



Australian Government

Office of the Registrar of Indigenous Corporations



Interaction between the Corporations (Aboriginal and Torres Strait Islander) Act 2006 and the Native Title Act 1993

How does the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) interact with the *Native Title Act 1993* and take into account the role and functions of prescribed bodies corporate?

This paper explains the policy reasons for provisions of the CATSI Act that only apply to corporations that hold or manage native title.

January 2010

Native title and specific sections under the CATSI Act

Introduction

The *Native Title Act 1993* (NTA) and the Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations) require corporations determined by the Federal Court to hold and manage native title rights and interests to register under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) as Aboriginal and Torres Strait Islander corporations. These corporations are referred to as prescribed bodies corporate or PBCs. Once a PBC is entered on the National Native Title Register it becomes a registered native title body corporate (RNTBC). The CATSI Act uses the abbreviation 'RNTBC' to make it clear that the provisions that apply to these specific corporations only apply once they are entered on the National Native Title Register.

The CATSI Act has tailored provisions for native title and RNTBCs to ensure there is appropriate interaction between the two laws. This paper summarises the obligations of Aboriginal and Torres Strait Islander corporations and explains the policy behind those provisions that have been tailored to ensure that obligations of RNTBCs don't conflict under the NTA, PBC Regulations and the CATSI Act.

1 Obligations of Aboriginal and Torres Strait Islander corporations under the CATSI Act

1.1 Registered size

Under the CATSI Act, corporations are registered as small, medium or large with different reporting obligations according to registered size and income. This allows corporations to report based on risk factors such as scale of operation and purpose. It also reduces the administrative burden on smaller corporations (for example, corporations that only hold land with minimal or no income), and aligns the bigger corporations' reporting requirements with companies registered under the *Corporations Act 2001*. Native title is not taken into account when determining a corporation's assets—refer to Part 5 of this paper.

Corporations registered as small meet two of the following three criteria:

- consolidated gross operating income: less than \$100 000
- consolidated gross assets: less than \$100 000
- less than 5 employees.

Corporations registered as large meet two of the following three criteria:

- consolidated gross operating income: \$5 million or more
- consolidated gross assets: \$2.5 million or more
- more than 24 employees.

All other corporations are registered as medium corporations and typically meet two of the following three criteria:

- consolidated gross operating income: between \$100 000 and \$5 million
- consolidated gross assets: between \$100 000 and \$2.5 million
- between 5 and 24 employees.

Corporations registered as small with an income of less than \$100 000 only have to provide a general report.

Corporations registered as medium with income up to \$5 million and corporations registered as small with an income between \$100 000 and \$5 million must lodge a general report and audited financial statements each year.

Corporations registered as large or any size corporation with income of \$5 million or more must provide a general report, audited financial statements and a directors' report each year.

Corporations registered as small or medium have a contact person and document access address. Corporations registered as large have a corporation secretary and registered office.

A general report includes information such as the names and addresses of members, directors and information about the contact person/secretary and document access address/registered office. It also includes information about number of employees, and value of assets and income.

Financial reports include audited financial statements and notes to those financial statements. In some circumstances the Registrar will accept the annual report provided to the funding body in place of a financial report. The qualifications of the auditor that must be used will differ depending on the registered size and income of the corporation.

Directors' reports consist of reporting on the corporation's activities and results throughout the year, as well as information about any legal proceedings or distributions made to members.

For more information, refer to ORIC's corporation reporting guides produced annually.

1.2 Initial start-up governance requirements

Before registering as an Aboriginal and Torres Strait Islander corporation under the CATSI Act, the RNTBC will need to:

- call and hold an initial general meeting according to the requirements of its proposed constitution (rule book) (RNTBCs are also required to ensure that their rule book is consistent with the NTA)
- agree on a proposed rule book (refer to ORIC's *A guide to writing good governance rules for PBCs and RNTBCs* for more information)
- conduct an election for its first board of directors
- appoint a contact person or secretary of the corporation.

