. These steps enable CATSI corporations to take advantage of different business structures and design corporate structures that are fit-for-purpose and maximise opportunities for Indigenous communities.’*
117. ABL also saw this amendment as promoting economic development, *‘We welcome the proposed amendments at items 86 to 92 and 96. They will facilitate flexible corporate structuring for Aboriginal corporations and support economic development.’*
118. The Office of the Victorian Aboriginal Heritage Council saw these measures as eliminating racist provisions in the CATSI Act: *‘As with previous proposal arising from the review process there are a number of proposals contained in the Exposure Draft operate to eliminate racially discriminatory provisions that are contained in the current CATSI. Elimination of these existing discriminatory provisions is supported. These proposals include: provisions relating to joint ventures; two person corporation....’.*
119. However there was concern expressed, both in submissions and through the virtual consultations, about the potential for ‘black cladding’ through these changes. People suggested by having Indigenous members, mainstream corporations would be able to meet the Indigeneity requirements under the CATSI Act to access ‘Indigenous funding’. One submission stated, *‘We support the proposed change allowing CATSI Act Corporations to create subsidiary and joint venture organisations. However, we encourage the Minister to review the indigeneity requirements for subsidiary Corporations. As it stands, we believe this creates a concerning loop hole for non-Indigenous entities to continue to access Indigenous funding via being a ‘subsidiary.’*
120. These provisions provide CATSI corporations flexibility in partnering with other companies and organisations where such a relationship will be beneficial to both. The choice to enter into these arrangements has been expressed in terms of self-determination during consultation phases. These amendments give effect to the flexibility many Aboriginal and Torres Strait Islander peoples indicated they wanted and expected under the CATSI Act. Further, it should be noted that these amendments are not limited to CATSI corporations but can be optioned by corporations incorporated under the Corporations Act, and state and territory incorporation statutes, as long as the Indigeneity requirement is met.



Two Person corporations

121. The provision allowing for a 2 person corporation, where one person is non-Indigenous, providing the Indigenous person has the deciding vote was not well supported. The main argument put forward through the submissions was that the membership of an Indigenous community controlled organisation should be majority Indigenous.
122. One submission noted, '[name redacted] *does not support this recommendation. [name redacted] supports that Indigenous corporations must have outright majority indigeneity*'.
123. NACCHO's submission echoed this sentiment going further to say, '*NACCHO does not support recommendation 19... as it does not seem to be in accord with the general principle of Aboriginal community control and, critically, as there is a real danger that this provision may be 'rorted'. For example, there may be a serious unintended consequence in which partnerships are formed in which Aboriginal and Torres Strait Islander people are manipulated by other interested parties seeking to profit from organisations with an Aboriginal status (e.g. advantages in Government procurement exercises).*'
124. Similar views were raised in virtual consultations, with a number of participants expressing discomfort with providing a casting vote in this situation with one person questioning whether this could be discriminatory. On the other hand, one participant said he was glad it was in the Bill because he saw that it was closing the gap between Indigenous and non-Indigenous corporations.
125. A small number of submissions did indicate agreement for the proposal including the Office of the Victorian Aboriginal Heritage Council, and the AICD which stated, '*We also support Items 93-95 of the Exposure Draft that allow for establishing two-member corporations where only one member is an Aboriginal or Torres Strait Islander person provided that the person has the deciding vote.*'



7. Part 5—Classification of corporations

126. Current section 37-10 of the CATSI Act is replaced to change the criteria for size classification, which is based on a tripartite income/assets/employees test, to a single criterion based on consolidated revenue. The concept of consolidated revenue accounts for the revenue of a parent corporation and its subsidiaries, and is calculated in accordance with the relevant accounting standards under section 37-25 as amended.
127. Chartered Accountants Australia and New Zealand was supportive of this approach and in its submission suggested this measure will improve clarity for CATSI corporations stating, *'We support these recommendations being adopted and consider they will provide clarity for corporations registered under the CATSI Act. In particular, the replacement of Section 37-10 to classify corporations as small, medium or large based on the single, rather than multiple, metric of consolidated revenue. We consider the raft of changes to better align the CATSI Act to the Australian Charities and Not-for-Profit Commission Act 2012 and the Corporations Act 2001 coupled with alignment to accounting standards will remove complexity for all stakeholders.'* SEARMS Community Housing Aboriginal Corporation and another submission also provided support for this amendment.
128. A further submission provided its support for this amendment as it considered it to be appropriate to continue with the 3-tier model given that is what has been in place historically.
129. AICD supported this amendment and indicated an expectation that CATSI corporations will be subject to the revised consolidated revenue thresholds that have recently been announced by the Australian Charities and Not-for-profits Commission, *'Based on our consultation, we support the amendments in the Exposure Draft that will ensure financial reporting thresholds be aligned to that of the Australian Charities and Not-for-profits Commission (ACNC), and be based solely on revenue, as is the case for other corporate entities. We note that the Government has announced that reporting thresholds for ACNC-registered charities will be increased from 1 July 2022. We assume that the CATSI Act regulations (which we understand will contain the new thresholds) will reflect the new ACNC reporting thresholds. We also understand that the Australian Accounting Standards Board (AASB) are also considering thresholds and do caution that it might be appropriate to deal with those thresholds in that process.'*
130. The thresholds for the revenue test for small and medium corporations will be prescribed in the CATSI Regulations. This will ensure that classifications, and the related annual reporting obligations, can be adjusted appropriately to reflect changes in the broader economic and regulatory environment. Consultation will be undertaken on the changes to the CATSI Regulations and stakeholders can provide their feedback in relation to the proposed size thresholds.



131. The Office of the Victorian Aboriginal Heritage Council raised some concerns about aligning the CATSI size classification framework with that of the ACNC stating, *'The principle that the reporting requirements of CATSI corporations should equate to those of CA corporations is generally supported by Council. However, the proposed amendments raise some concerns. First, while it has the potential to reduce the reporting requirements for some small corporations it also has the potential to increase the reporting requirements for a number of current mid-size corporations. Often Victorian RAPs fall within this mid-size classification. Second, and more fundamentally, the equation of all CATSI corporations with companies limited by guarantee under the CA is inappropriate. While all CATSI corporations have a member (as opposed to shareholder) structure as do companies limited by guarantee under the CA not all CATSI corporations are established for public or community purposes as is usually the case with companies limited by guarantee. Many CATSI corporations are established for private business purposes. These companies equate more closely with Proprietary Limited corporations under the CA. In respect of a Proprietary Limited corporation the CA has only two classifications; small (revenue < \$12.5m) and large (revenue > \$12.5m). The proposed amendment would only operate to continue or increase the regulatory burden on CATSI corporations of this nature. In addition, it continues the false perception that CATSI corporations are necessarily "social enterprises" when this is manifestly not the case as indicated by the fact that 70% of CATSI corporations are not ACNC registered.'*

132. During the second phase of consultation for the CATSI Act Review, the proposal to have a 2 size classification framework was canvassed and received almost no support. It should also be noted that if the revised ACNC size classification thresholds are adopted, around 50 CATSI corporations will have increased reporting requirements, while around 200 will have reduced reporting requirements.



8. Part 6–Meetings and reports

AGMs for small corporations

133. Amendments in the Bill enable small corporations that are not registered entities with the Australian Charities and Not-for-profits Commission (ACNC) and that had less than \$1,000 in consolidated revenue in the previous financial year, to pass a special resolution not to hold the next one or 2 AGMs. The special resolution will also need to appoint directors until the next AGM is held to ensure the directors remain in place in the absence of an AGM.
134. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission were all supportive of these amendments.
135. YMAC indicated this amendment should be expanded so the option to not hold an AGM for up to 2 years is available to more small corporations. It was proposed that rather than limiting this amendment to corporations with consolidated revenue of less than \$1,000 in the previous financial year, the threshold should be raised to between \$5,000 and \$10,000.
136. The threshold of \$1,000 aligns with the voluntary deregistration provisions set out in section 546-1 of the CATSI Act; that is, currently, one of the criteria that must be met before applying to voluntarily deregister a corporation is that its assets are worth less than \$1,000. This figure has been taken to represent a lack of, or limited, activity within a corporation. As noted in the CATSI Act Review Final Report, this amendment is aimed at those corporations that generate little income and have limited activity but nevertheless incur the cost of holding an AGM each year.
137. Further, this amendment needs to balance the information needs of members as illustrated in the North Queensland Land Council's (NQLC) submission which raised some concerns and questioned, *'whether this provision should apply uniformly to RNTBCs or whether a separate provision be developed which takes into account the particular functions exercised by a PBC.'* NQLC further comments that some PBCs do not apply for PBC Support Funding and may not have other sources of revenue, but this may be more a reflection of dysfunction rather than a lack of activity, and so by enabling such a PBC to not hold an AGM would not be in the interests of native title holders.
138. A decision to not hold an AGM for up to 2 years must be passed by special resolution which requires at least 75 per cent of the votes cast by members entitled to vote on the resolution. Therefore, it is in the hands of members as to whether they agree not to hold an AGM. Further, corporations that pass such a special resolution will be required to advise the Registrar of any significant changes in their circumstances during the time they are not holding an AGM, and the Registrar will have the power to require the corporation to hold an AGM if she or he considers it necessary. Alternatively, the Registrar can also call a meeting. Lastly, corporations are still required to prepare reporting during the time they are not holding meetings which is accessible to members by request or on ORIC's website.

Holding meetings virtually

139. The Bill introduces amendments that allow corporations to hold general meetings virtually using a means that is accessible to members and that affords them a reasonable opportunity to participate. The chair of a general meeting is enabled to decide how a vote will be held when a physical show of hands is not possible.
140. There was strong support for these amendments, including from NACCHO, ABL, SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand, Tangentyere Council Aboriginal Corporation and 2 further submissions.



141. Another submission supported this change and suggested that directors' meetings should also be able to be held virtually. In the CATSI Act, section 212-10 enables a directors' meeting to be held virtually with the consent of all directors. Consent can be standing but a director may withdraw his or her consent within a reasonable period before the meeting. There is merit in this suggestion put forward in this submission that directors' meeting could be held virtually as a matter of course. However, given its potential impact, the NIAA considers it requires broader consultation before being taken forward.

