



Australian Government

Office of the Registrar of Indigenous Corporations

# Proposed amendments to the CATSI Act

Discussion paper

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

August 2018

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# Introduction

## Why we want your input

The Australian Government is currently progressing reforms to strengthen and improve the CATSI Act. The proposed amendments are based on recommendations of the *Technical Review of the CATSI Act* (Technical Review), which was conducted in late 2017 and involved widespread consultation.

We want your input on the impact of the proposed amendments and how they should be implemented. Your feedback will also be used to assist the Office of the Registrar of Indigenous Corporations (ORIC) prepare guidance and support to help corporations understand and implement the changes when they take effect.

## Timing of the change

The changes to the CATSI Act are planned to take effect from 1 July 2019.

## How you can contribute

You can contribute in two ways:

- 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).

This discussion paper is also available at [oric.gov.au/catsi-review](http://oric.gov.au/catsi-review).

## Responding to this paper

This paper outlines the proposed amendments to the CATSI Act. The proposed amendments have been developed in accordance with:

- ORIC's extensive experience of the application of the CATSI Act in its current form
- recommendations from the Technical Review, and
- widespread consultations.

ORIC's preference is that respondents express a clear overall opinion on whether the proposals, as a whole, will be beneficial for their corporation, and how they might be implemented. We also invite you to supplement your opinions with detailed comments—supportive or otherwise—on the major issues.

## Background

Aboriginal and Torres Strait Islander corporations play a critical role in delivering services and supporting economic development in Indigenous communities, particularly in regional and remote Australia. The CATSI Act is a specialist regulatory framework designed that makes it easier for Aboriginal and Torres Strait Islander groups to form and manage corporations. It mirrors many requirements of the *Corporations Act 2001* (Cth) (Corporations Act), but has the flexibility needed to meet the unique needs of Aboriginal and Torres Strait Islander people. The CATSI Act is administered by the Registrar of Indigenous Corporations (the Registrar), an independent statutory office-holder, supported by ORIC. The Registrar is required under the CATSI Act to both regulate and support Aboriginal and Torres Strait Islander corporations.

The CATSI Act framework has been very successful. It has improved the efficiency, sustainability and accountability of Indigenous corporations. In 2015–16, the top 500 CATSI Act corporations earned a collective \$1.92 billion. After 10 years of its operation, Senator the Hon Nigel Scullion, Minister for Indigenous Affairs announced a review of the CATSI Act to ensure it remains relevant and effective for Indigenous corporations and the communities they serve.

The proposed amendments aim to strengthen and improve the CATSI Act and align it with recent changes in corporate law and regulation (particularly the Corporations Act). It also looks to reduce the regulatory burden for small corporations and increase transparency in the sector.

# Proposed amendments

## Size classifications

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### At a glance

- Simplify the classification test to make it easier to determine a corporation's size.
- Revise the thresholds for each classification to align the CATSI Act more closely with other legislative frameworks.
- Make size alone determine reporting requirements.

### Currently...

Under the CATSI Act corporations are classified by size—small, medium and large—to ensure their obligations are commensurate with their activity levels and risk factors.

The size of a corporation has impacts for various aspects of corporate governance under the CATSI Act:

- whether it has a contact person or secretary
- whether it has a document access address or registered office
- the level of its reporting obligations.

Currently the size of a corporation is determined by looking at a corporation's income, assets, and number of employees. Each of these factors are assessed against set thresholds for small, medium and large, and the corporation's size is determined when it meets two of the three criteria—any two.

Reporting obligations are determined by a combination of size and income. For example, a corporation may be classified as small in **size** because they have few assets and no employees (two of the three criteria for small), but they are required to report at a higher level because they have a higher **income**. For example, they may have received a grant or other income for the year which is greater than \$100,000 changing their reporting obligations from a general report only to a general report, financial report and audit report.

### Proposed change

It is proposed to:

- replace the current three-part classification test based on income, assets and employee numbers with a test based solely on revenue
- use the corporation's size alone to determine reporting requirements
- adjust the thresholds for size to align with other regulatory regimes:
  - small – < \$250,000
  - medium – between \$250,000 and \$1 million
  - large – \$1million and above.

There will still be three sizes but revenue alone will determine a corporation's size and reporting requirements.