Once registered as an Aboriginal and Torres Strait Islander corporation under the CATSI Act, the RNTBC will need to attend to various start-up governance arrangements, including the set-up of a number of records. This is usually done at the first directors' meeting. For example:

- set up a register of members and former members
- obtain a common seal (with the corporation's name and Indigenous corporation number—ICN—on it) if it wants to operate with one (particularly if its funding body requires it, noting that common seals are not required under the CATSI Act)
- set up a minute book for directors' meetings, general meetings and annual general meetings
- set up required accounts and financial records (including computer systems, manual records etc.) depending on the nature and size of its financial operations, and maintain proper books and records

- attend to a number of taxation matters (e.g. register for goods and services tax, apply for an Australian business number (ABN) with the Australian Securities and Investments Commission (ASIC), superannuation and insurance etc.) depending on the nature of its operations and whether it will employ staff.

1.3 Native title responsibilities

The NTA, the PBC Regulations and the corporation's rule book will set out native title functions and responsibilities, including requirements for it to consult with native title holders and gain consent to make native title decisions. The corporation will need to set up and maintain these arrangements (including meetings with native title holders), associated processes and supporting records.

2 Ongoing governance requirements

The CATSI Act and the corporation's rule book will require the RNTBC to attend to ongoing governance and record keeping requirements, including:

2.1 Annual general meetings

All corporations must hold an annual general meeting before the end of November each year. A corporation can apply to the Registrar before the deadline to have their time limit extended.

Corporations may also hold meetings via videoconference or teleconference and small corporations can apply to the Registrar to hold their annual general meeting every second year in appropriate circumstances.

2.2 Directors' meetings

Directors' meetings must be held as often as a corporation's rule book (constitution) specifies. The Registrar recommends that at least four directors' meetings are held each year.

2.3 Directors' and other officers' duties

Directors and officers under the CATSI Act are subject to certain duties, aligning them with companies registered under the *Corporations Act 2001*. Directors include persons validly appointed to the position of director and persons acting in the position of a director. Secretaries and chief executive or chief financial officers who participate in making decisions that affect the business of the corporation or may significantly affect the corporation's financial standing are officers. Special administrators, receivers, receivers and managers, liquidators or trustees are also corporation officers.

The duties include:

- duty to act in good faith
- duty of care and diligence
- duty to disclose conflicts of interest
- duty not to improperly use position or information
- duty not to trade while insolvent.

All of the duties apply to directors, and only some duties apply to officers. The CATSI Act provides a defence against some breaches of duties for directors and other officers of RNTBCs if they acted to meet native title legislation obligations and did so in good faith.

2.4 Accounts and records

Under Chapter 7 of the CATSI Act, all corporations are required to keep ongoing proper accounts and records including:

- accounts and records for the corporation’s financial affairs
- a copy of the corporation’s current rule book
- records relating to names and addresses of the corporation’s directors, secretary or contact person and the registered office or document access address
- records of meetings, including minutes of meetings, notices, register of members and former members etc.

2.5 Exemptions

Many provisions of the CATSI Act, particularly in chapters 4, 5 and 6, allow corporations and their directors to apply for exemptions which can ease the administrative burden in appropriate circumstances. The corporation can apply to the Registrar to be exempted from obligations such as holding an annual general meeting for a particular financial year if the corporation has not undertaken any business in that financial year.

3 CATSI Act—objects

3.1 Section 1-25

The objects of this Act are to:

- (a) provide for the Registrar of Aboriginal and Torres Strait Islander Corporations; and
- (b) provide for the Registrar’s functions and powers; and
- (c) provide for the incorporation, operation and regulation of those bodies that it is appropriate for this Act to cover; and
- (d) without limiting paragraph (c) provide for the incorporation, operation and regulation of bodies that are incorporated for the purpose of becoming a registered native title body corporate; and
- (e) provide for the duties of officers of Aboriginal and Torres Strait Islander corporations and regulate those officers in the performance of those duties.

3.2 Policy

The objects were designed to clarify that the CATSI Act specifically caters for RNTBCs that are required to register as Aboriginal and Torres Strait Islander corporations by the NTA and PBC Regulations.

4 CATSI Act—applications for registration

4.1 Sections 21-1(2), 22-1(3) and 23-1(3)

Each of these provisions mirror one another but they are drafted specifically in the following contexts: an application for registration in the first instance, an application to register an existing body corporate, and an application to register an amalgamated corporation.

The application must also:

- (a) identify the directors who are to hold office for only one year; and
- (b) if the application seeks registration of an Aboriginal and Torres Strait Islander corporation for the purpose of becoming a registered native title body corporate—indicate that purpose.