142. AICD offered that this approach should be agreed by members, *'It is critically important that the legislation is not overly prescriptive. We agree with the Exposure Draft's amendments which provide CATSI corporations flexibility to adopt the best meeting format for their circumstances, whether that be physical, hybrid or wholly virtual meetings, on a permanent basis. However, it is important to protect shareholder democracy and organisations that wish to have the option of conducting virtual meetings on a permanent basis should ensure that shareholders or members have consented via a member resolution.'*

143. This sentiment was also put forward by a further submission that suggested changing the Bill so that the provision enabling corporations to hold their meetings virtually is a replaceable rule, *'We have concerns where a meeting is held virtually without being also held in a place. The rights of members to access and participate in meetings is important and should not be curtailed unduly. Remote participation reduces face-to-face communication, which could leave the members unable to communicate with the board of directors properly. Further, from our experience, it is common for members to not have reliable access to technology that would enable them to attend a meeting virtually. The self-determination of CATSI corporations is paramount and the CATSI Act should not be too prescriptive. For these reasons we support amending the CATSI Act to include a replaceable rule that meetings can be held virtually, without being held in a place also, thereby requiring the consent of the members.'* This submission also suggested amending the provision that enables the chair of a general meeting to nominate the means by which a vote will be undertaken when a show of hands is not possible, to require that the means be secure.

144. These amendments enable a corporation to hold a general meeting using technology that gives the members *'as a whole a reasonable opportunity to participate.'* Corporations can introduce rules around this provision if they so choose, including rules about member consent and participation, the nature of the technology used, and expectations around the means by which voting is undertaken. Further, in the event that members are dissatisfied with the approach taken by their corporation with respect to virtual meetings, they are able to request that the Registrar intervene.

145. Broome Regional Aboriginal Medical Service (BRAMS) raised some challenges in relation to holding meeting virtually, including managing participant behaviour during meetings and ensuring the confidentiality of meetings as well as compliance with governance requirements. To this end, BRAMS requested that ORIC issue guidance on how to manage conduct in the virtual environment.

Changing meeting details

146. This amendment will enable CATSI corporations to defer a meeting for up to 30 days after a meeting notice has already been issued. A deferral may include a change to the date, time and/or place of the meeting, and would be allowable in the case of death in a community, a cultural activity or natural disaster.

147. This amendment received support from NACCHO, ABL, the Aboriginal Health Council of South Australia, Chartered Accountants Australia and New Zealand, SEARMS Community Housing Aboriginal Corporation and 2 further submissions.

148. NNTC and SANTS also indicated their support for this change but proposed that the extension should be for 60 instead of 30 days, *'A number of NNTC members consider that in these circumstances the proposed 30 day time limit within which a new meeting must be called is too restrictive, particularly for corporations whose members are widely dispersed or live in remote locations, and a 60 day time limit may be more appropriate.'* Similarly, a further submission supported this amendment and proposed that it should be 90 instead of 30 days.

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149. Other amendments in this Bill introduce a provision enabling CATSI corporations to cancel general meetings. In the event that there is some uncertainty regarding when a general meeting—that has already been called—can be held, corporations can choose to cancel that meeting and reschedule it rather than defer it for 30 days. The meeting cancellation provision is a replaceable rule, and so can be tailored to suit the circumstances of each corporation.
150. NQLC also indicated its support for this proposal, and sought clarity on whether the general meeting lapses within 30 days if it is not held to avoid the possibility of meetings being deferred on a rolling basis.
151. The criteria for changing meeting details was introduced to ensure that this provision is used when necessary but not for nefarious purposes. Nevertheless, if this provision is being abused in the way as suggested by the NQLC, members can request that the Registrar intervene, for example, by calling a Registrar-initiated general meeting.

Cancelling meetings

152. As noted earlier in this Chapter, measures in this Bill enable directors of a corporation to cancel a general meeting—that is not one called by the Registrar—by resolution. This provision was supported by the Aboriginal Health Council of South Australia, *‘The South Australian sector also supports Director’s being able to cancel a general meeting by resolution and not an individual decision from an employee or a single Director.’*
153. In its submission, the CLC suggested that this provision should indicate, *‘a specific obligation to exercise it on reasonable grounds, in addition to the directors’ general duties.’* NNTC and another submission echoed that of the CLC’s and suggested that the provision should state that meetings could only be cancelled on reasonable grounds. Directors must always exercise their duties, including if and when accessing this provision. Directors’ duties include acting with reasonable care and diligence, and acting in the best interests of the corporation and for a proper purpose. Therefore, it is not considered necessary to add to this specific provision that it be exercised on reasonable grounds.
154. The NNTC’s submission went on to state that greater clarity was needed in relation to how this provision would operate in relation to meetings requested by members, *‘The NNTC notes that at first glance it is unclear how this provision would operate in relation to a meeting that the directors are calling within the 21 days required after a written request by members to hold a general meeting, as provided for in s201-5 and s201-15. Whether s201- 38 will enable the directors to cancel such a meeting and not hold it within 21 days should be clarified.’*
155. Feedback during the second phase of consultation to the CATSI Act Review was very clear that Aboriginal and Torres Strait Islander peoples should be supported to decide their own governance rules and so the meeting cancellation provision is a replaceable rule which can be tailored to suit the circumstances of each corporation. Consideration was given during drafting the Bill as to whether the provision should be more specific regarding the types of meetings that could be cancelled and whether they should be recalled within a specific period. However, it was decided that corporations are best placed to determine these provisions. Corporations may set a rule stating that meetings called at the request of members cannot be cancelled, or can only be cancelled in certain circumstances.
156. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission supported this amendment. A further submission also provided its support stating, *‘Meetings in remote areas involve significant costs. Flexibility to cancel meetings is important when there are important cultural practices that must be observed and respected. We consider that one week is a reasonable amount of notice to cancel a scheduled meeting.’*



Automatic 30-day extension for AGMs and reporting

157. Amendments in this Bill 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 3 years in a row (proposed subsection 348-10(5)).
158. These amendments received support, including from NACCHO, SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand, Tangentyere Council Aboriginal Corporation and a further submission. Another submission noted when indicating its support for this change, *'In remote communities, this is a constant reality and delays cause enormous logistical, financial and communication issues.'* ABL also expressed its support for mechanisms that allow meetings to be deferred.
159. The NNTC, SANTS and another submission indicated their support for these amendments but suggested that the extension should be for 60 days. A further submission suggested that the extension should be to a maximum of 90 days and questioned the restriction of these provisions to not more than 3 years consecutive years.
160. It is important to note that this is an automatic extension and should further extension be required, a corporation can apply to the Registrar. This amendment seeks to strike the appropriate balance of providing flexibility in extenuating circumstances and ensuring members and the Registrar have access to information about a corporation in a timely manner.

Laying reports before an AGM

161. Changes to the CATSI Act will require directors to lay before an AGM (where the corporation is required to hold an AGM after the end of a financial year), any reports they have been required to prepare and submit to the Registrar. Failing to do so will be an offence that attracts a penalty of 5 penalty units.
162. One submission did not agree with this provision on timing grounds, *'It may not be entirely possible to have a report prepared in September or October that is due to go to the Registrar by the end of December.'* Another submission linked this provision to the new remuneration report and suggested that disclosure of remuneration should instead be voluntary.
163. AICD also did not support this provision citing that the requirement to lay reports before an AGM would be too onerous for corporations, *'The AICD agrees that members of a corporation should be able to request copies of reports. However, we have received feedback that it would be unnecessarily onerous and inappropriate for all corporations (required to hold an AGM) to lay before the AGM any report in respect of the relevant financial year (Item 121 of the Exposure Draft), particularly those in remote communities with limited access to resources. The AICD does not support this Item of the Exposure Draft and asks that its inclusion be reconsidered.'*
164. A number of amendments in this Bill support CATSI corporations to take advantage of technology, including making it easier to contact members through the collection and use of contact details such as email addresses. These amendments are aimed at reducing the administrative burden for CATSI corporations, and in the context of laying reports before an AGM could be utilised, such as by attaching reports to the electronic notice of the AGM or by emailing reports ahead of the AGM.
165. The Office of the Victorian Aboriginal Heritage Council suggested it was offensive to make this requirement of CATSI corporations, *'The exposure draft appears to create or exacerbate of number of such divergences from the arrangements under the CA. In this respect creating obligations on: ... documents required at Annual General meetings... would not appear to be reflected in the CA and are therefore offensive.'*



166. In contrast to the submissions above, the Aboriginal Health Council of South Australia was supportive of this provision, *'The South Australian sector supports the requirement for directors to lay before an Annual General Meeting any reports they have been required to prepare and submit to the Registrar.'* SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission also provided support for this requirement.



9. Part 7–Constitutions

Replaceable rules

167. The Bill inserts a provision that obligates corporations to ensure their rule books identify the replaceable rules in the CATSI Act, that apply to the corporation, and that have not been modified or replaced.
168. There have been questions raised about this requirement in written submissions as well as in the virtual consultation sessions. In their submissions, the NQLC, CLC, NNTC and SANTS suggested further clarity was required as to how this requirement would operate in practice. Further, these submissions as well as another submission, indicated a preference for this amendment to be taken forward as recommended in the CATSI Act Review Final Report which was to require corporations to replicate replaceable rules in their rule books, if they have not been modified or replaced.
169. When drafting the CATSI Amendment Bill, it was considered the approach to require corporations to refer to these rules, rather than replicate them, was more appropriate as:
- a. there was some concern that by requiring the incorporation of these rules, rule books may become unwieldy; and
 - b. rule books can remain up-to-date if there are any changes to the replaceable rules in the Act.
170. AICD was supportive of this change and in particular that the provision did not require the reproduction of replaceable rules noting the considerations outlined in the paragraph above, *‘As such, we support Item 125 of the Exposure Draft, which requires rule books to refer to replaceable rules rather than incorporate them in full. This will not only ensure that rule books do not become unwieldy, but also ensure that they remain current if there are amendments to the CATSI Act.’*
171. In its submission NQLC puts forward that, *‘The convention which operates in many rule books is that a table lists all the replaceable rules, indicates where the corresponding rule is located in the rule book and whether they have been replaced or adopted unchanged.’* These rule books would already be meeting the standard that this amendment is seeking to set and it is important to note, that this change is intended to benefit those corporations that do not already refer to replaceable rules in their rule, which can create confusion for members and directors who are not aware the rules exist.
172. It will be a matter for corporations as to how they refer to replaceable rules that have not been modified or replaced, in their rule books. Corporations may choose to list these rules in a schedule or make reference to these rules in the relevant sections of the rule book. In line with the submissions put forward by NQLC, CLC, NNTC, SANTS and a further submission, CATSI corporations can also choose to replicate the rules in their entirety in the rule books if they so choose.
173. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission were supportive of this approach, as was the Aboriginal Health Council of South Australia which said that it would ensure rule books are kept current.
174. The Aboriginal Health Council of South Australia also noted that there will be costs to corporations in implementing this provision. This sentiment was echoed in the submissions from BRAMS, Chalk and Behrendt, NNTC and SANTS which all said the introduction of this provision imposed an administrative burden on corporations.