The proposal aligns classification of CATSI Act corporations, and to a large extent their reporting requirements, with that of companies limited by guarantee under the Corporations Act (which they are most like) and the *Australian Charities and Not-for-profit Commission Act 2012*, as follows:

Size	Current test	Proposed test	Reporting requirements
Small	at least TWO of the following in a financial year: <ul style="list-style-type: none"> <li>consolidated gross operating income of less than \$100,000</li> <li>consolidated gross assets valued at less than \$100,000</li> <li>fewer than five employees.</li> </ul>	Consolidated revenue less than \$250,000	General report
Medium	at least TWO of the following in a financial year: <ul style="list-style-type: none"> <li>consolidated gross operating income between \$100,000 and \$5 million</li> <li>consolidated gross assets between \$100,000 and \$2.5 million</li> <li>between five and 24 employees.</li> </ul>	Consolidated revenue between \$250,000 and \$1 million	General report Financial report* Either: <ul style="list-style-type: none"> <li>review of financial report (for an explanation, see 'Benefit', below)</li> <li>audit report</li> </ul>
Large	at least TWO of the following in a financial year: <ul style="list-style-type: none"> <li>consolidated gross operating income of \$5 million or more</li> <li>consolidated gross assets valued at \$2.5 million or more</li> <li>more than 24 employees.</li> </ul>	Consolidated revenue more than \$1 million	General report Financial report Audit report Directors' report

\* Corporations who have grant income of more than 90 per cent of their total revenue will still be able to provide the material accepted by their funding bodies.

### **Benefit**

- The new classification test will be much easier to understand and apply.
- More corporations will be classified as small, reducing their reporting obligations and therefore their administrative burden.
- Size (and consequent obligations) will be aligned with other similar types of entities, e.g. companies limited by guarantee (companies that are 'Pty Ltd').
- Medium corporations will be able to elect whether to have their financial statement reviewed or audited. A review is generally cheaper and takes less time, but provides a lower level of assurance.

### **Implications**

Corporations will need to understand their reporting obligations under the new size classification to ensure that they can meet them once the changes take effect. ORIC will work with corporations before the amendments are introduced to assess their size under the

new arrangements. Based on current information, under the new system it is expected that the number of corporations classified as:

- small will increase
- large will increase
- medium will decrease.

### Questions

What assistance do you anticipate corporations will need to understand this change?

Do you see any problems arising from these changes to classifications?

## Rule books

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### At a glance

- Require that a corporation's rule book is easy to follow and comprehensive—that is, it covers all the matters/topics currently known as 'replaceable rules'.
- Allow the Registrar to refuse to register a rule book if it is not 'fit for purpose'.

## Replaceable rules

### Currently...

The CATSI Act provides a framework of rules related to the internal governance of a corporation. Of these, 35 are 'replaceable rules' meaning that corporations can adopt them as they are or replace them with rules that better suit the corporation's own needs and circumstances.

Replaceable rules are a key feature of the legislation, enabling corporations to tailor their rules to their particular circumstances and potentially, reduce the costs of governance.

At present, the CATSI Act provides that a corporation can adopt all the replaceable rules as they are, without including them in its constitution (rule book). But if a corporation replaces a replaceable rule, the CATSI Act requires it to write the replaced rule in its rule book.

The problem is that a rule book is considered the primary governing document for a corporation. The risk is that replaceable rules adopted as they are *but not reproduced in the rule book* may be forgotten or 'invisible' to members and directors.

For a list of replaceable rules see ORIC's fact sheet *A corporation's rule book: what you need to know*, at [oric.gov.au/rulebooks](http://oric.gov.au/rulebooks).

### Proposed change

It is proposed that corporations include all the replaceable rules (whether replaced or not) in their rule book, with the exception of a couple of replaceable rules that are only relevant when a corporation's rule book contains other related provisions. For example, the replaceable rule regarding the attendance of observers at meetings is only relevant if the corporation's rule book allows observers.

## ***Benefit***

Having all the replaceable rules (including those adopted as is) in one document will make it easier for members and directors to know and follow them. It will make the internal governance of the corporation clearer for all stakeholders.

## ***Implications***

Current corporation rule books will need to be reviewed and revised to meet the new requirements of the CATSI Act. To support corporations through this process, ORIC will provide a range of model rule books for different corporation types—such as standard, subsidiary, sole member and prescribed body corporate / registered native title body corporate. Each one will be simple in language and cover all the replaceable rule topics. We propose to give corporations two years to update their rule books.

ORIC's current 'Condensed rule book' template covers many of the replaceable rules and corporations that have used this model will require only minimal changes to shift to the new rule book requirements.

### **Questions**

What type of support do you anticipate corporations will require to revise their rule books?

Other than those suggested already—standard, subsidiary, sole member and PBC / RNTBC—are there particular corporation types that would benefit from a model rule book?

Are there rules not already provided for in guidance and templates that should be covered in developing new model rule books, or for different corporation types?