4.2 Policy

These provisions ensure that applications for registration under the CATSI Act are immediately identified as being for RNTBCs, or as organisations registering so that they can become RNTBCs, and advises the Registrar of the intended purpose of the corporation.

5 CATSI Act—small, medium and large corporations

5.1 Section 37-10(4)

This provision is for the purpose of valuing assets and as a result determining the size of a corporation under the CATSI Act.

- (4) The native title rights and interests held by a registered native title body corporate are to be disregarded in determining the value of the assets of a registered native title body corporate.

5.2 Policy

Given the special status of native title as inalienable, this provision clarifies that native title assets are not to be considered when determining registered size of a corporation, and removes any doubt that corporations may have to include native title in their assets calculations.

6 CATSI Act—internal governance rules requirements

6.1 Section 66-1(5)

This provision sets out internal governance rules requirements for corporations.

- (5) The internal governance rules must also be:
 - (d) consistent with the Native Title legislation if:
 - (i) an application for registration of an Aboriginal and Torres Strait Islander corporation seeks registration or the corporation for the purpose of becoming a registered native title body corporate; or
 - (ii) the corporation is a registered native title body corporate.

6.2 Policy

This provision supports consistency between the NTA and the CATSI Act.

7 CATSI Act—Registrar may change corporation’s constitution

7.1 Section 69-35(5)

This provision sets out circumstances in which the Registrar can and can not amend a corporation’s rule book (constitution) of his/her own initiative.

- (5) If the corporation is a registered native title body corporate, the Registrar must not change the constitution on the basis of:
 - (a) an act (or omission from doing an act); or
 - (b) a proposed act (or omission from doing an act);if an officer or employee of the corporation does (or refrains from doing), or proposes to do (or refrain from doing), the act:
 - (c) in good faith; and
 - (d) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

7.2 Policy

This provision protects the RNTBC’s rules from being altered by the Registrar and putting the corporation or its officers in a position of conflict with the NTA.

This provision supports consistency between the NTA and the CATSI Act.

8 CATSI Act—corporation’s name requirements

8.1 Section 85(1)

This provision is about a corporation’s name requirements.

- (4) If the corporation is a registered native title body corporate, then the corporation must also have as part of its name the words “registered native title body corporate” (Note: Section 85-10 allows the abbreviation “RNTBC” to be used in a corporation’s name instead of the words “registered native title body corporate”).
- (6) If the corporation is not a registered native title body corporate the corporation must not:
 - (a) have the term “registered native title body corporate” as part of its name; or
 - (b) include the abbreviation “RNTBC” in its name.

8.2 Policy

Having the words ‘registered native title body corporate’ or ‘RNTBC’ as part of the name of a corporation signals to the world at large that the corporation is involved in holding or managing native title rights and obligations. This ensures that the corporation is instantly recognisable as being in this special class of Aboriginal and Torres Strait Islander corporations. It is consistent with the convention that requires certain words or abbreviations to be included in a corporation’s name depending on

where it is registered (for example, all corporations registered under state and territory legislation are required to have the word ‘incorporated’ or ‘Inc’ in their name to signal that they are a not-for-profit body registered under state and territory legislation).

9 CATSI Act—corporation’s name requirements (2)

9.1 Section 88-10

This provision ensures that once a corporation notifies the Registrar of its RNTBC status, the Registrar can change the corporation’s name to include the abbreviation ‘RNTBC’ and re-issue the certificate of registration (under section 88-20) to ensure the corporation is immediately recognised as a body that manages native title rights and interests.

Notice required

- (1) If an Aboriginal and Torres Strait Islander corporation becomes a registered native title body corporate, the corporation must, within 28 days after becoming registered, notify the Registrar in writing accordingly.

Registrar to change registration

- (2) If:
 - (a) the Registrar is notified under subsection (1) that the corporation has become a registered native title body corporate; or
 - (b) the Registrar otherwise becomes aware of that fact;the Registrar must change the corporation’s name by altering the details of the corporation’s registration to include the words “registered native title body corporate” in the corporation’s name.

When name change takes effect

- (3) A change of name under subsection (2) takes effect when the Registrar alters the details of the corporation’s registration.

9.2 Policy

Corporations are required to advise the Registrar of their RNTBC status. However the Registrar can also change the name according to the corporation’s status.