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175. BRAMS and Chalk and Behrendt also expressed reservations regarding the impost this provision places on corporations into the future if new replaceable rules are introduced which require rule books to be updated. In particular, Chalk and Behrendt did not support this amendment and suggested that it may create conflict within corporations that have settled rule books, *‘Many CATSI corporations have adopted rule books which replace or modify replaceable rules and, in some cases, the rule books adopted have been the product of considerable discussion, debate and political compromise among members. In some cases, members may want to take the opportunity to reopen discussions and debates about the substance of particular rules, and there is in our view a risk that many corporations’ members may be unable to reach agreement about revised rule books within a reasonable timeframe. In many cases, corporations will need to obtain legal and other advice about the new rule book to be adopted, which will require funding that many corporations lack. Moreover, the requirement will be triggered each time a new replaceable rule is introduced into the CATSI Act. For these reasons, we submit that a requirement for existing CATSI corporations to revise their rules books to include a reference to any applicable replaceable rules is impracticable and ought not be implemented.’*
176. The CLC suggested that this provision created a significant impost on CATSI corporations and consideration should be given to only applying the provision to newly incorporated corporations and to those existing CATSI corporations that are updating their rule books. The CLC’s submission went on to propose that, *‘An alternative transitional arrangement could be to provide a significant period – say 2 years – for corporations to amend their rulebooks, after which time the Registrar be required by the transitional provisions to carry out a Registrar-initiated amendment to any rulebooks that remain uncompliant, by amending the rulebook only to the extent necessary to reproduce all replaceable rules that apply to that corporation.’*
177. BRAMS, CLC, Chalk and Behrendt, SANTS and another submission all raised concern regarding the timeframe within which rule books would need to be updated to meet this requirement, as the exposure draft did not address transitional arrangements. One submission suggested that corporations should be given 5 years to update their rule books.
178. Transitional requirements have been included in the final Bill and in line with the CLC’s suggestions, CATSI corporations will have 2 years to update their rule books. CATSI corporations may take advantage of this process to consider whether the replaceable rules should be tailored to suit their circumstances, including the new replaceable rules that are introduced through this Bill, such as those relating to the cancellation of memberships and meetings.

Registrar approval of changes to rule books

179. Special administrators often make changes to a rule book with the purpose of addressing aspects of the corporation’s operations that are leading to governance or financial difficulties. Sometimes, after a special administration has concluded, a corporation may move to reverse changes made by a special administrator to its rule book even though there is a risk that this action may lead to further governance and financial difficulties for the corporation. This Bill provides explicit power to the Registrar to reject changes to a corporation’s rule book that are inconsistent with those made by a special administrator. Specifically, the Registrar can reject changes unless they are consistent with changes previously made by a special administrator, or the Registrar is satisfied that the circumstances of the corporation have changed to the extent that the changes previously made by the special administrator are no longer relevant.

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180. Chalk and Behrendt did not agree with the introduction of this provision and instead suggested that the Registrar should be required to register changes to a rule book as put forward by the corporation, and if he or she disagreed with the changes, then the Registrar could use their existing power to initiate changes to the rule book, *'We understand that in certain circumstances, it may be detrimental to a corporation's interests for it to reverse a constitutional change which enabled the proper functioning of the corporation to be restored. However, we do not believe that there should be a rebuttable presumption, as the proposal in the Draft Bill introduces, that changes inconsistent with amendments made by the special administrator should not be registered. The Registrar already has the power to make changes to a CATSI corporation's constitution if the Registrar is satisfied of certain matters referable to the interests of the members. If the Registrar considers that a constitutional amendment made by a special administrator should not be reversed by a member resolution to change the constitution, he or she can overturn that change by satisfying the test under section 69-35, which imposes a positive obligation to consider the interests of the members.'*
181. This suggested approach outlined by Chalk and Behrendt is problematic for a few reasons. Firstly, it is likely to frustrate corporations that have changes registered to their rule books, only to have them overturned a short time later by the Registrar. Secondly, it imposes administrative burden on the Registrar and ORIC to register the changes and then overturn them; thus, diverting ORIC's resources away from more meaningful tasks such as capacity building. Lastly, it opens a window between the registration of those rule and their overturning, whereby the rules could be abused to the detriment of a corporation. For example, often a change made by a special administrator to a rule book, is to prevent or limit fees paid to directors where the corporation's financial position is insecure. If a corporation were able to reverse this change, if only for a limited window, it could enable the payment of fees when the corporation's resources may be needed to repay debt or deliver services.
182. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission were all supportive of this change. The Aboriginal Health Council of South Australia was also supportive but noted that it did not consider this amendment addresses underlying issues associated with reviewing rule books, *'The South Australian sector see no major issue with the Registrar's right to refuse to register a Corporations Rule Book in some circumstances, and the additional ability to require Corporations to retain elements imposed by Special Administration may be appropriate in certain circumstances, however the proposed changes to the Act don't address the current practical issues caused by the existing process for Rule Book reviews.'*
183. AH&MRC raised concern that the decision making of the corporation should still be affected after the completion of a special administration, *'It is noted that Item 127 permits the Registrar to reject changes to a corporation's constitution where the different conflicts with a change made by a special administrator. Special Administrators are implemented in situations where services have been unable to meet their requirements under the CATSI Act and/or are in a high-risk position. Special Administrators operate in environments where difficult decisions must be made to ensure the sustainability of a corporation. Once a Special Administrator is no longer required, the circumstances under which a corporation is operating should have significantly changed from those in which the Special Administrator was appointed if the process effectively served its purpose. As a result, the continued policing of a corporations right to make decisions that ensure best practices for their communities detracts from the very ideals that community control principles are implemented.'*
184. The AH&MRC submission raises an important point, which is reflected in the provision, that if the circumstances of the corporation have changed to the extent that the changes made by the special administrator are no longer relevant, the Registrar is required to register the rules as requested by the corporation.



10. Part 8—Officers of corporations

Remuneration of Senior Executives

185. Amendments in this Bill introduce a Remuneration Report, the contents of which will be outlined in the CATSI Regulations. Introduction of a remuneration report generated significant interest. The amendment to introduce a remuneration report has been changed from the proposal in the second phase of consultation which was to make this information publicly available. Due to the consistent feedback during the second phase of consultation that this information should not be publicly available, this amendment now requires the remuneration reporting be made available to members, but it will be exempt from being made public through proposed changes to the CATSI Regulations. There is still strong feedback in relation to this amendment and a range of alternative proposals were put forward in submissions as outlined below.
186. The AICD indicated support for increased transparency around the remuneration of CEOs and senior executives but cautioned against the introduction of requirements that were ‘unduly complicated’. The AICD suggested, *‘With this in mind and consistent with the 2018 Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review (ACNC Review), we suggest that any requirements on remuneration reporting are limited to the senior executives and responsible persons of large CATSI corporations, disclosed on an aggregated basis, in bands.’*
187. ABL reiterated concerns it raised during the second phase of consultation for the review that, *‘imposing transparency conditions beyond those required of non-CATSI corporations more generally would clearly be discriminatory and risks imposing an unnecessary and onerous burden on many CATSI Corporations.’* ABL suggested any reporting that goes beyond what is required of non-CATSI corporations, should be voluntary and any data published more widely should be de-identified.
188. Similar to the ABL submission, the Aboriginal Health Council of South Australia commented that the introduction of remuneration reports for CATSI corporations sets a higher bar than for comparable companies under the Corporations Act.
189. AH&MRC suggested that the amendment does not consider the operating context of CATSI corporations, *‘The AH&MRC and its Members strongly oppose disclosing details regarding the remuneration of Chief Executive Officers and Chief Finance Officers. It is unclear how this would increase accountability and does not adequately consider the context in which these CEOs and CFOs are expected to work. For example, in the ACCHO sector, there are significant discrepancies between the financial delegations, population serviced, and the number of programs delivered dependant on the specific service.’*
190. NACCHO and NNTC were clear in their submissions that where reporting requirements for CATSI corporations went beyond those for comparable non-CATSI corporations it would be seen as discriminatory. NACCHO also noted the potential impact on recruitment, *‘...there is no doubt for us that the measure will be disruptive and impact on our capacity to recruit and maintain key management personnel and directors. If it is not appropriate to introduce this measure for mainstream companies similar in size and nature to CATSI corporations, the Government needs to explain why. Otherwise, there is a serious risk that Aboriginal and Torres Strait Islander stakeholders will perceive this measure as racially discriminatory, whatever the intentions of the Government.’*
191. Privacy was also highlighted in some submissions, including the NQLC which noted, *‘These details [remuneration of key management personnel] are private and confidential as between the board and the relevant individual and only appear as part of a consolidated figure produced in their audited reports.... Accordingly, the NQLC submits that this proposal be amended to allow for a corporation to apply for an exemption to the operation of this rule to permit salaries of key management personnel to be reported as part of a consolidated figure.’*