## **Refusal to register a rule book**

### ***Currently...***

Under the CATSI Act the members of a corporation make the decision to adopt a rule book or changes to it. However, the rules do not take effect until they are approved and registered by the Registrar.

At present, there are very limited circumstances under which the Registrar may refuse to register a rule book, and they do not cover situations where the Registrar believes a rule book is 'not fit for purpose' because it is overly complex or poorly drafted.

Currently, some rule books include excessive detail and complex language, which can lead to disengagement among members and directors. Problems can also arise when members and directors find it difficult to understand or correctly apply the rule book in order to deal with a possible breach or a conflict in the corporation.

In previous consultations, many stakeholders expressed a preference for a simple rule book, to enhance members' understanding and engagement.

### ***Proposed change***

It is proposed to extend the Registrar's power to refuse to register a rule book where in the Registrar's opinion it is 'not fit for purpose'.

Under this proposal, corporations would maintain their autonomy with regard to their internal governance. If the Registrar refuses to register a rule book, the corporation would be required to consult members, who would consider the reasons for the refusal, and then either confirm the rule book in its current state or provide a redrafted rule book—which the

Registrar must then approve (subject to other registration requirements being satisfied).

It will remain the corporation's responsibility to determine that its rule book is appropriate for its individual circumstances, and that members and directors are adequately engaged and can understand how the corporation operates.

### ***Benefit***

This power is intended to encourage corporations to adopt comprehensive rule books that:

- members can easily follow
- are relevant and effective for the operations of the corporation
- reduce issues that can lead to disputes.

Members will benefit from the opportunity to respond to specific feedback from the Registrar, to consider if their proposed rule book will work for them.

### ***Implications***

In revising their rule books, corporations may wish to consider not just including the replaceable rules, but also ensuring that all the rules are relevant and effective, and how the rule book might better serve to engage members.

## **Business structures**

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### **At a glance**

- Make it easier to create subsidiary and joint venture organisations under the CATSI Act.

### ***Currently...***

Currently, for CATSI Act corporations wanting to establish a wholly-owned subsidiary or a joint venture, it is significantly easier for them to do so under the Corporations Act.

The CATSI Act requires that a majority of a corporation's directors be members of the corporation. One corporation can be a member of another, but an entity cannot be a director (a director must be an individual person). The requirement that directors be people also makes it difficult for a corporation to form a subsidiary with another corporation (a joint venture).

The requirement that a majority of directors must be Indigenous also makes it hard for two-member corporations to form, when one person or entity does not meet the Indigeneity requirement.

### ***Proposed changes***

It is proposed to:

- allow corporations to establish wholly-owned subsidiary CATSI Act corporations, unless the parent corporation's rule book expressly prohibits it from doing so
- allow an entity or group of entities to establish a CATSI Act corporation as a subsidiary or joint venture where the Indigeneity requirements of membership are met (with the parent or group of entities as members)

- allow two-member corporations, where one member is not an Aboriginal or Torres Strait Islander person or entity, as long as the Aboriginal or Torres Strait Islander member has a casting vote. For example, this may be a two-person corporation, or a joint venture between a CATSI Act corporation and a Corporations Act corporation.

### **Benefit**

These changes will give corporations more flexibility and allow them to establish modern business structures in a suitable legislative framework. They will maintain access to specialist regulatory support and Indigenous control.

Having a group of entities under the one legislative framework, with one regulator, will also allow for streamlined compliance and reporting obligations.

### **Implications**

Corporations registered under the CATSI Act will not be required to take any action on this change. The change will provide new opportunities for corporations to establish new entities or transfer existing entities into the CATSI Act.

### **Questions**

Corporations will need to provide proof that the majority of member corporations meet the Indigeneity requirement. What processes will need to be put in place to enable this?

## **Meetings and reporting**

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### **At a glance**

- Provide greater flexibility in the frequency and deferral of meetings and reporting, particularly for small corporations.
- Increase members' access to reports of medium and large corporations.

The proposed changes aim to align requirements for meetings and reporting with the corporation's size, and reduce unnecessary compliance costs. Previous consultations indicated that holding the AGM is particularly costly and burdensome for small corporations and those in remote or very remote areas. On the other hand, holding an AGM improves transparency and increases engagement of members and accountability of directors and management.

### **Less frequent general meetings for small corporations**

#### **Currently...**

All corporations are required to hold a general meeting every year (that's why it's called an *annual* general meeting) unless they apply for, and the Registrar approves, an exemption from holding the meeting.