Once the Registrar becomes aware that a corporation has been entered on the National Native Title Tribunal register, the Registrar can change the name of the corporation to reflect its RNTBC status. This provision reduces the administrative burden on RNTBCs.

The Registrar and the National Native Title Tribunal have arranged for the National Native Title Tribunal to regularly notify the Registrar when new RNTBCs are determined by the Federal Court.

10 CATSI Act—corporation’s name requirements (3)

10.1 Section 88-15

This provision deals with the Registrar updating a corporation’s name if it ceases to be an RNTBC.

Notice required

- (1) If an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate (RNTBC) ceases to be a RNTBC, the corporation must, within 28 days after ceasing to be a RNTBC, notify the Registrar in writing accordingly.

Registrar to change registration

- (2) If:
 - (a) the Registrar is notified under subsection (1) that the corporation has ceased to be a RNTBC or
 - (b) the Registrar otherwise becomes aware of that fact;the Registrar must change the corporation’s name by altering the details of the corporation’s registration to delete the words “registered native title body corporate” from the corporation’s name.

When name change takes effect

- (3) A change of name under subsection (2) takes effect when the Registrar alters the details of the corporation’s registration.

10.2 Policy

This provision enables the Registrar to alter the name of a corporation that ceases to be a RNTBC so that the change in status of the corporation is accurately reflected to third parties.

11 CATSI Act—grounds for a court order

11.1 Section 166-1(2)

This provision outlines the grounds on which a court may make an order.

- (2) If the corporation is a registered native title body corporate, the Court must not make an order under subsection 166-5(1) on the basis of:
 - (a) an act (or omission from doing an act); or
 - (b) a proposed act (or omission from doing an act);if an officer or employee of the corporation does (or refrains from doing), or proposes to do (or refrain from doing), the act:
 - (c) in good faith; and
 - (d) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

11.2 Policy

This provision is designed to ensure that directors and officers of RNTBCs do not have conflicting obligations under the NTA and the CATSI Act.

12 CATSI Act—applying for leave to bring, or intervene in, proceedings on behalf of a corporation

12.1 Section 169-10(5)

This provision deals with the circumstances in which a person can bring or intervene in proceedings on behalf of a corporation, and when the court can and cannot grant leave to a person to do so.

- (5) The Court must not grant the application if:
 - (a) the corporation has decided:
 - (i) not to bring the proceedings; or
 - (ii) not to defend the proceedings; or
 - (iii) to discontinue, settle or compromise the proceedings; and
 - (b) an officer or employee of the corporation made that decision:
 - (i) in good faith; and
 - (ii) with the belief that making the decision was necessary to ensure that the corporation complies with a Native Title legislation obligation.

12.2 Policy

This provision is designed to ensure that directors and officers of RNTBCs do not have conflicting obligations under the NTA and the CATSI Act and protects officers of RNTBCs from being exposed to conflicting duties.

13 CATSI Act—civil obligation of care and diligence

13.1 Section 265-1(2A)

This provision confirms the civil obligation relating to duty of care and diligence, and the business judgment rule. This obligation says that a director or officer of a corporation who makes a decision is taken to have complied with the duty of care and diligence if they do not have a material personal interest in the subject matter of the judgment.

- (2A) To avoid doubt, a director of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate is not taken to have a material personal interest for the purpose of paragraph (2)(b) (meeting the duty of care and diligence in relation to making a business judgment because of not having a material personal interest in the subject matter of the judgment) if the director does not need to give the other directors notice of the interest because section 26-5 applies.

13.2 Policy

Without this provision, directors and officers of an RNTBC who are also common law holders of native title may never be able to meet their duty of care and diligence. This is because to meet the duty a director or officer must not have a material personal interest in subject matter of decisions being made—an interest that may be inevitable as a common law holder.

Therefore this provision protects directors or officers of RNTBCs (who may have a material personal interest by virtue of their status as a common law holder of native title) from possible breach, by ensuring that they are still able to meet their duty of care and diligence under the CATSI Act.