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192. In a similar vein, another submission stated, *'Remuneration reporting: the reasons for greater transparency are valid, however, senior executives may feel apprehensive about their remuneration being publically [sic] known as it could be seen to infringe on their privacy as citizens. This could also lead to instances of envy outside of the metropolitan areas and thus make the work of senior executives more difficult. Corporations may find that it is more difficult to engage senior executives if it is known that their remuneration will be made public.'*
193. Aboriginal Family Legal Services also noted that the disclosure of remuneration information to family members could have serious implications for senior executives saying, *'In particular, when family members of Aboriginal executives members find out how much money their relative makes, this can cause havoc and create serious issues within family and the local Aboriginal community.'* To this end, Aboriginal Family Legal Services recommended amending the Bill to require remuneration reporting within salary caps while ensuring that the exact amount of remuneration remains private.
194. Executives are remunerated from corporate funds and in the context of CASTI corporations, these funds are often—although not always—grant funding which will be used to deliver critical services to communities such as housing, health and municipal services. In the context of RNTBCs, the native title benefits held by the corporation have been determined for the relevant common law holders, who may be making a personal sacrifice by choosing to have those benefits used for the benefit of the community rather than distributed to them personally. Members and common law holders should be entitled to understand how corporate and native title funds are used.
195. Further and as emphasised during the second phase of consultation, Indigenous corporations are sometimes taken advantage of by executive office holders, who defraud the corporation of much-needed funds by way of exorbitant remuneration. These situations have been occurred in the past due to the lack of transparency around executive remuneration, which this amendment aims to address.
196. Comments put forward in submissions highlight the difficulty with striking a balance that increases transparency, which most submissions support, but that does not require remuneration information to be reported, as illustrated by the position of the NNTC, SANTS and another submission, *'The NNTC supports measures that improve corporate transparency and accountability for RNTBCs to members and common law holders. However, any public reporting of the remuneration of key management personnel and sitting fees paid to directors should be no greater than that required for comparable companies under the Corporations Act and should not be equated with the disclosure requirements imposed by the Corporations Act on listed companies.'*
197. Further, while most participants that provided feedback during the second phase of consultation indicated their agreement that members should have access to remuneration information, one CEO participant in a virtual consultation session for the exposure draft agreed with the reporting of remuneration to the Registrar but was adamant the information should not go to members. The CEO noted that once the information was made available to members it would inevitably become public, and cause real problems especially in small communities.
198. This was in contrast to another CEO who was in an exposure draft virtual consultation session who said they were comfortable with their remuneration information being made available to members, as it would clarify and correct the rumours around their remuneration.
199. One submission acknowledged that members are likely to want information about the remuneration of key management personnel, and highlighted the benefit of having the de-identified sectoral analysis information which would be enabled from this reporting, *'[name redacted] does not currently have executive staff positions in its governance structure, but it is likely that members would want information about their salaries reported if executive officers were employed. Currently there is no guidance for boards or members about what a reasonable level of remuneration might be given the corporation's circumstances and the skills, experience, and performance of the executive in question. Publishing of de-identified salary information will assist Boards to make informed decisions about salary packages for executive managers.'*



200. The Aboriginal Health Council of South Australia also indicated its support for this de-identified sectoral analysis, *‘The South Australian sector does not support the inclusion of a rule which may allow the regulations to require the remuneration report of medium and large Corporations to publicly report on the remuneration details of the “key management personnel” which includes the Chief Executive Officer and Senior Executive staff via its Annual Report. The South Australian sector suggests instead, the remuneration of Chief Executives (or similar) should be disclosed to the Registrar on a confidential basis. This would allow a provision for the Registrar to collate Executive position remuneration, aggregate this data to create benchmarks and therefore provide guidance to the boards of Corporations on State, Territory and/or national pay rates. In addition, members of CATSI Act Corporations could be advised whether their key management personnel are receiving remuneration which is below, within or above the average band of remuneration for an organisation of their size and type.’*

CEO & CFO Advice to Registrar

201. Part 8 also makes amendments to insert the definitions of CEO and CFO into the Act. Previously, only CEO functions were defined or discussed in the Act. This Part also introduces a requirement that the personal details of the CEO and CFO must be advised to the Registrar within 28 days of them commencing, in the same way as Directors.

202. This change proved relatively uncontroversial and only 2 submissions commented. One submission noted support for the amendment, and the other from the Aboriginal Health Council of South Australia stated, *‘The South Australian sector welcome the changes to various provisions to include the concept of CFO and CEO and other officer roles. However, we would suggest that this should also take into account circumstances where a CATSI Act Corporation has outsourced the function of a role, such as CFO, and be clear about whether or not a person who is responsible for overseeing outsourced financial management (as opposed to performing that role) is considered to be a CFO or not.’*

203. The NIAA will refer the comment to ORIC for consideration in regard to implementation of the change.



11. Part 9–Related party transactions

204. Part 9 significantly amends the existing related party transaction regime for CATSI corporations. It removes the requirement for member approval when the total value of financial benefits given to a related party is below a threshold to be set out in the CATSI Regulations. It also removes the Registrar from having a role in the process, making it more streamlined and less administratively burdensome.
205. SEARMS Community Housing Aboriginal Corporations and Chartered Accountants Australia and New Zealand supported these changes. Dr Nehme was also positive about this change but considered that it was not appropriate for small entities and should also introduce a ‘parallel regime’ for small corporations where, *‘[d]irectors have to disclose related party benefit to members prior to the benefit being provided. If members are concerned about this, they will have a period of time to request more clarification and for the matter to be put forward for members’ approval.’* Dr Nehme also suggested that there should be exceptions to the related party transaction requirements for urgent repairs.
206. Feedback during the second phase of consultation of the CATSI Act Review was that the existing related party transaction requirements are not well understood. Rather than introduce new tiered requirements by class, such as suggestion by Dr Nehme, which could continue the confusion around obligations with respect to related party transactions, it is expected that these amendments will make the requirements easier to understand. No change is proposed to these amendments.
207. One submission acknowledged the complexity of the existing requirements and suggested a glossary of terms may help to reduce confusion.
208. In its submission, the AICD noted that the existing requirements were more onerous than those of the Corporations Act which it did not consider to be appropriate. The AICD indicated in-principle support for these changes, noting that the thresholds would be in CATSI Regulations and not yet available for comment, *‘The AICD agrees that the related party provisions in the CATSI Act are overly burdensome, and the provisions can work against the best interests of some corporations, especially in small communities or where it is not easy for corporations with a dispersed membership to call a general meeting. The provisions are more restrictive than the Corporations Act, which is inappropriate. The AICD supports, in principle, Items 165-171 of the Exposure Draft. However, it is difficult to comment on the operability of these provisions without knowing what the monetary threshold trigger for a related party transaction will be, which we understand will be prescribed in the CATSI Regulations. We also support requirements in the Exposure Draft that require corporations to report related party transactions in their annual reporting to members to ensure transparency and removing the Registrar from participating in the process to make it less administratively burdensome.’*
209. Similar to the AICD submission, the Office of the Victorian Aboriginal Heritage Council indicated its support for greater alignment between the CATSI Act and Corporations Act, *‘As with previous proposal arising from the review process there are a number of proposals contained in the Exposure Draft operate to eliminate racially discriminatory provisions that are contained in the current CATSI. Elimination of these existing discriminatory provisions is supported. These proposals include: ... related party transactions.’*
210. A further submission also provided its support for the amendments and suggested they should be a replaceable rule, *‘[name redacted] supports the proposed amendment, however submits that it should be a replaceable rule. These benefits must also be for a purpose not detrimental to the corporation. This will ease the burden on those corporations however also provide adequate safeguards against misuse of funds. In the interest of transparency, [name redacted] considers that all related party benefits should be outlined in annual reports.’*



211. As a replaceable rule, there is some concern that provisions about related party transactions could be open to manipulation or even abuse, and this suggestion is not reflected in the final bill. However, the suggestion that related party transactions be included in annual reports is supported and the CATSI Regulations will be amended accordingly.

212. The Aboriginal Health Council of South Australia advised that, *‘[w]hilst the South Australian sector appreciate the provision that member approval is not needed to give financial benefit to a related party if the amount or value is less than or equal to an amount prescribed under the regulation, we strongly recommend that such decisions should be decided by the Members. This is because an amount that is prescribed under the regulations is a one-size-fits all approach which may lead to difficulty in certain circumstances. Whilst a maximum threshold could be prescribed by regulations, Corporations should have the option to lower the threshold above which approval is required.’* This suggestion will be considered as part of drafting the changes to the CATSI Regulations.

213. Another submission posited that, *‘We support in principle the simplification of existing related party transaction requirements and removal of the requirement for member approval of small related party transactions; however, we note and repeat our position that it is not appropriate for RNTBCs to incur additional reporting requirements.’*



12. Part 10–Power to exempt corporation from employee-director requirements

214. Part 10 of the CATSI Act Amendment Bill provides the Registrar with the power to exempt a corporation, or a class of corporations, from the requirement that the majority of directors must not be employees.
215. This provision proved to be a somewhat controversial amendment as some people saw it as reducing accountability and noted the potential for conflict of interest.
216. NACCHO did not agree with this amendment, in addition to SEARMS Community Housing Aboriginal Corporation which stated in its submission, *‘Directors should not be employees of the Corporation. The conflict of interest rules and perceptions needs to be strong. Directors could perform a role if they were contractors and the conflict of interest rules were strictly adhered too.’* AH&MRC echoed this sentiment and expressed concern that, *‘the conflicts of interest which are likely to arise from employees also undertaking director roles on the Board of Directors have not been adequately considered or addressed through this provision.’*
217. Potential conflicts of interest were also raised during one of the virtual consultation sessions where it was proposed that there be a limit on the number of directors that were able to access this provision so that at least one director was not also an employee. This suggestion reflected concern having directors to whom the CEO reports, then they in-turn report to the CEO as employees.
218. On the other hand, the AICD noted that the CATSI Act has existing provisions to address these types of concerns, *‘We support Items 172 and 173 of the Exposure Draft that allow the Registrar to exempt corporations from the requirement that the majority of directors must not be employees of the corporation in certain circumstances. We support this proposal on the basis that section 310 of the CATSI Act sets out an appropriate application process and criteria for the Registrar to consider for an organisation to follow to benefit from the exemption.’*
219. One submission approved of the exemption where members had participated in the decision making, *‘[name redacted] supports amending the CATSI Act to enable the Registrar to exempt corporations from the rule that a majority of directors cannot be employees of a corporation where this rule would be inappropriate or impose unreasonable burdens. As noted in the Final Report, the directors of RNTBCs are often people in community who hold the knowledge requisite for conducting Aboriginal Cultural Heritage work. In our view, a corporation should be able to apply for this exemption where a resolution has been passed by the members to this effect.’*
220. Another submission provided partial support for this change for remote arts centres, and another provided its full support.
221. In considering this issue, the NIAA took into account that the measure proposed that the Registrar be able to exempt a corporation from the requirement on application. As such, the corporation would need to provide adequate evidence to justify the exemption and the Registrar would need to take into account a range of factors.



13. Part 11–Independent directors

222. Currently CATSI corporations cannot appoint independent directors without a rule in their rule book that states they can. Part 11 of the CASTI Act Amendment Bill allows directors to appoint independent directors without a rule allowing the appointment in the rule book, but noting that the proposed new section 246-17 is a replaceable rule and corporations can change this rule to prevent the appointment of independent directors if they so wish. This change received support from SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand, Victorian Aboriginal Heritage Council and 2 further submissions.