#### **Proposed changes**

It is proposed to enable small corporations to pass a special resolution to hold the next AGM in two or three years instead of the following year, provided that:

1. directors do not vote on that resolution, and
2. the corporation advises the Registrar if there is any material change in its circumstances.

If matters arise between meetings, members may request directors call a general meeting. Corporations where all members are also directors will be exempt from excluding directors from voting on the resolution.

It is also proposed to give the Registrar the power to direct a corporation to call and hold an AGM where the Registrar decides that it is reasonable to do so.

Corporations will still be obliged to prepare and lodge a general report with the Registrar annually, as well as provide the report to members in a timely manner.

### ***Benefit***

Small corporations can choose to reduce their regulatory burden and costs. This will be of particular benefit to corporations in remote locations or corporations with a geographically dispersed membership—which face difficulties in holding AGMs such as cost, contacting members and achieving a quorum—as well as some non-trading or passive landholding corporations. The power of the Registrar to direct corporations to hold an AGM provides an additional safeguard.

### ***Implications***

Small corporations will have access to new mechanisms for reducing AGM frequency; however, they will need to consider matters such as how they present annual reports to members, and aligning directors' terms with AGM timeframes.

### **Questions**

For small corporations that choose not to hold an AGM for up to three years, can you suggest ways to provide the general report to members?

Aside from the term of directorships, what other considerations or arrangements will need to be made to implement such a decision?

What will corporations need to consider during the non-AGM year/s (e.g. how to keep track of members; how to provide sufficient notice of the next AGM; how to deal with decisions that may arise)?

Examples of situations where the Registrar could decide it is reasonable to require an AGM be held include:

- change in classification from small to medium or large
- members making numerous complaints
- failure to provide annual reports in a timely manner to members two years in a row
- failure to give members an opportunity to ask questions of the board—or failure of the board to include their responses in the annual reporting
- failure to provide notice to the Registrar if there is any material change in circumstances

What other circumstances might be included?

Are there any other safeguards that should be considered?

## Members' access to reports

### *Currently...*

A corporation that is required to prepare a financial report and/or directors' report must give members copies of the reports on request. However, the CATSI Act does not currently require those reports to be laid before the members at the AGM.

Despite there being no requirement to table reports, many corporations have adopted the good practice of doing so at their AGM.

### *Proposed change*

It is proposed to require medium and large corporations to lay before the AGM, any reports they are required to prepare for that financial year.

### *Benefit*

Access to all relevant reports at AGMs will increase members' understanding of the corporation's operations and more closely align reporting requirements of medium and large corporations with the requirements of equivalent companies limited by guarantee.

### *Implications*

Medium and large corporations will need to ensure they prepare reports in a timely manner and in a format that members can understand.

### **Questions**

Should reports that are to be tabled at the AGM be provided to members along with the notice of meeting?

## Extensions of time

### *Currently...*

Under the CATSI Act, corporations are required to hold an AGM within five months of the end of their financial year, and to lodge reports with the Registrar within six months of the end of their financial year.

A corporation can apply to the Registrar for an extension of time to hold an AGM or lodge a report. The Registrar decides whether or not to grant the extension of time and for how long.

### *Proposed change*

It is proposed to allow corporations to activate an automatic once-only extension of time for a period of 30 days to hold a particular AGM, where the corporation:

1. notifies the Registrar that there is a death in the community, natural disaster, cultural activity or an unavoidable delay in the audit, and
2. makes that notification before the period to hold the AGM has expired, and
3. has not notified an automatic extension of time more than three years in a row.

This option would also be available in the situation where a notice of meeting has already been issued. In this case, directors will be able to issue an updated notice of meeting which may change one or all of the following: date, time and place of the meeting. The change of date must be within 30 days of the original meeting date.

Similarly, it is proposed to allow for corporations to activate a 30-day extension of time to lodge reports with the Registrar in the case of death, natural disaster and certain cultural activities in Indigenous communities. It is a one-off extension, so should another event occur which impacts on the ability to hold the AGM or lodge reports, corporations will need to apply to the Registrar as they do currently for a further extension of time.

### ***Benefit***

When certain circumstances occur, corporations can automatically extend the time for holding an AGM or lodging a report rather than waiting for an approval from the Registrar.

### ***Implications***

All corporations will have access to a new mechanism for extending the time for holding AGMs and reporting to the Registrar.

#### **Questions**

What processes should be put in place around this requirement? For example:

- Who in the corporation should be authorised to make this notification?
- How should the notification be made, for example, by online form, phone, email?

## **Membership**

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#### **At a glance**

- Make better use of alternative member contact details.
- Increase a corporation's ability to protect personal information in certain circumstances.

