



Australian Government

Office of the Registrar of Indigenous Corporations

# Consultation on proposed amendments to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

We are consulting on proposed amendments to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) to ensure that the changes will operate effectively and benefit Aboriginal and Torres Strait Islander corporations as intended.

## Why we want your input

The Australian Government is proposing reforms to strengthen and improve the CATSI Act. The proposed amendments are informed by the *Technical Review of the CATSI Act*, which was conducted in late 2017 and included widespread consultation.

Now, we want your input on the impact of the proposed amendments and how they should be implemented.

## How you can contribute

A consultation paper with suggested questions to address is available at [oric.gov.au](http://oric.gov.au).

There are two ways you can contribute:

- provide a **written submission** to [CATSIreview@oric.gov.au](mailto:CATSIreview@oric.gov.au) by Sunday, 16 September 2018
- participate in a public **consultation session**—for locations and dates see [oric.gov.au/catsi-review](http://oric.gov.au/catsi-review).

## What will be the outcome of this consultation?

Your comments will help us to identify any issues with implementing the proposed amendments to the CATSI Act, and to ensure corporations can comply with them. Your feedback will also be used to assist ORIC prepare guidance and support to help corporations understand and implement the changes when they take effect.

## When will the changes take effect?

The plan is that changes to the CATSI Act will take effect from 1 July 2019.

# Summary of the changes

Many of the changes aim to reduce red tape, especially for corporations with revenue of less than \$250,000 per year. Other proposed changes seek to improve options for responding to lower-level cases of non-compliance, and to increase transparency for members. There are also minor changes to streamline and clarify some parts of the CATSI Act.

We need to balance the specific characteristics and challenges Aboriginal and Torres Strait Islander corporations face with the strong desire to improve corporate governance and performance.

| Change   | Why we need the change   |
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| <p><b>Size classifications</b></p> <ul style="list-style-type: none"><li>• Simplify the classification system for corporations.</li></ul>  | <p>The test is too complicated and the threshold between small and medium corporations is too low. Under the proposed changes corporations with revenue under \$250,000 per year will be classified as small corporations, with minimal reporting requirements and the opportunity for less frequent meetings.</p>   |
| <p><b>Rule books</b></p> <ul style="list-style-type: none"><li>• Put all the 'replaceable rules' in the rule book.</li><li>• Provide model rule books in plain English that corporations can adapt and adopt.</li><li>• Allow the Registrar to refuse to register rule books that are not fit for purpose.</li></ul> | <p>Putting all the replaceable rules into one document will make it easier for a corporation to follow them.</p> <p>Rule books that are fit for purpose will help members and directors understand their rule book and participate effectively in their corporation.</p>   |
| <p><b>Prohibited names</b></p> <ul style="list-style-type: none"><li>• Prohibit entities using names like 'Aboriginal Corporation' if they are not incorporated under the CATSI Act.</li></ul>   | <p>These names are strongly associated with the Indigeneity criteria in the CATSI Act and it can be misleading if other entities use them.</p>   |
| <p><b>Business structures</b></p> <ul style="list-style-type: none"><li>• Make it much easier to create subsidiaries, and allow joint venture organisations to be set up under the CATSI Act.</li></ul>  | <p>Corporations could establish a variety of business structures under the CATSI Act, which would open the door to new economic opportunities.</p>   |
| <p><b>Meetings and reporting</b></p> <ul style="list-style-type: none"><li>• Provide greater flexibility, especially for small corporations, in the deferral and frequency of meetings and reporting.</li><li>• Require medium and large corporations to table their annual reports at the AGM.</li></ul>            | <p>Requirements for meetings and reporting should be proportionate to corporation size, to relieve the burden and cost of compliance.</p> <p>For example, small corporations could decide to have an AGM every three years instead of every year—which makes sense for low-revenue corporations such as non-trading or passive landholding corporations.</p> <p>Tabling reports at the AGM would make larger corporations more transparent and accountable to members.</p> |

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|---|--|
| <p><b>Membership</b></p> <ul style="list-style-type: none"> <li>• Allow use of alternative member contact details.</li> <li>• Enable the suppression of personal information in certain cases.</li> </ul>   | <p>Having alternative contact details will assist corporations in remote areas that have a large, mobile or geographically dispersed membership.</p> <p>Allowing directors to decide to redact certain member information will help keep people safe.</p>  |
| <p><b>Transparency of senior executives</b></p> <ul style="list-style-type: none"> <li>• Medium and large corporations will report the remuneration and work history of senior managers to members.</li> </ul>  | <p>Members will know more about their senior management team and have a better understanding of their value.</p> <p>The Registrar will also be able to provide sectoral statistics to help boards to make decisions about remuneration.</p>  |
| <p><b>Related third parties</b></p> <ul style="list-style-type: none"> <li>• Allow corporations to make some low-value related third party transactions.</li> <li>• Allow discretion for the Registrar to allow other transactions.</li> </ul>  | <p>The current requirements can work against the best interests of corporations, especially in small communities with extensive kinship ties and limited options for purchasing goods or services.</p>   |
| <p><b>Special administration</b></p> <ul style="list-style-type: none"> <li>• Broaden and clarify the grounds for putting corporations into special administration.</li> <li>• Streamline the process for corporations seeking the appointment of a special administrator.</li> </ul> | <p>There are some circumstances where corporations may need assistance from a specialist independent person that the current law doesn't cover, such as when a corporation has no directors or is insolvent.</p> <p>The 'show cause' process is unnecessary in cases where a board has unanimously requested a special administrator be appointed.</p>                   |
| <p><b>Voluntary deregistration</b></p> <ul style="list-style-type: none"> <li>• Make the criteria for voluntary deregistration more flexible.</li> </ul>  | <p>More corporations could voluntarily deregister—instead of voluntarily winding up, which is more complex and costly.</p>   |
| <p><b>Compliance powers</b></p> <ul style="list-style-type: none"> <li>• Broaden investigation and compliance powers to address lower-level compliance problems.</li> </ul>   | <p>The Registrar's current powers are more limited than the Australian Securities and Investments Commission's, and only suited to more serious situations. Lower-level powers such as fines and enforceable undertakings will allow the Registrar to take action before the viability of a corporation is threatened, and after adequate warning has been provided.</p> |



## CONTACT ORIC

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