223. Dr Nehme supported making it easier for corporations to appoint an independent directors but did not agree with the new replaceable rule set out in section 246-15 which enables directors of a corporation to appoint independent directors. In her submission, Dr Nehme states, *‘From an accountability and transparency perspective of corporate governance, members should be able to vote on the appointment of all directors, be it independent or otherwise. The current proposal is restricting that right when there is no reason for such a restriction. If the directors believe that an independent director is needed, then they should be able to put forward that name to the members to vote on such an appointment. This will enhance the transparency of the corporation and allow the members to understand the added value in having a particular person as a director.’*

224. Section 246-16 is a replaceable rule and as such corporations can change it to require the appointment of an independent director by members. It is drafted to enable directors to appoint independent directors as they are responsible for setting the strategic direction of the corporation. Further, directors are aware of where the Board may require the support of particular expertise and so will seek the appointment of an independent director with that expertise.

225. AICD also indicated its support for this change but suggested that the term for independent directors be 3 years instead of 1 year, *‘The AICD generally supports a majority of independent non-executive directors (independent directors) on boards. However, we recognise that independent directors may not always be appropriate or necessary for CATSI corporations given the nature of the organisations and the stakeholders whom they seek to serve. We support the inclusion of Items 174 to 177 of the Exposure Draft that incorporates a new replaceable rule that allows directors to appoint independent directors for a period not exceeding one year (with the ability to seek reappointment at the next AGM). In our view this is balanced by proposed new section 246-17 which enables corporations to amend the replaceable rule to prevent the appointment of independent directors if it is not appropriate in the context of their organisation. We recommend that the term of appointment of independent directors be extended to three years to reduce red tape around the appointment and enable the independent director to develop an ongoing relationship with the corporation.’*

226. ABL also indicated that it considered a 1 year term to be inadequate to enable *‘a Director to be effective’*, and promoted a 3 year term instead. As a replaceable rule, corporations could extend the period of appointment if they so choose but not beyond other provisions set out in the CATSI Act; that is section 246-25 allows a director to be appointed for a period not exceeding 2 years.

227. BRAMS did not support this change opining that it presented a wide range of challenges, namely, *‘...(a) undermines the fundamental governance principle that empowers members to appoint directors to manage the affairs of their corporation; (b) reduces the members’ right to appoint individuals to manage the affairs of the corporation; (c) establishes a lower threshold for the appointment of independent directors than member directors (i.e. a small number of directors are able to appoint an independent director, in contrast with the number of members required to appoint a member director); (d) automatically applies to corporations that have not expressly excluded the operation of all replaceable rules; (e) places a burden on corporations to amend their rule book to expressly exclude the operation of the provision; (f) leaves uncertainty as to whether an existing rule regarding eligibility to be appointed as a director is sufficient to displace the proposed replaceable rule (e.g. an existing rule requiring all directors to be members); and (g)*



gives a perception that the CATSI Act undermines self determination outcomes, demonstrates a lack of confidence in the capabilities of the sector and appears to be paternalistic.'

228. NACCHO offered that it had received disparate views from its members and affiliates regarding this provision, but ultimately supported it as it provided great flexibility to corporations, *'NACCHO has received some very different views from our members and affiliates. Some argue that this flexibility is needed to bring in specific expertise onto boards (e.g. recruiting a child psychologist in an area where there may be a cluster of youth suicides); while others argue that these appointments are counter to the fundamental principle of Aboriginal community control and that expertise can be accessed outside of a board appointment. NACCHO can see both views. Overall, NACCHO prefers to see arrangements in place that allow this flexibility and that, ultimately, it is up to the boards and their community members at the local level to decide whether they use such a provision or not. Furthermore, the one-year timeframe for these appointments should guard against misuse or the potential dilution of community control in situations where there is some dysfunction on a board or with a temporarily divided member-base.'*

229. NNTC, SANTS and another submission were supportive but considered, *'it is essential that RNTBCs and their members and common law holders are fully informed about its implications and provide their informed consent as to whether they want this replaceable rule to apply or whether they want to amend or exclude its operation in their rule book.'*

230. The Aboriginal Health Council of South Australia was also supportive but sought greater clarity as to the role of independent directors, *'The South Australian sector agrees that Corporations should be able to appoint Independent Directors whether it be written in their Rule Books or not. The sector, however, believes that further consideration and clarification needs to be given to the roles, responsibilities and accountability of the Independent Directors. For example, voting rights and ways of safeguarding those individuals should decisions be made by the Board of Directors that may not be in the best interests of an organisation.'* These will be matters for CATSI corporations and rules can be included in rule books that set out how an independent director will be appointed, whether they will have voting rights and if they will receive sitting fees.



14. Part 12–Modernising publication requirements

231. The Bill amends the requirements for the Registrar to publish notices in the *Australian Government Gazette*. Proposed changes broaden the range of ways in which the Registrar is able to publish an order or notice. In addition to *publishing* in the *Gazette*, an order or notice may be published on the Registrar’s website; in a national newspaper; or in a daily newspaper that circulates in each state or territory.

232. There was limited feedback on these changes. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission all indicated their support for these amendments. A further submission also provided support, ‘[name redacted] submits that the CATSI Act should be amended to allow the Registrar to publish notices on places such as the ORIC website, in addition to the current requirements for publishing in the *Australian Government Gazette* and/or newspapers. In our view, the CATSI Act will need to provide that the notices published electronically are kept indefinitely and are easy to access for corporations.’

233. In its submission, AH&MRC proposed that there should be further changes to these amendments to require the Registrar to first issue the notice to the corporation before publishing a notice, ‘It is the position of the AH&MRC and its Members that these sections should require ORIC first to ensure that a notice has been received by the Corporation to which that notice is being issued. It can be problematic for community members to identify through a publication that a statement from ORIC has been given before the corporation being made aware. This can occur where there have been staff changes, Board Directors or relevant contact details as community-controlled organisations accountable to the community ORIC should be required first to attempt to work with the corporation to determine appropriate ways of ensuring that the community are notified about a notice from ORIC.’

234. This suggestion has merit but there may be practical implications with its application. It may not be necessary as in most cases the Registrar must write to the corporation and ask them to show cause why they should not be placed into special administration. However, when the Registrar appoints a special administrator he or she is required to give notice of the decision as soon as practicable to the corporation. The Registrar is also required to publish notice as soon as practicable. In the event that a special administrator has been appointed due to governance difficulties, it may be difficult for the Registrar to give notice to the corporation and confirm that the community is aware of the notice. There is a further question as to how long the Registrar should spend to confirm the community is aware of the notice before publishing. Working with the community to make them aware of the special administration and its purpose, is usually undertaken by the special administrator following their appointment. This change would require consultation before being given effect through changes to the CATSI Act.



15. Part 13—Storage of information

235. Part 13 of the CATSI Act Amendment Bill proposes to modernise the operation of CATSI corporations by explicitly allowing corporations to store their information on information storage platforms such as cloud servers. This Part introduces the concept of a ‘place of storage’ which may be different to the ‘place of inspection’. As a result, corporations will be required to provide means of accessing the stored information at their nominated place of inspection.

236. Four submissions indicated their support for this change, including SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand, NACCHO and another submission.



16. Part 14–Improving consistency with Corporations Act

Protection for whistleblowers

237. These amendments repeal the existing Part 10-5 of the CATSI Act, which outlines provisions for the protection of whistleblowers and refers to Part 9.4AAA from the Corporations Act, with appropriate changes to reflect the context of Aboriginal and Torres Strait Islander corporations.

238. There was general support for this proposal, including from SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and 2 further submissions.

239. The AICD also provided support for this proposal suggesting that corporations should have internal mechanisms to deal with whistleblowers, *'The AICD strongly supports robust whistleblower protections and believes that they support high standards of governance. As a matter of good governance, organisations should have strong internal whistleblowing frameworks in place which aim to detect, address and ultimately prevent corporate wrongdoing. We welcomed the reforms that were introduced to strengthen Australia's whistleblowing laws in the corporate sector and were actively engaged in the relevant consultations leading up to the passage of the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 (Whistleblower Act).'*

240. ABL did not support these amendments cautioning the Corporations Act provisions are too complex, *'We are concerned by the proposal to import by cross-reference the requirements of part 9.4AAA of the Corporations Act (item 216). Whistleblower protections are important however the particular Corporations Act scheme is complex and burdensome of smaller and/or under-resourced entities. If this amendment is made we recommend a reasonable transition period, especially given the penalties for non-compliance.'*

False and/or misleading information

241. These changes replace 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. They also provide 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.

242. These changes received limited feedback. Aboriginal Health Council of South Australia welcomed the changes and wanted them to go further, *'The South Australian sector supports the provision of setting out what reasonable steps means in the context of providing false and / or misleading information in relation to a corporation's affairs. However, the South Australian sector would also support the inclusion of a defence for individual officers to have taken reasonable efforts to either correct or clarify the misleading information and acted in good faith. This is to protect Directors who may be in a minority and were not in favour of the distribution of the impugned material.'*

243. Another submission suggested that the description of 'reasonable steps' was repetitious and should be redrafted, *'We agree in principle to the produced alignment and reduction to the lower penalty as contemplated by Recommendation 48. However, the proposed clauses to clarify 'reasonable steps' appear to be repetitious and would perhaps better achieve its purpose with a simplified redrafting.'*



244. The provisions outlining what could be considered reasonable steps in this context are based on the subsections 1308 (10) to (13) of the *Corporations Act 2001*.

Qualified privilege for auditors

245. There was unanimous support for the amendments that introduce qualified privilege for auditors under the CATSI Act, including from SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australian and New Zealand, AICD, the Aboriginal Health Council of South Australia, and 3 other submissions.

Operation of 'dishonesty' offences

246. One submission raised the potential inconsistency between the operation of the 'dishonesty' offences between the CATSI Act and Corporations Act. It noted that the Corporations Act was updated in 2019 in relation to the definition of 'dishonesty' and a corresponding update had not been made to the CATSI Act. On the basis of this feedback, the Bill was updated to reflect those amendments made to the Corporations Act in 2019.



17. Part 15—Finalising processes

247. Part 15 amends the CATSI Act to require the Registrar to provide notice to a corporation if he or she is satisfied that the action specified in a compliance notice have been taken by that corporation, and provide for the Registrar to notify a corporation at the conclusion of an examination, that he or she has concluded that they will take no further action.

248. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand, ABL, 2 further submissions all supported these changes. Another submission considered the change should go further, *‘We support proposed Item 224 in principle to the extent that it provides certainty to the RNTBC of the outcome of the examination and, for that purpose, suggest the drafting “the Registrar may notify the corporation” be amended to replace “may” with “will”. We support amending the CATSI Act to require the issuing of finalisation letters and compliance outcome letters to clarify current and proposed practice by ORIC and the Registrar in relation to examination outcomes under the Act.’*

249. There was also support for these changes from participants in the virtual consultation sessions who appreciated the value these notices had for corporations to be able to show to key stakeholders such as members and funding bodies.