### **Using alternative contact details for communications**

#### ***Currently...***

Currently, members can provide their corporation with alternative contact details for the purpose of receiving notices of meetings. It's not mandatory to include this information in the register of members and alternative contact details cannot be used for other purposes, such as the corporation determining that a member is non-contactable.

#### ***Proposed change***

It is proposed that where a member has provided alternative contact information, the corporation should be obliged to record that information in the corporation's records and use it for issuing notices to meetings as well as other communications with members, including for the purpose of attempting contact when considering cancelling a membership.

#### ***Benefit***

Making better use of alternative contact details will assist corporations to communicate with and manage their membership. This will be particularly beneficial for corporations in remote areas, with a large, mobile or geographically dispersed membership.

## ***Implications***

Corporations will need to put in place processes that allow for the collection and storage of the alternative contact details. These details may or may not be part of the official register of members, but either way they won't be part of the (public) list of members.

### **Questions**

- How do you manage alternative contact details currently?
- How many alternative contact addresses should members be able to nominate? At this point only one is proposed to limit the administrative burden for corporations.

## **Cancellation of membership**

### ***Currently...***

At present, the process for cancelling a person's membership on the ground of being non-contactable doesn't require a corporation to use the member's alternative contact details. In addition, a membership cannot be cancelled unless the corporation has been unable to contact the member for a continuous period of two years. Having a lot of members that are uncontactable can make it difficult for a corporation to form a quorum at meetings.

### ***Proposed change***

It is proposed to change the circumstances in which membership may be cancelled due to the member being non-contactable, to:

- reduce the non-contactability period for membership cancellation from two years to one year (12 months)
- require a minimum of three attempts to contact the member within the timeframe, where at least one of the attempts:
  - uses the alternative contact information that the member supplied, or
  - (if the member did not supply alternative contact information) uses any other means set out in the corporation's rule book.

### ***Benefit***

Corporations, especially those with mobile memberships, will have improved options for managing their memberships.

## ***Implications***

Corporations will need to put in place processes that allow and record the three contact attempts within a 12-month period.

### **Questions**

- If your corporation is small and chooses to not hold an AGM for three years, what processes will you put in place to contact members three times within a 12-month period in order to assess prospects for cancellation?
- Is three contacts within 12 months an appropriate number?

- Should corporations in remote communities with a communal address for receiving post (such as the post office or community store) be obliged to collect alternative contact details?

## Privacy of members

### *Currently...*

The CATSI Act requires that a corporation's register of members include the name and residential address of each member. The Registrar currently publishes member lists (a copy of the register of members at a point in time), including member names and addresses, in the public register on its website. The Registrar considers requests from individuals or corporations to remove information from the public registers on a case-by-case basis, but will usually only grant the request if satisfied that certain circumstances exist.

### *Proposed change*

It is proposed to give directors or other officers the power to redact (block) certain member information from the corporation's register of members, where the officer considers that disclosure of that information would compromise a person's safety.

The corporation will still need to keep the information for communication purposes with members.

### *Benefit*

This change will give corporations more power to decide if the personal information of members should be withheld to safeguard members. In this situation, it will still be possible for anyone to apply to the Registrar to obtain the information, and the Registrar may approve or deny the request.

### *Implications*

Corporations will need to develop an application process for the suppression of information, and keep records of applications, considerations and decisions.

A corporation may present a redacted register of members at a general meeting for inspection.

### **Questions**

- What controls or training should be provided to corporations to support them to implement this process?
- How will the corporation show where information has been redacted from a register of members under this process? For example, where information has been redacted, would putting something like 'Removed on application' be appropriate?
- Where information has been redacted, corporations should regularly review the members' circumstances to ensure they remain relevant. What processes can corporations put in place to ensure regular review of redacted information?
- If corporations present a redacted register of members at the AGM, what process will they use for members to check their address for receiving notifications is up to date?

## Transparency of senior executives

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### At a glance

- Provide access to information that allows greater scrutiny of senior management appointments and benefits.

### Senior executives' work history

#### *Currently...*

Unless they have an exemption, all corporations must prepare a general report every year. The general report includes names and addresses of each of the corporation's members, directors and secretary. Currently, it does not include any information about senior executives.

The Technical Review recommended a mechanism to enhance oversight of senior executives of corporations, by supporting boards to make good decisions during the recruitment process.

#### *Proposed change*

It is proposed that medium and large corporations be required to report annually on each CEO and senior executive, including their name and their 10-year employment history. This requirement would exclude directors who are not employees (for which large corporations must provide a director's report already) but extends to senior staff of any subsidiary of the corporation.