14 CATSI Act—acts done to comply with native title legislation obligations, and criminal offences in relation to good faith, use of position and use of information

14.1 Sections 265-20 and 265-25(2)

This provision is mirrored in both sections. They set out the civil obligations and criminal offences which arise from breaching the duty to act (or refrain from acting) in good faith, and the duty not to use position or information improperly under the CATSI Act. They also set out the defence afforded if a director or officer of an RNTBC has acted (or refrained from acting) in good faith and for the purpose of a native title legislation obligation.

A director or other officer of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate does not contravene subsections [265-1(1), 265-5(1), 265-10(1), 265-15(1) or 265-25(1)] merely because of doing (or refraining from doing) a particular act if the director or other officer does (or refrains from doing) the act:

- (a) in good faith; and
- (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

14.2 Policy

This provision is designed to ensure that directors and officers of RNTBCs do not have conflicting obligations under the NTA and the CATSI Act.

15 CATSI Act—interest as common law holder of native title

15.1 Section 268-5

This provision outlines a director's duty to give notice to other directors of a material personal interest when a conflict arises.

- (1) This section applies if:
 - (a) an Aboriginal and Torres Strait Islander corporation is a registered native title body corporate; and
 - (b) a director of the corporation has a particular interest as one of the common law holders of native title, being native title:
 - (i) which the corporation holds in trust for the common law holders of the native title; or
 - (ii) for which the corporation acts as agent or representative for the common law holders of the native title.
- (2) The director does not need to give the other directors notice of the interest under subsection 268-1(1).
- (3) A failure to give the other directors notice of the interest does not breach any general law rule about conflicts of interest.

15.2 Policy

This provision clarifies that interests arising because a director is a common law holder of native title do not need to be disclosed.

16 CATSI Act—directors liable for debts and other obligations incurred by corporation as trustee

16.1 Section 271-1(3)

This provision refers to directors not being liable for debts and other obligations incurred by the corporation as trustee if they have acted in good faith in the performance of native title legislation obligations.

- (3) The person is not liable under subsection (1) merely because of doing (or refraining from doing) a particular act if the director does (or refrains from doing) the act:
 - (a) in good faith; and
 - (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

16.2 Policy

This provision ensures that directors and officers of RNTBCs do not have conflicting obligations under the NTA and the CATSI Act, and as a result are not personally liable for debts incurred by a corporation that is a trustee, when they act in good faith and in accordance with their native title obligations.

17 CATSI Act—disqualified person not to manage corporations

17.1 Section 279-1(3)

This provision makes it an offence for a person who is disqualified to manage corporations under the CATSI Act, and protects common law holders of native title from breaching disqualification provisions if they have acted in good faith and according to native title legislation obligations.

- (3) The person is not liable under subsection (1) merely because of doing (or refraining from doing) a particular act if the director does (or refrains from doing) the act:
 - (a) in good faith; and
 - (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

17.2 Policy

This section ensures that directors and officers of RNTBCs do not have conflicting obligations under the NTA and the CATSI Act. It also protects individuals who may not be elected or appointed as directors or managers of the corporation but who, by virtue of the fact that they are native title holders, may arguably fall within the definition of a ‘shadow director’ just because they are giving advice or making decisions as part of their legitimate native title obligations.

18 CATSI Act—benefits given to comply with native title legislation obligations

18.1 Section 287-12

This part says that financial benefits cannot be given to a related party unless members' approval has been obtained in the required manner, and creates an exception for member approval in relation to compliance with native title legislation obligations.

Member approval is not needed to give a financial benefit if the benefit is given to the related party to comply with a Native Title legislation obligation.

18.2 Policy

This provision ensures consistency between the NTA and the CATSI Act, enabling RNTBCs to meet their native title legislation obligations without extra burdens being imposed by the CATSI Act. It clarifies that any benefit given to common law holders will not be regarded as a material personal interest.

19 CATSI Act—grounds for special administration

19.1 Section 487-5(2)

This provision relates to grounds for special administration, especially to the ground that officers have conducted the affairs of the corporation in their own interests or in an oppressive or unfairly prejudicial way.

- (2) Paragraph (1)(d) or (e) does not apply to an officer of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate merely because of doing (or refraining from doing) a particular act if the officer does (or refrains from doing) the act:
 - (a) in good faith; and
 - (b) with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with a Native Title legislation obligation.

19.2 Policy

This provision is designed to ensure that directors and officers of RNTBCs do not have conflicting obligations under the NTA and the CATSI Act.