18. Part 16—Dealing with unclaimed property

250. Part 16 allows for the establishment of a new special account which will be funded from the current Unclaimed Money special account with funds that are (under current rules) required to be transferred into the Consolidated Revenue Fund. This new special account will be used for the protection of Indigenous assets that are vested with the Registrar on the deregistration of a corporation.
251. This measure was welcomed with some participants in virtual consultation sessions expressing surprise that this was not already the case. Stakeholders were clear that Indigenous funds should be retained and used to benefit Aboriginal and Torres Strait Islander people.
252. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission all provided support for this amendment.

19. Part 17–External administration and deregistration

Ground for Special Administration

253. An existing ground for special administration, where the corporation has traded at a loss for at least 6 of the last 12 months, is replaced with a new ground, ‘there is a serious irregularity in the financial affairs of the corporation’. The inclusion of the description ‘serious’ in this clause came about as a direct response to concerns that were raised during consultation that any minor irregularity could inappropriately trigger the appointment of a special administrator.
254. Whilst this inclusion appears to have reduced concerns it has not completely allayed all trepidation with the amendment. Despite the beneficial nature of special administration, some stakeholders indicated it is an overreach of regulatory power. For instance, ABL stated, *‘The now proposed ground of requiring a ‘serious irregularity in the financial affairs of the corporation’ is a significant improvement on the earlier proposal. However, as a general comment, we reiterate that there should not be any change that increases the ability for the Registrar to place a CATSI Corporation into special administration. The existing ability is already controversial and sometimes viewed as a paternalistic and antiquated measure. It should be used as infrequently as possible and certainly should not be more widely available.’*
255. We contend however that since the new ground replaces an existing ground, this amendment does not represent an increase in the ability for the Registrar to place a CATSI corporation into special administration.
256. In contrast another submission suggested providing for both grounds: *‘[name removed] fully supports the current ground for appointing an administrator but also suggest the alternative option be included.’*
257. Several submissions called for greater clarity in what constitutes a ‘serious irregularity’. One submission stated, *“‘Irregularity in management of financial affairs’ is not a term used in accounting standards. We note that if legislation does not define the criteria or principles that must be applied, the discretion to place a corporation into special administration is broadened significantly. We also note that the Act provides a definition for “business affairs” and “affairs” but not financial affairs. It is unclear how the phrase “financial affairs” is to be defined. Noting that “examinable affairs” includes “business affairs” of connected entities, it is unclear whether it is intended that financial affairs of connected entities will be exempt from the definition of “examinable affairs” (as defined in s 700-1). As indicated above, it is unclear whether irregularities in the management of connected entities’ financial affairs will constitute grounds for special administration.’*
258. In a similar vein, the Aboriginal Health Council of South Australia noted, *‘The proposed Amendment Bill refers to a ‘serious irregularity’ in a Corporation’s financial affairs, limiting the scope of the grounds for appointing a special administrator. While the South Australian sector supports the inclusion, it believes that the definition of ‘serious irregularity’ needs to be fleshed out so there is at least a baseline standard that Corporations can refer to of what constitutes irregular and what is serious. There also needs to be a link to the whistleblowing provisions.’*
259. AH&MRC submitted *‘Item 236 replaces the current trigger for establishing a Special Administrator to ‘there is a serious irregularity in the corporation’s financial affairs. The term ‘serious’ has been introduced to address concerns that minor financial irregularities may trigger the appointment of a Special Administrator. The AH&MRC and its Member Services remain concerned that this addition is vague and open to interpretation. The last criteria of trading at a loss gives corporations specific guidance to understand where it is likely that ORIC may intervene with the management of their corporation. This criterion must be clearly defined to provide clarity and transparency to both corporations and the Registrar.’*

260. ORIC has indicated its intent to update policy statement, *PS-20 Special administrations*⁷, with respect to this and the second change relating to special administration included in this Part. This update will include an explanation of ‘serious irregularity’ in the context of appointing a special administrator.

Show cause notice

261. These amendments remove of the show cause notice when a majority of directors request that the Registrar appoint a special administrator. This change was uncontroversial during virtual consultation sessions and received general agreement. However, some stakeholders see this amendment as removing a safeguard.
262. One submission did not support this amendment stating, *‘The show cause notice is an important mechanism for making sure the corporation can respond to claims against it. Removing the requirement for a show cause notice where only a majority have requested may impact on minority directors. If only a majority of directors have made the request, this suggests there may be a disagreement. In those circumstances, a show cause notice is appropriate.’*
263. On the other hand the NNTC and SANTS supported this change. Another submission noted, *‘We support the NNTC’s position that the ‘show cause’ requirement for the Registrar should be removed if all the directors of a corporation request the appointment of a special administrator. The ‘show cause’ requirement could be removed if a majority of directors request the appointment of a special administrator, as in some circumstances it will not be possible to obtain the agreement of all directors even when special administration would be in the best interests of the corporation, the members, and in the case of a RNTBC, the common law holders.’*
264. SEARMS Community Housing Aboriginal Corporation and 2 further submissions also supported this change, with one indicating the amendment supports the self-determination of corporations, stating, *‘[name redacted] fully endorses this recommendation. The director’s decision should take precedence.’*
265. Dr Nehme also stated that the provisions in this part simplify the current regime which is to be applauded.

Leave of the Court

266. For reasons similar to that of removing the show cause notice above, this Part also removes the need for the Registrar to apply for the leave of the Court when applying to wind up a corporation on the grounds of insolvency. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission indicated support for this amendment.
267. In contrast, comments in some submissions indicated concern that this step is a necessary step when winding up a corporation. In their submission, Tangentyere Council protested, *‘We are concerned that some of the provisions of the CATSI Act create obligations on Aboriginal Corporations that do not exist to advance those corporations, but merely give the Registrar additional powers or impose additional burdens or rules on Aboriginal Corporations that do not apply to non-Indigenous corporations. Items 235, 241 and 243 to 245 in the CATSI Amendment Bill reflect recommendation 71 and remove the requirement for the Registrar to seek the leave of the court in advance of making an application to wind up a corporation. Conversely, if an insolvent company registered under the Corporations Act 2001 is not voluntarily wound up, leave of the court is required to commence winding up on the grounds of insolvency and appoint a liquidator. This is just one example of a different standard applying to an Aboriginal Corporation than a corporation governed outside the CATSI Act. The amendment has no apparent benefit to CATSI corporations. Its only effect appears to be to make it easier for the*

⁷ ORIC, *PS-20 Special administrations*, ORIC, 2017, available from https://www.oric.gov.au/sites/default/files/documents/02_2017/PS-20_Special-administrations_v7-0.pdf [accessed 15 August 2021].

Registrar to commence an application for the winding up of a company. The amendment would lead to a different set of laws for Aboriginal corporations under the CATSI Act to all other corporations.

268. Similarly, another submission echoed this sentiment, 'We note the basis within the Final Report for Recommendation 71 to the effect that the prima facie basis for making such an application to the court is a redundant step, and repeat our concerns about Recommendation 70 as to the circumstances where such a step may be warranted.'

269. Dispensing with the need to apply for the leave of the Court does not obviate the requirement for the Registrar to apply for winding up and prove insolvency to the Court. It also does not remove the right of the corporation to be able to defend itself and prove solvency where it feels the Registrar's assessment is incorrect.

Presumptions of Insolvency

270. Presumptions of insolvency are introduced, which the Court can rely on for the purposes of finding a corporation insolvent. They are rebuttable, so a corporation has the opportunity to prove that it is solvent.

271. While recognising the importance of a presumption of insolvency, Dr Nehme did not think the appropriate presumptions had been incorporated stating, 'A presumption of insolvency is important to facilitate liquidation of an insolvent corporation. However, the current proposal mirrors a presumption of insolvency under s 588E of the Corporations Act 2001 (Cth). This is an issue as that presumption operate for insolvent trading by directors, voidable transactions and may also help liquidators establishing the insolvency of the company at a particular time. There are other presumptions under s 459C of the Corporations Act 2001 (Cth) that may have more merit in being used in the context of ATSI corporations. These presumptions are specifically targeted to the winding up of an insolvent company.'

272. ABL also objected to this amendment on the basis that 'A rebuttable presumption places the burden back on stretched and often under resourced CATSI Corporations to prove that are not insolvent. We see absolutely no justification for this shift of burden and expense back onto the CATSI Corporations.'

273. The Office of the Victorian Aboriginal Heritage Council also objected to this amendment on the grounds that 'The exposure draft appears to create or exacerbate of number of divergences from the arrangements under the CA. In this respect creating obligations on:... presumptions of insolvency... would not appear to be reflected in the CA and are therefore offensive.'

274. It should be noted that the CATSI Act already applies the presumptions of insolvency in section 459C of the Corporations Act. Section 526-35 applies, among other provisions, Part 5.4 of the Corporations Act which includes section 459C. Further, item 3 of Clause 4 of Schedule 4 of the CATSI Regulations modifies section 59C of the Corporations Act for the purpose of the CATSI Act. The additional presumptions proposed in the draft bill in the context of winding up are innovations that were based on recommendations from the 2017 Technical Review of the CATSI Act.

275. Another submission sought more information before agreeing to the proposal stating '...introducing a presumption of insolvency for a failure to keep adequate records is unwarranted if it could be applied in circumstances where a corporation such as a RNTBC has failed to meet this standard because of minor breaches due to its lack of resources and capacity. More information is required about the details of this proposal and the standard that would be applied before we could consider if this proposal could operate fairly and be justified as a special measure.'

276. On the other hand, SEARMS Community Housing Aboriginal Corporation and 2 further submissions agreed with the proposal, with one noting, 'The proposal is supported on the basis that the presumption applies only where an examiner or special administrator (or other authorised person) has formed an opinion that the corporation failed to keep adequate financial records for the last seven years.'



Voluntary Deregistration

277. The last section of this Part enables corporations to apply for voluntary deregistration even if the conditions for voluntary deregistration are not all met, provided they specify which conditions are not met and the reasons why they are not met. This would, for example, allow a corporation to apply for voluntary deregistration even when all members have not voted on such a resolution.