#### *Benefit*

The purpose of providing a work history statement is to:

- help ensure that boards and members are aware of the former employment of their senior executives—as well as sources for verifying their previous performance, and
- enable the corporation to determine whether an individual is appropriately qualified and experienced to perform their role.

This requirement would be in addition to existing sources for background checks, such as the Register of Disqualified Officers.

The change proposed in 'meetings and reporting' requirements will mean that this information will be laid before members at the corporation's AGM. Therefore, members will know more about their senior management team and their relevant experience.

#### *Implications*

Corporations will need to collect this information to have it available to include in the annual report. The information will only be about senior officers employed as at the end of the financial year.

### Questions

- Would corporations find a 'template' useful for collecting and publishing the material?
- How can ORIC support your corporation to implement this change?

## Remuneration

### ***Currently...***

Publicly listed companies under the Corporations Act are required to disclose the nature and value of remuneration of key management personnel (including directors) in their annual reporting to ensure their shareholders are provided with comprehensive information. These reporting requirements are similar to those for public office holders, such as the Registrar of Aboriginal and Torres Strait Islander Corporations and the Chairperson of the Torres Strait Regional Authority, whose remuneration and travel allowances are published by the Remuneration Tribunal. Under a review of the *Public Governance, Performance and Accountability Act 2013* it is also proposed to make this mandatory for senior executives of all government entities.

Under the CATSI Act, corporations are currently not required to disclose the remuneration of key management personnel to their members, although some corporations choose to do so. Members can direct their corporation to prepare a report on all remuneration and expenses paid to directors, although it requires a minimum number of members to make the request (for corporations with between 2 and 10 members—1; for corporations with between 11 and 29 members—3; and for corporations with 30 or more members either five individual members or 10 per cent, whichever is greater). The members cannot take this action in relation to senior executives.

As a one-off research project in 2013, the Registrar published a detailed report to help provide guidance to the sector in setting remuneration. The Registrar does not currently collect or publish this information on a regular basis.

### ***Proposed change***

It is proposed that medium and large corporations include in their annual reports a 'remuneration report' that details CEO and senior executive salary and benefits packages. It is also proposed that this report be laid before members at the corporation's AGM and lodged with the Registrar.

It is **not** proposed that the Registrar publish individual remuneration reports on the public register (on [oric.gov.au](http://oric.gov.au)). Benchmarking data would be published as a guide for corporations in setting remuneration.

It is **not** proposed that the Registrar be given any powers to set remuneration limits.

### *Further detail on the proposed remuneration report*

The proposed remuneration report may include for each CEO and officer (excluding directors who are not employees):

- their name and position
- the value of remuneration paid for:
  - base salary—fixed (non-performance based) remuneration
  - performance remuneration (bonus payments)—including a description of the performance criteria and the process for assessment
  - superannuation
  - annual and long service leave
  - other benefits and allowances
  - termination payouts.

- (if the person is hired under a fixed-term contract) the duration of the term; the periods of notice required to terminate the contract; and the termination payments provided for under the contract
- details of any loans to and other transactions with the executive.

**Sample table based on the review of the PGPA Act:  
Remuneration paid to the CEO and senior executive during the reporting period**

Name of individual	Position	Base salary	Other benefits and allowances	Employer-contributed superannuation	Bonus paid	Termination	Long service leave	Total remuneration package
		\$	\$	\$	\$	\$	\$	\$
Name A	CEO	xx	xx	xx	xx	xx	Xx	xx
Name B	CFO	xx	xx	xx	xx	xx	Xx	xx
Name C	COO	xx	xx	xx	xx	xx	Xx	xx
Name D	General manager	xx	xx	xx	xx	xx	Xx	xx

#### *Definition of key terms*

'Key management personnel' are those with authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly—AASB Standard 124

The 'CEO function' is performed by a person who is primarily and directly responsible to the directors for the general and overall management of the corporation—section 694–85 CATSI Act

The definition of 'officer' (at section 683-1(3) of the CATSI Act) covers various roles and positions in relation to a corporation, including a person who:

- is a director or secretary of the corporation
- makes, or participates in making, decisions that affect the whole or a substantial part of the business of the corporation; or
- has the capacity to affect significantly the corporation's financial standing.

#### **Benefit**

The availability of this information to members will encourage transparency and accountability for CEOs and senior executives of corporations. It will also allow the Registrar to publish de-identified information about remuneration in an annual sectoral analysis. Such analysis will be useful for corporations to benchmark their remuneration levels against current practice in the sector.

## **Implications**

Corporations will need to report remunerations for all senior executive staff employed throughout the financial year regardless of whether they are still employed as at the end of the financial year.