20 CATSI Act—acts done to comply with native title legislation requirement

20.1 Section 526-10

This provision says that the following grounds for the court to order winding up of a corporation do not apply to officers of RNTBCs in certain circumstances:

- where officers have acted in their own interests, or in a way that is unfair or unjust to the members (section 526-5(e))
- where officers have conducted affairs in an oppressive, unfairly prejudicial or discriminatory way or contrary to the interests of the members (section 526-5(f))
- where an act or omission by the corporation, or made on behalf of the corporation, is oppressive, unfairly prejudicial to or discriminatory against a member or members or contrary to the interests of the members (section 526-5(g))
- where a resolution or proposed resolution of a class of members was or would be oppressive, unfairly prejudicial or discriminatory against or contrary to the interests of the members (section 526-5(h))

These provisions do not apply to an officer of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate merely because of doing (or refraining from doing) a particular act if the officer does (or refrains from doing) the act:

- in good faith and
- with the belief that the doing of the act or omission, or the proposed act or omission, is necessary to ensure that the corporation complies with a native title legislation obligation.

20.2 Policy

This provision makes it clear that acting to carry out a native title obligation will not be considered as oppressive conduct. Oppressive conduct may be a ground for the court to order winding up and therefore prevent the statutory members' rights provisions from being used to challenge decisions and actions taken to comply with native title obligations.

21 CATSI Act—Corporations Act 2001 duty not to trade while insolvent to prevail over conflicting native title legislation obligations

21.1 Section 531-5

- (1) In the event of a conflict between:
 - (a) the duty of a director of an Aboriginal and Torres Strait Islander corporation to ensure that the corporation comply with its Native Title legislation obligations; and
 - (b) the director's duty in relation to the corporation under section 588G of the Corporations Act as applied by section 531-1 of this Act;the director's duty under section 588G of the Corporations Act as so applied prevails, and the director is released from the first-mentioned duty, to the extent of the conflict.
- (2) The corporation is released from the duty to comply with its Native Title legislation obligations to the extent that complying with them would place a director of the corporation in breach of his or her duty in relation to the corporation under section 588G of the Corporations Act as so applied.

21.2 Policy

Section 588G of the *Corporations Act 2001* is the duty not to trade while insolvent. This is a fundamental common law and statutory duty and cannot be displaced by the CATSI Act. This is the only example where duties under the CATSI Act (modelled on the *Corporations Act 2001* duty) override any duty or obligation under native title legislation.

22 CATSI Act—deregistration

22.1 Section 546-15

The Registrar must not deregister an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate under section 546-1, 546-5, 546-10.

22.2 Policy

This provision ensures that a corporation holding or managing native title cannot be deregistered while it is still holding or managing that native title. If the native title functions move to another entity and the corporation ceases to hold their RNTBC status under the NTA, the deregistration process will be triggered.

23 CATSI Act—regulations concerning registered native title bodies corporate

23.1 Section 633-5

Regulations concerning registered native title bodies corporate generally

- (1) Without limiting section 633-1, the regulations may modify any of the provisions of this Act (other than subsections (8) and (9) of this section) as they relate to a registered native title body corporate.

Regulations concerning registered native title bodies corporate and special administrators

- (2) Without limiting subsection (1), the regulations may modify the operation of:
 - (a) Division 499; and
 - (b) the provisions of the Corporations Act (as applied by section 499-10); in relation to the functions, duties and powers of a special administrator for a registered native title body corporate.
- (3) Without limiting subsection (1), the regulations may make provision for the manner in which a special administrator for a registered native title body corporate is to exercise his or her powers in relation to the body corporate.

Regulations concerning registered native title bodies corporate and receivers or liquidators

- (4) Without limiting subsection (1), regulations made for the purposes of paragraph 516-1(2)(b) may modify the operation of the Corporations Act receiver provisions in relation to the functions, duties and powers of a receiver or controller of property of a registered native title body corporate.
- (5) Without limiting subsection (1), the regulations may make provisions for the manner in which a receiver or controller of property of a registered native title body corporate is to exercise his or her powers in relation to the body corporate.