278. In its submission Aboriginal Family Legal Services noted its support for these amendments commenting, *'AFLS welcomes this as an opportunity to allow a corporation to apply for voluntary deregistration even when all members have not voted on such a resolution...Obtaining agreement from 100 per cent of members is onerous and often not possible, as members frequently move away and lose touch with the corporation.'*

279. The Aboriginal Health Council of South Australia also provided its support, *'The South Australian sector agrees with the new proposed process for voluntary deregistrations.'*

280. SEARMS Community Housing Aboriginal Corporation and another submission were also supportive of this change. A further submission gave qualified agreement stating, *'We agree with the NNTC's support of the proposal that a corporation may voluntarily deregister where it passes a special resolution to this effect and the other criteria in section 542-1(2) are satisfied. We would also be prepared to consider a proposal to provide the Registrar with the power to exempt corporations from satisfying particular criteria to deregister if more details were provided about the parameters of this power of exemption.'*⁸

⁸ NNTC's submission did not address this issue.



20. Part 18–Minor technical amendments

281. Part 18 of the CATSI Act Amendment Bill captures a number of minor technical amendments most of which originated in the 2018 Strengthening Governance and Transparency Bill. These amendments make small corrections to the text of the CATSI Act, providing clarification of the clause without changing the intent of the original measure.
282. These changes were very technical in nature, arising mainly from experience of administering the CATSI Act over 14 years. A couple of changes arose through the drafting process for these amendments, where the drafter identified the requirement for a consequential change. SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission all provided support for these changes.
283. Throughout the consultations these amendments were uncontroversial attracting no comment. Similarly most submissions were silent on the issue, although one submission made a significant disagreement. The Aboriginal Health Council of South Australia stated *'The South Australian sector do not support the amendment to subparagraph 279-25(1)(a)(iii) to clarify that the court may only disqualify a person from managing a CATSI corporation if the conditions in both paragraphs 279-25(1)(a) and (b) are met. The South Australian sector consider that combining these two provisions makes it easier for a person who should be disqualified from managing an Aboriginal or Torres Strait Islander corporation to circumvent committing an offence as they need to satisfy both requirements, not one or the other.'*
284. The original intent of the provision was that both requirements needed to be met in order to disqualify a person. Combining the requirement means that the Court not only has to identify that the person has breached the Act but also believes that the disqualification is justified. This provides an additional level of protection for persons who may have inadvertently breached the Act. The amendment is actually rectifying an error with the original drafting of the Act.



21. Part 19–Review of financial reports

285. Part 19 is dedicated to implementing provisions that allow medium corporations to have their financial statements reviewed rather than audited. This complements Part 5 that aligns the size classification of CATSI corporations with that of the ACNC. By implementing Part 19, the reporting requirements of CATSI corporations will also be aligned with that of the ACNC.

286. This provision has been welcomed as it reduces the reporting requirement for a number of CATSI corporations, cutting red tape and streamlining requirements. As such, the measure itself attracted little attention in the Bill SEARMS Community Housing Aboriginal Corporation, Chartered Accountants Australia and New Zealand and another submission all indicated support for this change. The AICD also provided its support, *'We also agree with amendments included in Part 19 of the Exposure Draft that allow medium sized corporations to have their financial reports reviewed rather than audited. That will bring CATSI corporations requirements into line with registered entities under the Australian Charities and Not-for-profits Commission Act and companies limited by guarantee under the Corporations Act.'*



22. Part 20–Native Title Register

287. The final part of the CATSI Amendment Bill amends the *Native Title Act 1993* (Native Title Act). The proposed sections allow the Registrar of the National Native Title Tribunal to update the National Native Title Register with the updated name of the corporation subsequent to an identical change in the Register of Aboriginal and Torres Strait Islander Corporations.

288. While there is nothing currently in the Native Title Act preventing the Registrar of the Native Title Tribunal from doing this, it is also not explicitly provided for. As such this measure is one which removes doubt rather than implements a new power.

289. This was an uncontroversial measure and while 3 submissions agreed generally with most of the provisions in the Bill, not one submission commented on this measure specifically. Similarly in virtual consultation sessions this measure received general support but was not particularly noteworthy otherwise.



23. Recommendations not being taken forward

290. A small number of submissions indicated disappointment that recommendations made in the CATSI Act Review Final Report were not being taken forward.
291. Chartered Accountants Australia and New Zealand indicated disappointment that recommendation 64, which is to change the name of special administration, is not being taken forward. While this recommendation was generally well received during consultations, discussions to determine an alternative name highlighted the risk of potential confusion with a different name. Therefore this recommendation is not being taken forward through the Bill.
292. The NNTC, CLC, First Nations Legal and Research Services, SANTS, Office of the Victorian Aboriginal Heritage Council, YMAC and another 3 submissions expressed disappointment that recommendation 62 of the CATSI Act Review Final Report was not being taken forward. Recommendation 62 is for the creation of a separate division in the CATSI Act for specific provisions relating to RNTBCs.
293. One submission put forward that the, *'CATSI Act does not presently sufficiently recognise the unique characteristics and circumstances of RNTBCs and, as such, cannot adequately regulate those entities. For these reasons, the [name redacted] submits that separate regulation of RNTBCs is required. At a bare minimum, this separate regulation should be done through a stand-alone Part of the CATSI Act dealing with RNTBCs.'*
294. This submission highlights some of the complexity with establishing a standalone division for RNTBCs as there are few dedicated, completely independent provisions at present in the CATSI Act. The CATSI Act Review Final Report made a number of recommendations requiring further work; particularly in relation to RNTBCs and the CATSI Act. This recommendation will be considered further as that work progresses as the inclusion of additional provisions dedicated to RNTBCs may provide a stronger basis for a standalone division.



24. Conduct of the review

295. A small number of submissions commented on the review process, including the release of the exposure draft for consultation.

296. In its submission, Chartered Accountants Australia and New Zealand welcomed the way in which recommendations made in the CATSI Act Review Final Report were responded to stating, *'We applaud the clarity with which each recommendation of the Final Report from the 2019-20 review has been addressed.'*

297. Some submissions, including NACCHO, Tangentyere Council Aboriginal Corporation and the Office of the Victorian Aboriginal Heritage Council commented on the conduct of the comprehensive review. The NACCHO submission ascribed comments made about the previous 2017 Technical Review to the (current) comprehensive review, including that:

- a. the terms of reference were too narrow and did not consider key issues such as whether the CATSI Act is achieving its objectives, the benefit to Aboriginal and Torres Strait Islander people, the implication of Indigenous Advancement Strategy reforms and whether there were other ways to deliver productivity;
- b. submissions to the 2017 Technical Review and the final report were not published;
- c. there was no evidence that key stakeholders participated in the review;
- d. there was a conflict of interest as to who undertook the review and it should have been undertaken by the relevant policy agency; and
- e. there was a lack of meaningful consultation.

298. The consultation approach undertaken by the (current) comprehensive review of the CATSI Act addressed these and other comments made about the conduct of the 2017 Technical Review.

299. The terms of reference for the (current) comprehensive review were broad and included: whether the CATSI Act is meeting its objects and continues to be desirable as a special measure for the advancement and protection of Indigenous people as set out in the Act's preamble; whether the functions and powers of the Registrar of Indigenous Corporations are appropriate, effective and adequate; and possible amendments to the CATSI Act to better support the regulation of CATSI corporations. Importantly, the first phase of consultation for the comprehensive review sought public feedback about what aspects of the CATSI Act should be considered as part of the review.

300. Transparency was an important focus of the comprehensive review which included publishing:

- a. a Phase 1 Summary Report that outlined feedback received through the first phase of consultation regarding the aspects of the CATSI Act that should be considered as part of the review;
- b. a draft CATSI Act Review report that outlined proposed changes to the CATSI Act and which formed the basis of the second phase of consultation;
- c. submissions received during the second phase of consultation where permission was provided;
- d. a CATSI Act Review Final Report that reflected feedback received during the second phase of consultation in addition to 72 recommendations;
- e. an exposure draft of the CATSI Amendment Bill;
- f. submissions received in relation to the exposure draft where permission was provided; and
- g. this summary report that outlines feedback provided in relation to the exposure draft.

301. In relation to the concern about a possible conflict of interest in the conduct of the review, the (current) comprehensive review was undertaken by the relevant policy agency, i.e. the NIAA (and not the regulatory agency ORIC).



302. Concerns were expressed over the participation of key stakeholders and the nature of consultation in the review. The NACCHO submission stated, *‘there has been no clear and systematic engagement with senior Aboriginal and Torres Strait Islander leadership in the process of the review and in the decision making in relation to the drafting and the preparation of the exposure draft.’*
303. During the comprehensive review, there was 22 dedicated weeks of consultation involving 3 phases: the first being what should be considered as part of the review; the second being in relation to proposed changes to the CATSI Act; and the third being in relation to the exposure draft of the CATSI Amendment Bill. This included consultation with directors, members and CEOs of CATSI corporations (including Registered Native Title Bodies Corporate (RNTBCs)), academics, peak Indigenous and professional bodies, lawyers, accountants, industry and businesses.
304. More broadly, the comprehensive review process included the convening of a Stakeholder Reference Group comprising key stakeholders from the native title sector, relevant professional bodies, government bodies and a CATSI corporation. A Steering Committee comprised senior officials from the NIAA, ORIC and other Commonwealth regulatory bodies.
305. Notwithstanding the comments above, the NACCHO submission also notes the importance of the CATSI Act in supporting the self-determination of Aboriginal and Torres Strait Islander peoples, and acknowledges the positive outcomes of the 2019-20 comprehensive review that are expected to benefit the sector stating, *“NACCHO recognises that the CATSI Act facilitates self-determination for Aboriginal and Torres Strait Islander corporations. It provides a vehicle to ensure corporations delivering services to our people remain community-controlled. The CATSI Act is designed to reduce the inequalities faced by Aboriginal and Torres Strait Islanders and has an important role to play in the revitalised Closing the Gap process. Accordingly, it is an understatement to say that the CATSI Act is important to the Aboriginal and Torres Strait Islander health sector. It is a primary vehicle that has been available, in its original form, since 1976, for Aboriginal and Torres Strait Islander people to control and take responsibility for their own health. It facilitates self-determination and sets out rules for how our members and directors are appointed from our communities. The CATSI Act also provides the rules to establish policies for the governance of our organisations, for their financial management, control and reporting. It has had a significant impact on our costs and benefits to Aboriginal and Torres Strait Islander peoples for about 45 years. Despite the lack of engagement with Aboriginal and Torres Strait Islander leadership, the review does seem to have resulted in a number of positive elements included in the report that will benefit the sector”.*
306. The Office of the Victorian Aboriginal Heritage Council referred to the consultation as *‘meaningless’* as it considered many of the proposals considered as part of the CATSI Act Review were similar to those in the 2017 Technical Review and contends that there was strong opposition to those proposals.
307. In relation to this comment, the CATSI Amendment Bill includes approximately 15 items from the 2018 Bill as well as 22 new items that were not included. It also includes 8 items that were in the 2018 Bill but have been modified to reflect feedback received during the 3 phases of consultation undertaken during the current comprehensive review. As an example, stakeholders indicated that the Registrar should consider a range of platforms when publishing notices to ensure that they are accessible to the intended audience. For this reason, rather than amend the CATSI Act in line with the 2018 Bill which enabled the Registrar to publish notices on ORIC’s website, this Bill requires the Registrar to publish on at least one platform including ORIC’s website as well as national, and state and territory websites as well as the *Gazette*. Attachment B outlines the full list of amendments in this Bill and their source.