### **Questions**

- How should 'remuneration' be defined? The Corporations Act defines remuneration as follows: Remuneration of directors or executives will typically include all or some of cash salary, shares or share options, superannuation, annual and long service leave. Could this definition be applied to your corporation?
- Should the information about CEOs and senior executives include the same items as currently required about directors in a directors' report (their name; period of tenure; qualifications, experience and special responsibilities in relation to the corporation)?
- Should consolidated reporting by a parent corporation distinguish individuals in the subsidiaries of a group or subgroup where the subsidiaries are not registered under the CATSI Act?
- Does the proposed remuneration report provide sufficiently enhanced accountability to members?
- How often do members ask for director remuneration details at your corporation?
- In considering who 'senior executives' are, do the current CATSI Act definitions of 'CEOs (CEO functions)' and 'officers' provide sufficient flexibility to reflect differences in business models and group structures? Is the definition of 'officer' too broad?

## **Thresholds for related party financial benefits**

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### **At a glance**

- Give corporations freedom to enter into some low-value related third party transactions.
- Give the Registrar discretion to allow other related third party transactions.

## **Approval for related party financial benefits**

### **Currently...**

Currently, when a corporation gives a financial benefit to a person or organisation with a close relationship to the corporation, it must first gain the members' approval. There are some limited exceptions that don't require members' approval.

The members approve the giving of the benefit by passing a resolution at a general meeting. Before the members vote, the corporation needs to prepare certain documents and allow time for the Registrar to comment on them. This all takes time and calling a general meeting is not always easy for corporations in remote areas and with large or dispersed memberships.

For more about current requirements see ORIC's fact sheet '*Related party financial benefits*' at [oric.gov.au/related-benefits](http://oric.gov.au/related-benefits).

Although there is a need to prevent misuse of corporation assets and funds, the Technical Review found that current requirements can work against the best interests of some corporations, especially in small communities with extensive kinship ties and limited options for purchasing goods or services.

### ***Proposed change***

It is proposed to:

- Exempt small corporations from needing to seek member approval if the benefit for that related party is worth less than \$5000—in either a single transaction or all transactions in one financial year.
- Allow corporations to apply for exemptions from seeking member approval in cases where there would be no detriment (disadvantage) to members of the corporation.
- Require all corporations to include a list of all related party benefits as part of their annual reports.

### ***Benefit***

Reduce the compliance burden and increase operational efficiency, especially for corporations located in small communities with extensive kinship and family relationships.

### ***Implications***

Corporations will need to keep detailed records of all related party transactions for reporting purposes as well as ensuring multiple transactions do not exceed the threshold for each related party.

#### **Questions**

- Is \$5000 a reasonable threshold for each related party? If not, what would you suggest and why?
- Should members be able to reduce the threshold for the value of transactions that triggers their requirement to seek member approval?

## **Special administrations**

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#### **At a glance**

- Broaden and clarify the grounds for putting corporations into special administration.
- Revise outdated processes in the appointment process.
- Streamline the appointment process when a board unanimously requests it.

### **Extending the grounds**

#### ***Currently...***

To place a corporation under special administration, the Registrar must be satisfied that at least one of the grounds set out in the CATSI Act is satisfied.

There are some circumstances not covered by the CATSI Act, where corporations could benefit from a specialist independent person to assist them in resolving problems—such as when a corporation has no directors or is insolvent.

### ***Proposed change***

It is proposed to add the following grounds for the appointment of a special administrator:

- the corporation has no directors
- the corporation is insolvent
- there is doubt as to whether the board of directors is validly constituted
- there are substantial or repeated breaches of the prohibition on related party transactions
- the corporation is a registered native title body corporate and conducts its affairs contrary to the interests of the common law holders.

### ***Benefit***

For corporations experiencing problems and in appropriate circumstances, special administration is likely to provide a better outcome than a liquidation. These changes will provide more corporations with access to the specialist support provided under special administration.

### ***Implications***

Corporations do not need to take any action in regard to this change.

## **Revising the process**

### ***Currently...***

By default, the process for placing a corporation under special administration requires the Registrar to give a corporation a chance to explain why it thinks it should not be placed under special administration (this is called a 'show cause' procedure). This step must be followed even in cases where all the directors request the appointment—that is, cases where the 'show cause' process is redundant.

The CATSI Act requires that after making an appointment the Registrar must publish a notice in the *Gazette* and a newspaper. The Registrar also publishes appointments in the public register online.