Regulations concerning registered native title bodies corporate and Administrators

- (6) Without limiting subsection (1), the regulations made for the purposes of paragraph 521-1(2)(b) may modify the operation of the Corporations Act administration provisions in relation to the functions, duties and powers of an administrator appointed under those provisions for a registered native title body corporate.
- (7) Without limiting subsection (1), the regulations may make provision for the manner in which an administrator appointed under those provisions for a registered native title body corporate is to exercise his or her powers in relation to the body corporate.

Regulations must not increase criminal penalties etc.

- (8) Regulations made for the purposes of subsection (1) must not:
 - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
 - (b) widen, or have the effect of widening, the scope of any offence.

Consistency with Native Title legislation obligations

- (9) To avoid doubt, regulations that modify this Act in relation to a registered native title body corporate, must not be inconsistent with the Native Title legislation obligations.

23.2 Policy

These powers allow regulations to be made if they are necessary to support better interaction between the NTA and the CATSI Act.

24 CATSI Act—meaning of director and officer

24.1 Section 683

This provision refers to the meaning of director or officer for the purposes of interpretation of the CATSI Act.

- (5) A common law holder of native title is not a director of an Aboriginal and Torres Strait Islander corporation under subparagraph (2)(b)(ii), or an officer of an Aboriginal and Torres Strait Islander corporation under paragraph (3)(c), merely because the directors of the corporation take action, or refrain from taking action, to ensure that the corporation complies with a Native Title legislation obligation.
- (6) A person who is a common law holder of native title is not an officer of an Aboriginal and Torres Strait Islander corporation under paragraph (3)(b), merely because:
 - (a) the person, in complying with a Native Title legislation obligation, makes, or participates in making, decisions that affect the whole or substantial part, of the business of the corporation; or
 - (b) the person, as a common law holder of native title, has the capacity to affect significantly the corporation's financial standing.

24.2 Policy

This provision makes it clear that common law holders of native title do not become directors or officers by virtue of their status or decisions made in relation to that status. It also prevents them from being considered a shadow director when they are acting to carry out a native title obligation.

25 CATSI Act—associates

25.1 Section 686-15(2)

This provision sets out exclusions from the meaning of an associate under the CATSI Act.

- (2) A person who is a common law holder of native title is not an associate of another person by virtue of subsection 686-10(1), or by virtue of subsection 686-10(2) as it applies in relation to subsection 686-10(1), merely because a Native Title legislation obligation has been complied with.

25.2 Policy

An associate of a body corporate includes directors, the secretary, a related body corporate (or its directors or secretary) of the body corporate. This provision makes it clear that common law holders of native title do not become an associate by virtue of their status or decisions made in relation to that status.

26 CATSI Act—subsidiaries and control

26.1 Section 689-25(5)

This provision refers to a first entity controlling a second entity. Control occurs when the first entity can determine the outcome of decisions about the second entity's financial and operating policies.

- (5) If the first entity is a common law holder of native title and the second entity is a registered native title body corporate, the first entity does not control the second entity merely because the second entity complies with a Native Title legislation obligation.

26.2 Policy

This provision makes it clear that an entity that is a common law holder of native title does not control a second entity merely because the second entity complies with a native title legislation obligation. This protects native title holders from falling within the definition of 'control' simply because they are common law holders of native title.

27 CATSI Act—dictionary

27.1 Section 700

This Part contains the dictionary definitions used in the CATSI Act. It confirms that the definitions of 'common law holder', 'registered native title body corporate' and 'native title' have the same meaning as under the NTA.

It also gives the following specific definitions:

Native Title legislation means:

- (a) the Native Title Act and any regulations made under that Act; and
- (b) a prescribed law, or a prescribed provision of a law, of the Commonwealth or of a State or Territory.

Native Title legislation obligations mean the following obligations imposed by the Native Title legislation on a registered native title body corporate:

- (a) an obligation to consult with the common law holders of native title;
- (b) an obligation to act in accordance with the directions of the common law holders of native title;
- (c) an obligation to act only with the consent of the common law holders of native title;
- (d) an obligation to take any other action in relation to the common law holders of native title.

27.2 Policy

The definition of 'Native Title legislation' and 'Native Title legislation obligations' supports the provisions of the CATSI Act that have been tailored to account for RNTBCs, as outlined in this paper. It also adopts the definitions of 'common law holder', 'registered native title body corporate' and 'native title' from the NTA, ensuring consistency between the NTA and the CATSI Act.