Appendix A: Written submissions

Table A1: List of written submission received as part of exposure draft consultation

No.	Entity
1	SEARMS Community Housing Aboriginal Corporation
2	APONT Aboriginal Governance and Management Program
3	First Nations Legal and Research Services
4	Central Land Council (CLC)
5	Chartered Accountants Australia New Zealand
6	Australian Institute of Company Directors
7	[name redacted]
8	Broome Regional Aboriginal Medical Service (BRAMS)
9	Minerals Council of Australia
10	Aboriginal Family Legal Services
11	National Aboriginal Community Controlled Health Organisation (NACCHO)
12	[name redacted]
13	Yamatji Marlpa Aboriginal Corporation (YMAC)
14	Chalk & Behrendt
15	National Native Title Council (NNTC)
16	Arnold Bloch Leibler (ABL)
17	[name redacted]
18	Dr Marina Nehme (Dr Nehme)
19	Office of the Victorian Aboriginal Heritage Council
20	South Australian Native Title Services (SANTS)
21	NTSCORP
22	Aboriginal Health Council of South Australia
23	North Queensland Land Council NTRBAC (NQLC)
24	[name redacted]
25	Aboriginal Health and Medical Research Council of NSW (AH&MRC)
26	[name redacted]
27	Tangentyere Council Aboriginal Corporation

Appendix B: Source of amendments

Table A2: Source of amendments in the CATSI Amendment Bill

Amendment	Source
Part 1 Review of operation of Act	
Introduce review of the CATSI Act every 7 years.	New.
Part 2 Powers and functions of Registrar	
Enable the Registrar to accept enforceable undertakings, and for an authorised officer to report to the Registrar in relation to a suspected breach of an enforceable undertaking.	Included in the 2018 Bill.
Align the Registrar’s powers with those of ASIC’s regarding the production of books.	Included in the 2018 Bill.
Provide the Registrar with the same powers as authorised officers	Included in the 2018 Bill.
Revised infringement notice provisions	New. The 2018 Bill did not include the revised provisions for infringement notices.
Part 3 Membership applications, member contact details and electronic communication	
Allowing the collection of contact details such as email addresses and phone numbers when addresses are required.	New.
Enable the Registrar to contact corporations and individuals using other contact details that are available, such as email.	New.
Amend existing sections of the CATSI Act that refer to corporations collecting address details from members, to also enable the corporation to collect, record and use other contact details such as email addresses, phone numbers and alternative addresses.	New.
<ul style="list-style-type: none"> Directors to make a decision on a membership application within 6 months of the application being made. New powers for the Registrar to extend or remove this timeframe for a corporation or class of corporations. Enable corporations to introduce rules to limit the discretion of directors when considering membership applications or provide a review process for applications that are rejected despite being eligible. 	New.
A replaceable rule for cancelling memberships for CATSI corporations that are not RNTBCs. The proposed provisions change the existing requirements for corporations when considering membership cancellation by changing the number of member contact attempts, the means by which the member should be contacted and timeframe within which contact must be attempted.	Included in the 2018 but modified in this Bill to be a replaceable rule for non-RNTBC corporations so that the cancellation provisions can be tailored to suit the circumstances of the corporation.
Introduce 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.	New.



Amendment	Source
Empower members and former members to request a corporation to redact their personal information from a corporation’s register of members or register of former members, respectively.	Included in the 2018 Bill but modified to remove the threshold question of personal safety to enable the redaction. Also did not include the option for directors to be able to decide to redact information on behalf of a member which was not supported by feedback.
Part 4 Subsidiaries and joint ventures	
Change the directorship and membership provisions to more easily facilitate corporations with only body corporate members.	Included in the 2018 Bill.
Allow for the incorporation of 2-member corporations where only one member is Indigenous as long as that member has the deciding vote.	Included in the 2018 Bill.
Part 5 Classification of corporations	
Replace the current section 37-10 of the CATSI Act to change the current criteria for classification, based on a tripartite income/assets/employees test, to a single criterion based on consolidated revenue.	Included in the 2018 Bill.
Part 6 Meetings and reports	
Small corporations that are not registered entities with the Australian Charities and Not-for-profits Commission (ACNC) and that had less than \$1,000 in consolidated revenue in the previous financial year, will be able to pass a special resolution not to hold the next one or 2 AGMs.	Included in the 2018 Bill but modified to add the additional registration and consolidated revenue criteria for the types of small corporations that can access these provisions. Also modified from 3 years to 2 years and to appoint directors terms until the next AGM is held.
Allow corporations to hold meetings virtually using a means that is accessible to members and that affords them a reasonable opportunity to participate. Enable the chair of a general meeting to decide how a vote will be held when a physical show of hands is not possible.	New.
Enable a CATSI corporation to defer a meeting for up to 30 days after a meeting notice has already been issued. A deferral may include a change to the date, time and/or place of the meeting, and would be allowable in the case of death in a community, a cultural activity or natural disaster.	New.
Introduce a replaceable rule that enables directors of a corporation to cancel a general meeting—that is not one called by the Registrar—by resolution.	New.
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).	Included in the 2018 Bill.
Directors are required to lay before an AGM (where the corporation is required to hold an AGM after the end of a financial year) any reports they have been required to prepare and submit to the Registrar.	Included in the 2018 Bill.
Part 7 Constitutions	
Require corporations to ensure their rule books identify the replaceable rules in the CATSI Act, that apply to the corporation and that have not been modified or replaced.	Included in the 2018 Bill but modified to require corporations to refer to replaceable rules rather than reproduce those rules.



Amendment	Source
Explicit power for the Registrar to reject changes to a corporation’s constitution that are inconsistent with ones made by a special administrator, unless the circumstances of the corporation has changed to the extent that the changes previously made by the special administrator are no longer relevant.	New.
Part 8 Officers of corporations	
<ul style="list-style-type: none"> Amend section 694-85 to provide 2 separate definitions for the meaning for a CFO function and a CEO function. Require that a corporation must 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. 	New.
Introduce the concept of a Remuneration Report.	Included in the 2018 Bill.
Part 9 Related party transactions	
Remove the Registrar from having a role in the related party transaction approval process.	New.
Remove 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 that will be prescribed in the CATSI Regulations.	Included in the 2018 Bill.
Part 10 Power to exempt corporation from employee-director requirement	
Provide the Registrar with the power to exempt a corporation from, or make a determination exempting a class of corporations from, the requirement that the majority of directors must not be employees.	New.
Part 11 Independent directors	
Allow directors to appoint independent directors noting that the proposed new section 246-17 is a replaceable rule and corporations can change this rule to prevent the appointment of independent directors if they so wish.	Included in the 2018 Bill but modified to refer to an independent director as a person who is not a member of a corporation.
Part 12 Modernising publication requirements	
Change the requirement for the Registrar to publish notices in the Australian Government Gazette.	Included in the 2018 Bill but modified enable the Registrar to publish notices on a range of different platforms.
Modernise legislative instrument provisions.	New.
Part 13 Storage of information	
Inserts a new section 376-22, based on section 1301 of the Corporations Act, which explicitly allows corporations to store information on storage platforms such as cloud servers which may be in a location other than the place of inspection.	New.
Part 14 Improving consistency with Corporations Act	
Repeals the existing Part 10-5 that outlines provisions for the protection of whistleblowers and refers to Part 9.4AAA from Corporations Act with appropriate changes to reflect the context of Aboriginal and Torres Strait Islander corporations.	New.



Amendment	Source
<p>Replace 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.</p> <p>Provide 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.</p>	New.
Introduce qualified privilege for auditors.	Included in the 2018 Bill.
Part 15 Finalising processes	
<ul style="list-style-type: none"> Require the Registrar to provide notice to a corporation if he or she is satisfied that the action specified in a compliance notice have been taken by that corporation. Provide for the Registrar to notify a corporation at the conclusion of an examination, that he or she has concluded that they will take no further action. 	New.
Part 16 Dealing with unclaimed money	
Create a new special account called the Aboriginal and Torres Strait Islander Corporations Assets Protection Account, ensuring that the funds deposited in that account are taken from the existing Aboriginal and Torres Strait Islander Corporations Unclaimed Money Account.	New.
Part 17 External administration and deregistration	
Repeals the existing ground for appointing a special administrator which is that the corporation has traded at a loss for at least 6 of the last 12 months and replacing it with a new ground, 'there is a serious irregularity in the financial affairs of the corporation'.	Included in the 2018 Bill but modified to replace the existing ground that the corporation has traded at a loss for at least 6 of the last 12 months.
Remove the requirement for the Registrar to issue a show cause notice when the majority of directors of a corporation have requested the Registrar in writing to appoint a special administrator.	Included in the 2018 Bill.
Provide that for a corporation under special administration, sections 451E to 451H of the Corporations Act apply. These sections relate to enforcing rights when a corporation is under administration (etc), and would prevent the enforcement of a right to terminate a contract with a corporation under administration.	New.
Introduce presumptions of insolvency as recommended above, which the Court can rely on for the purposes of finding a corporation insolvent noting that they are rebuttable, so a corporation has the opportunity to prove that it is solvent.	Included in the 2018 Bill.
Enable corporations to apply for voluntary deregistration even if the conditions for voluntary deregistration are not all met, provided they specify which conditions are not met and the reasons why they are not met.	Included in the 2018 Bill.
Part 18 Minor technical amendments	
Amendments to correct errors, provide clarification on matters, and improve the accuracy, consistency and readability of the CATSI Act.	Included in the 2018 Bill but modified to include additional amendments.



Amendment	Source
Part 19 Review of financial reports	
Allow medium corporations to have their financial reports reviewed rather than audited.	Included in the 2018 Bill.
Part 20 Native Title Register	
Amend the <i>Native Title Act 1993</i> to allow the Registrar of the National Native Title Tribunal to update the National Native Title Register with the name or address of a prescribed body corporate (PBC) as well as the name or address of an agent PBC	New.