### ***Proposed change***

It is proposed:

- where a board unanimously requests that a special administrator be appointed, or the corporation has no directors, the Registrar need not issue a show cause notice
- to remove the outdated publishing requirements as these are no longer frequently accessed sources and the information already exists in the public domain.

### ***Benefit***

This change would remove redundant red tape, and make access to specialist help more streamlined for corporations that want it.

### ***Implications***

Corporations do not need to take any action in regard to this change.

## **Voluntary deregistrations**

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### **At a glance**

- Make the criteria for voluntary deregistration more flexible.

### ***Currently...***

In order to voluntarily deregister a corporation, 100 per cent of members need to agree to the deregistration.

In many cases where a corporation is no longer active, the membership may have lost interest and contact. It can be extremely difficult to convene a meeting or circulate a resolution in order to gain 100 per cent of member agreement.

### ***Proposed change***

It is proposed to allow corporations to apply for an exemption from particular criteria for deregistration such as the requirement for 100 per cent of the membership to agree to deregistering the corporation, or the members to pass a special resolution at a general meeting to wind up.

### ***Benefit***

This change will make it easier for corporations voluntarily deregister instead of voluntary winding up, which is more complex and costly.

### ***Implications***

Corporations don't need to take any action in regard to this change.

## **Compliance powers**

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### **At a glance**

- Broaden investigation and compliance powers to address lower level compliance problems.

### ***Currently...***

The Registrar's current powers are more limited than the Australian Securities and Investments Commission's and only suited to more serious situations. In short, the current powers are either inadequate or extreme if applied in situations that are less serious.

Lower level powers such as fines and enforceable undertakings will allow corrective action before waiting until a corporation's viability is threatened.

### ***Proposed change***

It is proposed that compliance powers be modelled on ASIC's powers—for example that the Registrar be empowered to:

- impose fines for late lodgment of documents
- impose fines for failure to comply with a compliance notice
- accept enforceable undertakings—a voluntary agreement between ORIC and a CATSI Act corporation that can be enforced by a court
- set deadlines that require action sooner than 14 days.

When we say that the Registrar's powers will be 'modelled' on ASIC's, we mean that the provisions and powers will be adapted to suit the Registrar's role in supporting and regulating CATSI Act corporations. For example, fines for late lodgment will be discretionary rather than automatically issued by a system as soon as a document is late. In this way, ORIC could contact and support a corporation before any penalty is applied.

### ***Benefit***

A broader suite of lower-level powers allows for corrective action before a corporation's viability or a director's position are threatened. Where a breach has been identified, rather than engage in legal action to prosecute, it may be preferable to accept an enforceable undertaking from the corporation to fix the issue. Doing so may prevent unnecessary litigation.

### ***Implications***

Corporations don't need to take any action in regard to this change. More information about the specific powers will be circulated as it is agreed.

#### **Questions**

What impact do you expect these changes will have for your corporations?

How can ORIC assist CATSI Act corporations to understand these changes?

## **Miscellaneous**

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A number of minor technical improvements are also proposed in order to strengthen corporate governance, and making it easier to comply with the CATSI Act. Most would require no action on behalf of corporations.

### **Prohibited names**

Prohibit entities that are not registered under the CATSI Act from using a term such as 'Aboriginal Corporation' in their name.

The following terms are strongly associated with the CATSI Act and corporations that use them are widely recognised as meeting the CATSI Act Indigeneity requirements:

- Aboriginal corporation
- Torres Strait Islander corporation
- Aboriginal and Torres Strait Islander corporation

- Torres Strait Islander and Aboriginal corporation
- Indigenous corporation.

The intent of this change is to reduce the risk of entities misleading stakeholders about their Indigenous ownership and control.

## **Independent directors**

Appointing an independent director with specialist skills and knowledge is widely recognised as a good strategy for adding value to a board. Currently the CATSI Act prevents a corporation from appointing independent directors unless they put rule in their rule book that specifically allows it.

It is proposed to reverse this position by amending the CATSI Act to allow corporations to appoint independent directors without updating or writing it into their rule books, unless they put a rule in their rule book preventing it.

## **Other minor changes**

- Introduce some technical provisions in relation to auditors, including qualified privilege in alignment with the Corporations Act.
- At a members meeting, when a corporation proposes a resolution about a related third party transaction, require that the resolution be 'materially the same' as the resolution described in the notice of meeting—rather than exactly the same, as it is currently.
- The CATSI Act is designed to interact with the *Native Title Act 1993* to ensure that if directors of RNTBCs are carrying out native title obligations, they won't be in breach of their statutory duties under the CATSI Act when there's an overlap in duties. Consideration is being given to how to extend this relief to directors that have similar native title obligations under state and territory legislation.