



Update on proposed reforms to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

Update, November 2018

Amending the law

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) was reviewed in late 2017. The Australian Government has considered the review and decided to pursue amendments to the legislation. The plan is to make the regulatory framework stronger, increase transparency and—for small corporations—more flexible.

Drafting of the legislative changes has been completed and we're engaging with corporations and stakeholders to help us work out how to implement the proposed changes.

Changing the CATSI Act is a lengthy and complex process, but we're aiming to complete it in time for the changes to take effect from 1 July 2019.

The next step is for the draft bill to go to the House of Representatives.

Downstream changes

Once we know exactly how the law will change, we can start updating the business systems and processes that underlie how ORIC administers the CATSI Act and maintains the Register of Aboriginal and Torres Strait Islander Corporations.

We'll be looking for opportunities here, to make it easier for corporations to lodge reports, make requests and keep their details up to date.

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.

Summary of the changes

Simpler sizing

The change simplifies the test for determining whether a corporation is small, medium or large, and adjusts the thresholds.

We predict there'll be fewer medium-sized corporations, and more corporations in both the small and large categories.

Why does size matter? Size is linked to some governance arrangements as well as reporting and meeting obligations. Changing size means some corporations will have reduced reporting obligations; others will need to provide a directors' report for the first time.

More useful rule books

Corporations will need to include all the 'replaceable rules' from the CATSI Act in their rule book so that the corporation's rules are all in the one place. This will make it easier for members and directors to find and follow the rules.

The Registrar will have a power to initially refuse to register rule books that are not fit for purpose—for example, they use language that's overly complex or excessive details. But if members decide they want the rule book as it is, then the Registrar will have to register it.

Business structures

The changes make it easier to create wholly-owned subsidiaries, joint venture organisations between Indigenous and non-Indigenous entities or entities with corporate members, within a regulatory framework that provides access to unique safeguards against corporate collapse.

Meetings and reporting

Medium and large corporations will need to table their reports at the AGM rather than just making them available to members.

Members of small corporations can decide to skip one or two consecutive AGMs—to relieve the burden and cost of holding meetings.

Corporations can extend the deadline for holding their AGM or reporting for up to 30 days if certain circumstances arise such as natural disaster or death in the community.

Summary of the changes

Membership

Corporations will need to make use of alternative contact details of members before trying to cancel a person's membership for being uncontactable—protecting members' rights.

Directors will be allowed to redact personal information on the corporation's register of members to help keep people safe.

Transparency of senior executives

Medium and large corporations will report the salary and benefits within aggregated bands as well as a 10-year employment summary of senior managers to members and the Registrar.

The Registrar will collate de-identified data to produce sectoral statistics to help boards to make decisions about how much to pay senior staff.

Related third parties

The related third party rules will be loosened to help corporations, especially those in small communities with extensive kinship ties and limited options for purchasing goods or services.

Small corporations will be able to make related third party transactions—up to \$5000 per party, per year—without following the strict provisions of the CATSI Act and seeking member approval.

Corporations will also be able to apply to the Registrar to allow other transactions.

New low-range compliance powers

Currently the Registrar's only option for taking action against officers and corporations that breach their obligations under the CATSI Act is to prosecute in court or appoint a special administrator. These are serious steps to take and not always appropriate for less serious wrongdoing, such as failing to respond to a compliance notice or to lodge reports.

The amendments introduce fines (discretionary rather than automatically issued) and allow the Registrar to accept enforceable undertakings.

When investigating allegations of wrongdoing the Registrar will be able to set deadlines for action earlier than 14 days—consistent with other frameworks.

Some other minor bits

- Add insolvency to the grounds for putting corporations into special administration.
- Streamline the process for corporations seeking the appointment of a special administrator—if everyone wants it, we shouldn't waste time unnecessarily.
- Reduce the criteria for voluntary deregistration from 100 per cent to 75 per cent of member votes—deregistration is cheaper than winding up.
- Allow corporations to appoint independent directors without having to have a rule about it in their rule book—access to skilled people without the hoops.
- Other minor matters to make some parts of the CATSI Act more consistent with the *Corporations Act 2001* such as assumption of insolvency.



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